RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Species of Ash Tree, Parts Thereof and Products and Debris Therefrom, Which Are at Risk for Infestation by the Emerald Ash Borer

I.D. No. AAM-25-16-00006-A
Filing No. 791
Filing Date: 2016-08-16
Effective Date: 2016-08-31

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

Action taken: Repeal of section 141.2 and addition of new section 141.2 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

Subject: Species of ash tree, parts thereof and products and debris therefrom, which are at risk for infestation by the emerald ash borer.

Purpose: To expand and combine the 14 existing restricted zones where EAB infestations exist.

Text or summary was published in the June 22, 2016 issue of the Register, I.D. No. AAM-25-16-00006-EP.

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

Text of rule and any required statements and analyses may be obtained from: Christopher A. Logue, New York State Department or Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2087, email: christopher.logue@agriculture.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 2019, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment
Comment:
The Department received one comment, the gist of which is that the emerald ash borer (EAB) is so widely distributed throughout the State that any further regulation of it is futile. Additionally, the comment stated that the regulations as drafted hamper landowners by prohibiting them from processing uninfested ash wood.
Response:
The EAB regulated area currently encompasses approximately 45% of the state's land area, with the spread of the insect over the past several years observed along the borders of previously regulated areas. Significantly, the insect has not been observed in the Champlain Valley, St. Lawrence area or other outlying/isolated areas, supporting the Department's belief that its quarantine strategy designed to limit the human assisted spread of the insect is having some positive effect and has afforded additional time to plan for infestation on municipal and state lands and in urban areas where ash is an important street tree.
The Department has concluded that the benefits of maintaining the quarantine outweighs the burden that it places on landowners and the forest products industry. The Department has sought to mitigate that burden, and in administering the quarantine, has endeavored to provide landowners and the forest products industry with the ability to harvest ash through the year certain, but under certain restrictions. To that end the department initiated flight season harvest permits, which allow for the harvest of uninfested ash from regulated areas. This recognizes the regional nature of processing capacity, as well as safety and access issues which make fall, winter and spring harvests difficult. To date, approximately 25 flight season harvest permits have been issued for the summer harvest.
The Department, in conjunction with the Department of Environmental Conservation, will reevaluate the quarantine incorporating 2016 trapping data in the last quarter of 2016.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Program Rules for New York State Grown and Certified

I.D. No. AAM-35-16-00017-P

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

Proposed Action: This is a consensus rule making to add Part 161 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18, 156-f and 156-h

Subject: Program rules for New York State Grown and Certified.

Purpose: Inform interested parties of the program, its purpose, participation requirements, qualifying product and rules of participation.

Text of proposed rule: Title One of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding thereto a new Part 161, to read as follows:

PART 161

NEW YORK STATE GROWN AND CERTIFIED PROGRAM

161.1 Purpose

This Part has been promulgated to allow producers of farm or forest products, grown, harvested, raised and bred in New York and processors and/or manufacturers of farm and forest products manufactured in New York using farm and forest products predominantly grown, harvested or

raised in the state by New York State Grown and Certified Program producers, to use the New York State Grown and Certified Seal on labels and labeling associated with such product, provided that, as more specifically set forth in this Part, the producer, processor or manufacturer has: (a) been verified to grow, harvest, raise, process and/or manufacture the product using good agricultural or handling practices; and/or (b) operates in an environmentally responsible manner.

161.2 Definitions

For the purpose of this Part, the following terms shall have the following meanings:

(a) "Environmentally Responsible Manner" means participation in: (i) the Agricultural Environmental Management Program, administered by the Department of Agriculture and Markets ("AEM Program"), with the completion of Tier 2 of the program, or higher, within three years of admission into the New York State Grown and Certified Program; or (ii) another program, either identified in this Part or determined by the Commissioner to demonstrate environmental responsibility sufficient to qualify for participation in the New York State Grown and Certified Program.

(b) "Farm products" means agricultural and horticultural products grown and/or produced in New York, including: vegetable and fruit products; grains, livestock and meats; milk, poultry; eggs; nuts; honey; maple tree sap and maple products produced therefrom; as well dairy products that have been processed or manufactured in New York from milk predominantly produced in New York. Except as otherwise provided in this subdivision, a farm product is produced in New York if it is, solely, the product of land or trees located in New York.

(c) "Forest products" means trees, logs, firewood, lumber, paper and related products that have been produced or processed in New York. A forest product is produced in New York if it: (i) consists solely of trees, or parts thereof, grown in New York or (ii) it has been manufactured in New York from trees grown predominantly in New York.

(d) "Good Agricultural Practices" (GAP) and Good Handling Practices (GHP) mean the voluntary audit programs bearing those names administered by the United States Department of Agriculture.

(e) "GAP or GHP Certification" means that the processes employed by the producer have been verified under the United States Department of Agriculture's GAP or GHP Program.

(f) "GAP or GHP Certified Equivalent" means a program with annual third-party audits to verify that the participant operates using good agricultural and/or handling practices, which program is either identified in this Part or which has been determined to be a GAP or GHP Certified equivalent by the Commissioner.

(g) "Horticultural products" means nursery stock, ornamental shrubs, ornamental trees and flowers.

(h) "Seal" means the official New York State Grown and Certified seal.

161.3 Qualifications for New York State Grown and Certified Producers, Processors and Manufacturers

(a) New York State Grown and Certified is a voluntary program open to:

(1) producers of farm products;

(2) processors and/or manufacturers of food products manufactured in New York, including wine, spirits, beer and cider, using farm products of New York State Grown and Certified Program producers at levels to be established by the Commissioner which in no event shall fall below a preponderance of the product's ingredients;

(3) producers of forest products and equine stock born and bred in New York;

(4) processors and/or manufacturers of forest products that are processed and manufactured in New York and use forest products from New York State Certified Producers at levels established by the Commissioner which in no event shall fall below a preponderance the product or the component parts of the product; and/or

(5) processors and/or manufacturers of such other non-food products determined by the Commissioner to qualify for the New York State Certified Program, which product is processed or manufactured in New York and uses product from New York State Certified Producers at levels established by the Commissioner which in no event shall fall below a preponderance of the product or the component parts of the product.

(b) Qualifications for the New York State Grown and Certified Program producers, processors and manufactures shall be established by the Commissioner and at a minimum require:

(1) for food products:

(a) certification for safe food handling practices, evidenced by: (i) GAP Certification, GHP Certification, or a GAP or GHP certified equivalent; (ii) participation in a Safe Quality Food Institute auditing program (SQF), or in an annual safe food handling training program deemed acceptable by the Commissioner, or in a modified annual food safety inspection for good manufacturing practices (GMPs) conducted by the Department's Division of Food Safety & Inspection, and/or (iii) such other good food handling practices program deemed acceptable by the Commissioner for the particular product category; and/or

(b) operation in an environmentally responsible manner.

(2) for non-food products: operation in an environmentally responsible manner.

161.4 New York State Grown and Certified Seal

(a) Individuals or entities that grow, produce, raise or harvest farm products in New York and individuals or entities that process or manufacture farm products in New York predominately from farm products grown, produced, raised or harvested in the State may use the New York State Grown and Certified Seal (the "Seal") on or upon a label, labeling, package, container, advertisement, or display, in the form set forth below as applicable to the product and under the terms set forth in this Part, provided that the individual or entity has been determined to be qualified to use the Seal by the Commissioner and has executed a license agreement in the form provided by the Commissioner ("license").

(b) The Seal shall be in the following form: See Appendix in the back of this issue.

161.5 Application

A producer, processor and/or manufacturer of farm or forest products or a breeder of horses born and bred in New York may apply to the Commissioner for permission to place the Seal on or upon a label, labeling, package, or container of, or on or upon an advertisement or display promoting, products qualifying for use of the New York State Grown and Certified Seal. Such application shall be submitted to the Commissioner, upon a form provided by the Commissioner, and shall contain the information required by the provisions of this Part as well as any other information that, in the opinion of the Commissioner, is necessary for the proper administration of the New York State Grown and Certified Program. Except as provided in section 161.6 of this Part, permission will not be granted unless an application therefor has been made and a Trademark Licensing Agreement, in a form provided by the Commissioner has been executed.

161.6 Granting Applications to Use the Seal; Revoking Permission therefor

The Commissioner may grant an application for permission for the Seal to be placed on a label or labeling of, or upon an advertisement or display promoting, a qualifying product, after finding the applicant is qualified to participate in this program pursuant to the terms of this Part. The Commissioner may decline to grant an application, or may suspend or revoke permission to use the Seal, whenever he or she finds, after an opportunity to be heard, that the program participant:

(a) does not or no longer meets the qualifications set forth in section 161.3 of this Part;

(b) has failed or refused to produce any information demanded by the Commissioner reasonably related to the administration and enforcement of this Part;

(c) has failed or refused to comply with any applicable provision set forth in this Part or in the Trademark Licensing Agreement; and/or

(d) has, in the Commissioner's opinion, disparaged the Seal or engaged in conduct damaging the good will of the Seal.

161.7 Conditions of Use of the Seal

A producer, processor and/or manufacturer granted permission to use the Seal shall:

(a) use it on articles or other publicity materials solely for the purpose of referring to the New York State Grown and Certified Program;

(b) use it to support the New York State Grown and Certified Program and for the purpose of promoting products to their customers and to the general public;

(c) use it only on products for which permission was granted by the Commissioner, pursuant to the provisions of this Part;

(d) use it only on top-quality products; and no culls or second-quality products may bear the Seal;

(e) comply with all federal, state, local and municipal laws and ordinances directly related to products in connection with which the Seal is used;

(f) not alter, amend, change, or otherwise distort the Seal in any way, except as otherwise and expressly authorized by the Commissioner;

(g) not challenge, contest, impair or tend to impair or use it in a way that invalidates or may tend to invalidate any of the Department's rights in the Seal;

(h) not use it in any manner likely to confuse, mislead or to deceive the public, or engage in conduct that damages value or the good will of the Seal or of the New York State Grown and Certified Program;

(i) not claim or assert any property interest in the Seal; and

(j) not to register or file applications to register the Seal or a name substantially similar thereto.

Text of proposed rule and any required statements and analyses may be obtained from: Kevin King, Director, Division of Agricultural Development, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 485-0048, email: Kevin.King@agriculture.ny.gov

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

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

Consensus Rule Making Determination

The proposed rule will amend 1 NYCRR to add a new Part 161 thereto which will allow: (1) producers of farm products grown, harvested or raised in New York in an environmentally responsible manner and using good agricultural or handling practices; and (2) processors and manufacturers of products processed or manufactured from farm or forest products predominantly grown, harvested or raised in New York, to use the New York State Grown and Certified Seal.

The proposed rule institutes a voluntary program and no producer, processor or manufacturer of farm products or forest products who does not participate in the program will be required to change, in any way, its processes or procedures for growing, harvesting, raising, processing and/or manufacturing its farm or forest products. The express terms of the proposed rule were drafted only after producers, processors and manufacturers were consulted and their advice solicited regarding what standards for participation in the program should be set forth in the proposed rule. The Department believes that the standards for participation in this voluntary program are uniformly recognized as reasonable and anticipates that they will meet with no objection from market participants.

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

Job Impact Statement

The proposed rule will provide for a voluntary program whereby producers, processors, and manufacturers of farm or forest products grown, harvested, or raised in New York, or that predominantly use such products, may apply for and receive permission to use a "New York State Grown and Certified Seal" on the label or labeling of such products, if the program participants have been determined to meet certain conditions. The proposed rule, when implemented, will either have no impact upon jobs and employment opportunities, or will have a positive effect if consumers purchase farm or forest products that bear the seal rather than products from outside the state that do not.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-34-15-00012-A
Filing No. 777
Filing Date: 2016-08-10
Effective Date: 2016-08-31

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the exempt class.

Text or summary was published in the August 26, 2015 issue of the Register, I.D. No. CVS-34-15-00012-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-36-15-00016-A
Filing No. 771
Filing Date: 2016-08-10
Effective Date: 2016-08-31

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the non-competitive class.

Text or summary was published in the September 9, 2015 issue of the Register, I.D. No. CVS-36-15-00016-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-15-00011-A
Filing No. 772
Filing Date: 2016-08-10
Effective Date: 2016-08-31

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify positions in the exempt class.

Text or summary was published in the November 4, 2015 issue of the Register, I.D. No. CVS-44-15-00011-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-15-00003-A
Filing No. 776
Filing Date: 2016-08-10
Effective Date: 2016-08-31

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the November 10, 2015 issue of the Register, I.D. No. CVS-45-15-00003-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-15-00004-A
Filing No. 774
Filing Date: 2016-08-10
Effective Date: 2016-08-31

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the November 10, 2015 issue of the Register, I.D. No. CVS-45-15-00004-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-15-00005-A
Filing No. 773
Filing Date: 2016-08-10
Effective Date: 2016-08-31

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the November 10, 2015 issue of the Register, I.D. No. CVS-45-15-00005-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-15-00006-A
Filing No. 770
Filing Date: 2016-08-10
Effective Date: 2016-08-31

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the non-competitive class.
Text or summary was published in the November 10, 2015 issue of the Register, I.D. No. CVS-45-15-00006-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-15-00007-A
Filing No. 775
Filing Date: 2016-08-10
Effective Date: 2016-08-31

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the non-competitive class.
Text or summary was published in the November 10, 2015 issue of the Register, I.D. No. CVS-45-15-00007-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-35-16-00004-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:
Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Audit and Control, by increasing the number of positions of Assistant Counsel from 12 to 13 and Special Assistant from 3 to 7.
Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov
Public comment will be received until: 45 days after publication of this notice.
Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.
Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.
Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-35-16-00005-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of the Budget," by deleting therefrom the positions of øMail and Supply Clerk (4), øPrincipal Mail and Supply Clerk (2) and øSenior Mail and Supply Clerk (2) and by adding thereto the positions of øOffice Assistant 1 (Stores/Mail) (4), øOffice Assistant 2 (Stores/Mail) (2) and øStores and Mail Operations Supervisor (2); in the Department of Civil Service, by deleting therefrom the positions of Principal Mail and Supply Clerk (1) and Testing Center Supervisor and by adding thereto the position of Stores and Mail Operations Supervisor (1); in the Department of Economic Development, by deleting therefrom the positions of Keyboard Specialist 2 (3) and Senior Public Information Specialist (1) and by adding thereto the positions of Office Assistant 2 (Keyboarding) (3) and Public Information Specialist 1 (1); in the Department of Environmental Conservation, by deleting therefrom the positions of Calculations Clerk 1 (until first vacated) (1) and Clerk 2 (until first vacated) (1) and by adding thereto the positions of Office Assistant 1 (until first vacated) (1) and Office Assistant 2 (until first vacated) (1); and, in the Department of Labor under the subheading "Workers' Compensation Board," by deleting therefrom the position of Principal Clerk (1) and by adding thereto the position of Office Assistant 3 (1).

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-35-16-00006-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Information Technology Services," by adding thereto the position of Assistant Public Information Officer.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-35-16-00007-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of the Budget," by adding thereto the position of Counsel.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-35-16-00008-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Health under the subheading "Office of the Medicaid Inspector General," by adding thereto the position of Director Internal Audit.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-35-16-00009-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Labor under the subheading "State Insurance Fund," by increasing the number of positions of Special Investment Officer from 12 to 24.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-35-16-00010-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Taxation and Finance, by adding thereto the positions of Computer Forensic Analyst 3 (Tax) (2) and Computer Forensic Analyst 4 (Tax) (3).

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-35-16-00011-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of State, by adding thereto the position of øMedical Specialist 2 (1).

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-35-16-00012-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office for People with Developmental Disabilities," by increasing the number of positions of Deputy Commissioner from 6 to 7.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Department of Economic Development

EMERGENCY
RULE MAKING

START-UP NY Program

I.D. No. EDV-35-16-00001-E
Filing No. 769
Filing Date: 2016-08-10
Effective Date: 2016-08-10

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

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

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

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

Specific reasons underlying the finding of necessity: On June 24, 2013,

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

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

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

Subject: START-UP NY Program.

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

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

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

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

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

4) The regulation establishes eligibility criteria for Tax-Free Areas. Eligibility of vacant land and space varies based on whether it is affiliated with a SUNY college, CUNY college, community college, or private college, and whether the land or space in question is located upstate, downstate, or in New York City. The regulation prohibits any allocation of land or space that would result in the closure or relocation of any program or service associated with a university or college that serves students, faculty, or staff.

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

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

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

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

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

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

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

12) With respect to audits, the regulation requires businesses to provide access to DED, DTF, and DOL to all records relating to facilities located in Tax-Free Areas at a business location within the State during normal business hours. DED, DTF, and DOL are to take reasonable steps to

prevent public disclosure of information pursuant to Section 87 of the Public Officers Law where the business has timely informed the appropriate officials, the records in question have been properly identified, and the request is reasonable.

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

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

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

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

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

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

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

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires November 7, 2016.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

LEGISLATIVE OBJECTIVES:

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

NEEDS AND BENEFITS:

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

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

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

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

COSTS:

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

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

III. Costs to the State government: None.

IV. Costs to local governments: None.

LOCAL GOVERNMENT MANDATES:

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

PAPERWORK:

The rule establishes application and eligibility requirements for Tax-Free NY Areas proposed by universities and colleges, and participating businesses. These regulations establish paperwork burdens that include materials to be submitted as part of applications, documents that must be submitted to maintain eligibility, and information that must be retained for auditing purposes.

DUPLICATION:

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

ALTERNATIVES:

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

FEDERAL STANDARDS:

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

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Participation in the START-UP NY program is entirely at the discretion of qualifying business that may choose to locate in Tax-Free NY Areas.

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

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

Rural Area Flexibility Analysis

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

Job Impact Statement

The regulation establishes procedures and standards for the administration of the START-UP NY program. START-UP NY creates tax-free areas designed to attract innovative start-ups and high-tech industries to New York so as to stimulate economic activity and create jobs. The regulation will not have a substantial adverse impact on jobs and employment opportunities; rather, the program is focused on creating jobs. Because it is evident from the nature of the rulemaking that it will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Education Department

EMERGENCY RULE MAKING

Teacher Certification in Career and Technical Education

I.D. No. EDU-22-16-00006-E
Filing No. 784
Filing Date: 2016-08-15
Effective Date: 2016-08-15

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

Action taken: Addition of section 80-3.5(b)(4) to Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The proposed amendment to section 80-3.5 is necessary to provide an additional pathway option for a Transitional A Certificate in the CTE subjects for candidates who are issued a full license to teach by the Bureau of Proprietary School Supervision and who have two years of teaching experience under such license.

A Notice of Proposed Rule Making was published in the State Register on June 1, 2016. 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), would be the July 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 September 28, 2016, the date a Notice of Adoption would be published in the State Register.

Emergency action is therefore necessary to allow those who are issued a full license by the Bureau of Proprietary School Supervision (BPSS) and who have two years of teaching in the license area in a New York State licensed private career school to take advantage of the additional pathway before the start of the 2016-17 school year and to ensure that the emergency action taken by the Board of Regents at its May 2016 meeting remains continuously in effect until it can be adopted as a permanent rule.

Subject: Teacher certification in career and technical education.

Purpose: Establishes a new pathway for Transitional A certificate.

Text of emergency rule: 1. A new paragraph (4) is added to subdivision (b) of section 80-3.5 of the Regulations of the Commissioner of Education shall be amended by adding new paragraph (4), effective August 15, 2016, to read as follows:

(4) Option D: The requirements of this paragraph are applicable to candidates who will seek an initial certificate and who possess a full license as a teacher issued by the Department pursuant to section 126.6(f) of this Title in the career and technical field in which a certificate is sought. The candidate shall meet the requirements in each of the following subparagraphs:

(i) Education. The candidate shall complete at least two clock hours of coursework or training regarding the identification and reporting suspected child abuse or maltreatment, in accordance with requirements of section 3004 of the Education Law. In addition, the candidate shall complete at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is provided by a provider approved or deemed approved by the department pursuant to Subpart 57-2 of this Title. A candidate who applies for the certificate on or after December 31, 2013, shall also complete at least six clock hours, of which at least three hours must be conducted through face-to-face instruction, of coursework or training in harassment, bullying and discrimination prevention and intervention, as required by section 14 of the Education Law.

(ii) Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination content specialty test(s) in the area of the certificate.

(iii) Experience. The candidate shall have at least two years of satisfactory teaching experience under a full license issued by the Department pursuant to section 126.6(f) of this Title, in a New York State licensed private career school in the certificate area or in a closely related subject area acceptable to the department.

(iv) Employment and support commitment. The candidate shall submit evidence of having a commitment for three years of employment as a teacher in grades 7 through 12 in a career or technical field in a public or nonpublic school or BOCES, which shall include a mentored experience for the first year that will consist of daily supervision by an experienced teacher during the first 20 days of teaching, except that such mentoring shall not be required if the candidate has two years of satisfactory employment as a teacher of students in grades 7 through 12 in a public or nonpublic school or BOCES.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-26-16-00016-EP, Issue of June 29, 2016. The emergency rule will expire October 13, 2016.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law 207(not subdivided) grants general rule-making authority to the Regents to carry into effect State educational laws and policies.

Education Law 305(1) authorizes the Commissioner to enforce laws relating to the State educational system and execute Regents educational policies.

Education Law 3001(2) establishes the qualifications of teachers in the State and requires that such teachers possess a teaching certificate issued by the Department.

Education Law 3004(1) authorizes the Commissioner to promulgate regulations, subject to approval by the Board of Regents, regulations governing the certification and examination requirements for teachers employed in public schools.

Education Law 3006(1) authorizes the Commissioner to issue temporary certificates to teachers.

Education Law 3009 prohibits school district monies from being used to pay the salary of an unqualified teacher.

2. LEGISLATIVE OBJECTIVES:

The proposed rule establishes three new certification pathway options for candidates to obtain a Transitional A certificate who do not meet the current requirements but who possess industry experience, credentials, or are in the process of completing certification in a CTE field to address concerns raised by school districts and Board of Cooperative Educational Services (BOCES) that have expressed difficulty in filling CTE positions.

3. NEEDS AND BENEFITS:

Currently, a Transitional A certificate in a specific career and technical subject is issued to permit the employment of an individual in a specific career and technical education title who does not meet the requirements for an initial certificate, but who possesses the requisite occupational experience. This certificate is valid for three years, and the candidate would complete the additional requirements for an initial certificate during the three years.

The three options available for a Transitional A certificate at this time are:

• Option A. Candidates who possess an associate's degree (or its equivalent) in the career and technical field in which the certificate is sought, and who have at least two years of documented and satisfactory work experience in the career and technical education subject for which a certificate is sought;

• Option B. Candidates who possess a high school diploma or its equivalent (but who do not possess an associate's degree or its equivalent in the certificate area), and who have at least four years of documented and satisfactory work experience in the career and technical education subject for which a certificate is sought; and

• Option C. Candidates who possess an associate's degree (or its equivalent) in the career and technical field in which the certificate is sought, and who have at least two years of documented and satisfactory teaching experience at the postsecondary level (excluding experience as a teaching assistant) in the career and technical education subject for which a certificate is sought.

All three Transitional A pathways described above also require:

(1) Coursework training in identification of and reporting of child abuse or maltreatment, school violence prevention and intervention, and harassment, bullying and discrimination prevention and intervention;

(2) Evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Exam Content Specialty Test in the area of the certificate, and

(3) An employment and support commitment—the candidate must submit evidence of having a commitment for three years of employment as a teacher in a public or nonpublic school or BOCES, which includes a mentored experience for the first year consisting of daily supervision by an experienced teacher during the first 20 days. However, the mentoring is not required if the candidate has two years of satisfactory employment as a teacher of students in grades 7-12 in a public or nonpublic school or BOCES.

In addition, at the May 2016 Board of Regents meeting, the Board adopted by Emergency action a new pathway option for those issued a full license to teach in licensed private career schools and who have two years of teaching experience under such license, to qualify for a Transitional A certificate. If adopted at the September 2016 Board of Regents meeting, this will allow those candidates to teach CTE during the 2016-2017 school year.

Proposed Amendment:

Based on feedback from the field, it appears that several school districts are having difficulty finding CTE teachers to fill positions at the secondary level, particularly the New York City School District. While the Board of Regents has already made the effort to expand the pathways available to obtain a Transitional A certificate in 2013 and at the May 2016 Board meeting, this amendment would create additional pathways for those individuals who do not meet current requirements.

In order to address this issue, the proposed amendment to 80-3.5 of the Regulations of the Commissioner of Education allows additional opportunities for individuals who possess industry experience, credentials, or are in the process of completing certification in a CTE field to obtain a Transitional A teaching certificate in their area of expertise, thus allowing them to teach CTE subjects at the secondary school level. This will help to increase the supply of qualified, certified teachers in the career and technical education field to satisfy the increasing demand for those teachers.

Candidates must meet one of the following requirements:

• Have a minimum of two years of work experience in the CTE subject area of the certificate sought and hold an industry-related credential, where available, or pass an industry accepted examination as approved by the Department and have an employment and support commitment

• Are enrolled in an approved CTE teacher preparation program and have either a minimum of one year of related work experience and/or take and pass an industry accepted examination and have an employment and support commitment

• Are currently certified 7-12 grade teachers in any CTE subject area with two years of documented work experience or who hold industry-recognized credentials, where available, in the related CTE area and have an employment and support commitment

4. COSTS:

a. Costs to State government: The amendment does not impose any costs on State government, including the State Education Department.

b. Costs to local government: The amendment does not impose any costs on local government, including school districts and BOCES.

c. Costs to private regulated parties: The amendment does not impose any costs on private regulated parties.

d. Costs to regulating agency for implementation and continued administration: See above.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon any local government.

6. PAPERWORK:

Any candidate interested in pursuing this certification pathway must submit evidence of having a commitment for three years of employment as a teacher in a public or nonpublic school or BOCES, which includes a mentored experience for the first year consisting of daily supervision by an experienced teacher during the first 20 days.

7. DUPLICATION:

The rule does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

No alternatives were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards concerning registration and CTLE requirements for certificate holders.

10. COMPLIANCE SCHEDULE:

It is anticipated that schools districts and BOCES will be able to comply by the stated effective date.

Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of proposed amendment is to address the issue of school districts and Board of Cooperative Educational Services (BOCES) that have expressed difficulty in filling Career and Technical Education (CTE) positions at the secondary level. The proposed amendment will create a new pathway option for those issued a Full License to teach in licensed private career schools and who have two years of teaching experience under such license, to qualify for a Transitional A certificate. This would allow those who qualify to teach CTE subjects at the secondary level.

The amendment does not impose any new 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:

If adopted by the Board of Regents at the September 2016 Board of Regents meeting, commencing with the 2016-2017 school year, the proposed amendment creates a new certification pathway option for those issued a full license to teach in licensed private career schools by the Department and who have two years of teaching experience under such license, to qualify for a Transitional A certificate. This would allow those who qualify to teach Career and Technical Education (CTE) CTE subjects in grades 7-12.

2. COMPLIANCE REQUIREMENTS:

Currently, a Transitional A certificate in a specific career and technical subject is issued to permit the employment of an individual in a specific career and technical education title who does not meet the requirements for an initial certificate, but who possesses the requisite occupational experience. This certificate is valid for three years, and the candidate would complete the additional requirements for an initial certificate during the three years.

The three options available for a Transitional A certificate at this time are:

• Option A. Candidates who possess an associate's degree (or its equivalent) in the career and technical field in which the certificate is sought, and who have at least two years of documented and satisfactory work experience in the career and technical education subject for which a certificate is sought;

• Option B. Candidates who possess a high school diploma or its equivalent (but who do not possess an associate's degree or its equivalent in the certificate area), and who have at least four years of documented and satis-

factory work experience in the career and technical education subject for which a certificate is sought; and

• Option C. Candidates who possess an associate's degree (or its equivalent) in the career and technical field in which the certificate is sought, and who have at least two years of documented and satisfactory teaching experience at the postsecondary level (excluding experience as a teaching assistant) in the career and technical education subject for which a certificate is sought.

All three Transitional A pathways described above also require:

(1) Coursework training in identification of and reporting of child abuse or maltreatment, school violence prevention and intervention, and harassment, bullying and discrimination prevention and intervention;

(2) Evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Exam Content Specialty Test in the area of the certificate, and

(3) An employment and support commitment—the candidate must submit evidence of having a commitment for three years of employment as a teacher in a public or nonpublic school or BOCES, which includes a mentored experience for the first year consisting of daily supervision by an experienced teacher during the first 20 days. However, the mentoring is not required if the candidate has two years of satisfactory employment as a teacher of students in grades 7-12 in a public or nonpublic school or BOCES.

Proposed Amendment:

Based on feedback from the field, it appears that several school districts are having difficulty finding CTE teachers to fill positions at the secondary level, particularly the New York City School District. While the Board of Regents has already made the effort to expand the pathways available to obtain a Transitional A certificate in 2013, and this amendment would create an additional pathway for those who hold a full license to teach in licensed private career schools, who also have two years of teaching experience under such license.

In order to address this issue, the proposed amendment to 80-3.5 of the Regulations of the Commissioner of Education allows additional opportunities for individuals with specific technical and career experience to obtain a Transitional A teaching certificate in their area of expertise, thus allowing them to teach CTE subjects at the secondary school level. This will help to increase the supply of qualified, certified teachers in the career and technical education field to satisfy the increasing demand for those teachers.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

There are no additional compliance costs on local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule does not impose any additional technological requirements on districts or BOCES.

6. MINIMIZING ADVERSE IMPACT:

The rule seeks to address the issue of school districts having difficulty finding certified teachers to serve as substitute teachers, as this concern was raised by the field. The proposed amendment seeks to provide flexibility to these school districts by providing an additional certification pathway for teachers in CTE in grades 7-12.

7. 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, and from the chief school officers of the five big city school districts.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

If adopted by the Board of Regents at the September 2016 Board of Regents meeting, commencing with the 2016-2017 school year, the proposed amendment creates a new pathway option for those issued a full license to teach in licensed private career schools and who have two years of teaching experience under such license, to qualify for a Transitional A certificate. This would allow those who qualify to teach Career and Technical Education (CTE) subjects at the secondary level.

This amendment applies to all districts and BOCES in New York and those who hold a Full License to teach in licensed private career schools, including those 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:

Currently, a Transitional A certificate in a specific career and technical subject is issued to permit the employment of an individual in a specific career and technical education title who does not meet the requirements for an initial certificate, but who possesses the requisite occupational experience. This certificate is valid for three years, and the candidate would complete the additional requirements for an initial certificate during the three years.

The three options available for a Transitional A certificate at this time are:

• Option A. Candidates who possess an associate's degree (or its equivalent) in the career and technical field in which the certificate is sought, and who have at least two years of documented and satisfactory work experience in the career and technical education subject for which a certificate is sought;

• Option B. Candidates who possess a high school diploma or its equivalent (but who do not possess an associate's degree or its equivalent in the certificate area), and who have at least four years of documented and satisfactory work experience in the career and technical education subject for which a certificate is sought; and

• Option C. Candidates who possess an associate's degree (or its equivalent) in the career and technical field in which the certificate is sought, and who have at least two years of documented and satisfactory teaching experience at the postsecondary level (excluding experience as a teaching assistant) in the career and technical education subject for which a certificate is sought.

All three Transitional A pathways described above also require:

(1) Coursework training in identification of and reporting of child abuse or maltreatment, school violence prevention and intervention, and harassment, bullying and discrimination prevention and intervention;

(2) Evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Exam Content Specialty Test in the area of the certificate, and

(3) An employment and support commitment—the candidate must submit evidence of having a commitment for three years of employment as a teacher in a public or nonpublic school or BOCES, which includes a mentored experience for the first year consisting of daily supervision by an experienced teacher during the first 20 days. However, the mentoring is not required if the candidate has two years of satisfactory employment as a teacher of students in grades 7-12 in a public or nonpublic school or BOCES.

Proposed Amendment:

Based on feedback from the field, it appears that several school districts are having difficulty finding CTE teachers to fill positions at the secondary level, particularly the New York City School District. While the Board of Regents has already made the effort to expand the pathways available to obtain a Transitional A certificate in 2013, and this amendment would create an additional pathway for those who hold a full license to teach in licensed private career schools, who also have two years of teaching experience under such license.

In order to address this issue, the proposed amendment to 80-3.5 of the Regulations of the Commissioner of Education allows additional opportunities for individuals with specific technical and career experience to obtain a Transitional A teaching certificate in their area of expertise, thus allowing them to teach CTE subjects at the secondary school level. This will help to increase the supply of qualified, certified teachers in the career and technical education field to satisfy the increasing demand for those teachers.

3. COSTS:

The proposed amendment does not impose any costs on candidates for the Transitional A certificate, school districts or BOCES across the State, including those located in rural areas of the State.

4. MINIMIZING ADVERSE IMPACT:

The rule seeks to provide additional flexibility to school districts by addressing the issue raised by school districts who were having difficulty finding CTE teachers to fill positions at the secondary level, as this concern was raised by the field.

5. RURAL AREA PARTICIPATION:

Copies of the rule have been provided to Rural Advisory Committee for review and comment.

Job Impact Statement

The purpose of proposed amendment is to address the issue of school districts and Board of Cooperative Educational Services (BOCES) that have expressed difficulty in filling Career and Technical Education (CTE) positions at the secondary level. The proposed amendment will create a new pathway option for those issued a full license to teach in licensed private career schools and who have two years of teaching experience under such license, to qualify for a Transitional A certificate. This would allow those who qualify to teach CTE subjects at the secondary level.

Because the proposed amendment seeks to address an issue raised by the field in employing CTE teachers, 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, and no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

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

EMERGENCY RULE MAKING

Licensure of Occupational Therapy Assistants (OTAs)

I.D. No. EDU-22-16-00008-E
Filing No. 783
Filing Date: 2016-08-15
Effective Date: 2016-08-15

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

Action taken: Amendment of sections 76.6, 76.7, 76.8, 76.9 and 76.10 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 7902-a, 7903, 7904-a, 7905(2), 7906(4) and 7907; L. 2015, ch. 470

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary to implement Chapter 470 of the Laws of 2015, which became effective on May 18, 2016. The amendment to the Education Law made by Chapter 470 codifies and defines the practice of occupational therapy assistants, establishes requirements for licensure, and requires at least one occupational therapy assistant to serve on the State Board for Occupational Therapy. Pursuant to Chapter 470, the practice of an occupational therapy assistant is defined as the provision of occupational therapy and client related services under the direction and supervision of an occupational therapist or a licensed physician in accordance with the Regulations of the Commissioner of Education. It also establishes the requirements for licensure of occupational therapy assistants, which include, but are not limited to, professional education, experience and examination requirements. This amendment to the Education Law also provides for a grandparenting licensure pathway for individuals to qualify for a license as an occupational therapy assistant, without a written examination, if they had a current registration on February 3, 2012 with the Department as an occupational therapy assistant and satisfy the specified education, experience, age, moral character and fee requirements for licensure.

The proposed amendment was adopted as an emergency action at the May 16-17, 2016 Regents meeting, effective May 18, 2016 and a Notice of Emergency Action and Proposed Rule Making was published in the State Register on June 1, 2016. Because 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 State Administrative Procedure Act (SAPA) sections 202(1) and (5), would be the September 12-13, 2016 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 September 28, 2016, the date a Notice of Adoption would be published in the State Register. However, the May 2016 emergency rule will expire on August 14, 2016, 90 days from its filing with the Department of State on May 17, 2016.

If the rule were to lapse, applicants for licensure as occupational therapy assistants would be unable to become licensed until September 28, 2016, which could result in a temporary shortage in the number of licensed professionals qualified to practice occupational therapy and decrease New Yorkers' access to occupational therapy services. Emergency action is therefore necessary at the July 2016 Regents meeting for preservation of the public health and general welfare in order to ensure that the proposed rule adopted by emergency action at the May 2016 Regents meeting remains continuously in effect until the effective date of its permanent adoption, so that applicants for licensure as occupational therapy assistants, who do not meet the requirements for licensure under the grandparenting licensure pathway, can continue to be licensed as occupational therapy assistants, if they meet the licensure requirements of the proposed rule.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the September 12-13, 2016 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: Licensure of Occupational Therapy Assistants (OTAs).

Purpose: To define the practice of OTAs, establish requirements for licensure, and alter the composition of the State Board.

Text of emergency rule: 1. Subdivision (a) section 76.6 of the Regulations of the Commissioner of Education is amended, effective August 15, 2016, as follows:

(a) An occupational therapy assistant shall mean a person *licensed or otherwise* authorized in accordance with this Part who provides occupational therapy services under the direction and supervision of an occupational therapist or licensed physician and performs client related activities assigned by the supervising occupational therapist or licensed physician. Only a person *licensed or otherwise* authorized under this Part shall participate in the practice of occupational therapy as an occupational therapy assistant, and only a person *licensed or otherwise* authorized under this Part shall use the title occupational therapy assistant.

2. Section 76.7 of the Regulations of the Commissioner of Education is amended, effective August 15, 2016, as follows:

§ 76.7 Requirements for [authorization] *licensure* as an occupational therapy assistant.

To qualify for [authorization] *licensure* as an occupational therapy assistant pursuant to section [7906(7)] *7904-a* of the Education Law, an applicant shall fulfill the following requirements:

(a) . . .

(b) have received an education as follows:

(1) completion of a two-year associate degree program for occupational therapy assistants registered by the department or accredited by a national accreditation agency which is satisfactory to the department; or

(2) completion of a postsecondary program [in occupational therapy satisfactory to the department and] of at least two years duration *that has been determined by the Board of Regents pursuant to Education Law section 6506(5) to substantially meet the requirements of Education Law section 7904-a(b)*;

(c) have a minimum of [three months] *sixteen weeks* clinical experience satisfactory to the State board for occupational therapy and in accordance with standards established by a national accreditation agency which is satisfactory to the department;

(d) . . .

(e) . . .

[(f) register triennially with the department in accordance with the provisions of subdivision (h) of this section, sections 6502 and 7906(8) of the Education Law, and sections 59.7 and 59.8 of this Title;]

([g]*f*) pay a fee for an initial license and a fee for each triennial registration period that shall be one half of the fee for initial license and for each triennial registration period established [in Education law] for occupational therapists; and

([h]*g*) except as otherwise provided by Education Law section 7907(2), pass an examination acceptable to the department.

3. Subdivision (a) of section 76.8 of the Regulations of the Commissioner of Education is amended, effective August 15, 2016, as follows:

(a) A written supervision plan, acceptable to the occupational therapist or licensed physician providing direction and supervision, shall be required for each occupational therapy assistant providing services pursuant to section [7906(7)] *7902-a* of the Education Law. The written supervision plan shall specify the names, professions and other credentials of the persons participating in the supervisory process, the frequency of formal supervisory contacts, the methods (e.g., in-person, by telephone) and types (e.g., review of charts, discussion with occupational therapy assistant) of supervision, the content areas to be addressed, how written treatment notes and reports will be reviewed, including, but not limited to, whether such notes and reports will be initialed or co-signed by the supervisor, and how professional development will be fostered.

4. Subdivision (b) of section 76.9 of the Regulations of the Commissioner of Education is amended, effective August 15, 2016, as follows:

To be permitted to practice as an exempt person pursuant to section 7906(4) of the Education Law, an occupational therapy assistant student shall be enrolled in a program as set forth in section 76.7(b)(1) of this Part and shall practice under the direction and supervision of:

(a) an occupational therapist; or

(b) an occupational therapy assistant who [has obtained authorization] *is licensed or otherwise authorized* pursuant to section [7906(7)] *7904-a* of the Education Law and who is under the supervision of an occupational therapist.

5. Paragraph (3) of subdivision (a) of section 76.10 of the Regulations of the Commissioner of Education is amended, effective August 15, 2016, as follows:

(a) Definitions. As used in this section:

(1) . . .

(2) . . .

(3) Licensee means an individual licensed to practice occupational therapy pursuant to section 7904 of the Education Law or [authorized] *licensed* to practice as an occupational therapy assistant pursuant to section [7906(7)] *7904-a* of the Education Law.

(4) . . .

(5) . . .

(6) . . .

(7) . . .

6. Paragraph (1) of subdivision (j) of section 76.10 of the Regulations of the Commissioner of Education is amended, effective August 15, 2016, as follows:

(j) Fees.

(1) At the beginning of each registration period, a mandatory continuing competency fee of $45 shall be collected from [licensees] *each licensed occupational therapist* engaged in the practice of occupational therapy in New York State and a mandatory continuing competency fee of $25 shall be collected from [licensees] *each person licensed or otherwise* authorized to practice as an occupational therapy assistant in New York State, except for those exempt from the requirement pursuant to subparagraph (b)(2)(i) of this section. This fee shall be in addition to the registration fee required by section 7904 of the Education Law for [licensees] *licensed occupational therapists* [engaged in the practice of occupational therapy], and the registration fee required by section [76.7 of this Part] *7904-a of the Education Law* for [individuals] *persons licensed or otherwise* authorized to practice as [an] occupational therapy assistants.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-22-16-00008-EP, Issue of June 1, 2016. The emergency rule will expire October 13, 2016.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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 practices of the professions.

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

Section 7902-a of the Education Law, as added by Chapter 470 of the Laws of 2015, provides that only a licensed or otherwise authorized person is permitted to practice as an occupational therapy assistant and use the title "occupational therapy assistant" and defines practice as an occupational therapy assistant to include the providing of occupational therapy and client related services under the direction and supervision of an occupational therapist or a licensed physician.

Section 7903 of the Education Law, as amended by Chapter 470 of the Laws of 2015, provides for a State Board for Occupational Therapy for the purpose of assisting the Board of Regents and the Department on matters of professional licensing and professional conduct, to be composed of not less than six licensed occupational therapists, one occupational therapy assistant, one physician and two members of the public.

Section 7904-a of the Education Law, as added by Chapter 470 of the Laws of 2015, codifies and establishes the education, experience, examination, age, moral character and fee requirements for applicants seeking licensure as occupational therapy assistants.

Subdivision (2) of section 7905 of the Education Law, as amended by Chapter 470 of the Laws of 2015, provides that an individual with a limited permit to practice occupational therapy or as an occupational therapy assistant, shall be authorized to practice only under the direct supervision of a licensed occupational therapist or a licensed physician and shall practice only in a public, voluntary, or proprietary hospital, health care agency or in a preschool or an elementary or secondary school for the purpose of providing occupational therapy as a related service for a handicapped child, and further requires that the supervision of such limited permittee shall be direct supervision as defined by the Regulations of the Commissioner of Education.

Subdivision (4) of section 7906 of the Education Law, as amended by Chapter 470 of the Laws of 2015, permits an occupational therapy assistant student to engage in clinical practice under the direction and supervision of an occupational therapist or an occupational therapy assistant who is under the supervision of an occupational therapist, as part of an accredited occupational therapy assistant program, as defined by the Commissioner and in accordance with the Regulations of the Commission of Education, provided that no title, sign, card or device is used in such manner as to tend to convey the impression that the person rendering such service is a licensed occupational therapist.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes that the Department shall supervise the regulation of the practice of the professions for the benefit of the public. The proposed amendment will conform the Regulations of the Commissioner of Education to Chapter 470 of the Laws of 2015 which amended Article 156 of the Education Law, by, inter alia, codifying and defining the practice of an occupational therapy assistant and providing that only a licensed or otherwise authorized person is permitted to practice as an occupational therapy assistant and use the title occupational therapy assistant. Chapter 470 of the Laws of 2015 also establishes the requirements for licensure as an occupational therapy assistant, which include, but are not limited to, education, experience, and examination and conforms section 76.7 to Chapter 470 of the Laws of 2015. Chapter 470 of the Laws of 2015 provides for supervision requirements for limited permittees.

The proposed amendment to subdivision (a) of section 76.8 of the Regulations of the Commissioner of Education provides for written supervision plans for occupational therapy assistants, who are licensed or otherwise authorized to practice as occupational therapy assistants by providing occupational therapy and client related services under the direction and supervision of an occupational therapist or a licensed physician.

The proposed amendment to section 76.9 of the Regulations of the Commissioner of Education provides that occupational therapy assistant students with limited permits to practice as exempt persons pursuant to section 7906(4) of the Education Law practice under the direction and supervision of an occupational therapist or a licensed occupational therapy assistant who is under the supervision of an occupational therapist.

The proposed amendment to paragraph (3) of subdivision (a) of section 76.10 of the Regulations of the Commissioner of Education amends the definition of licensee to include occupational therapy assistants licensed pursuant to section 7904-a of the Education Law.

The proposed amendment to paragraph (1) of subdivision (j) of section 76.10 of the Regulations of the Commissioner of Education provides that, inter alia, those licensed to practice as occupational therapy assistants shall be subject to a $25 mandatory continuing competency fee at the beginning of each triennial registration period.

Finally, Chapter 470 of the Laws of 2015 also provides for a grandparenting licensure pathway for individuals to qualify for a license as an occupational therapy assistant, without an examination if they had a current registration on February 3, 2012 with the Department as an occupational therapy assistant and satisfy the specified education, experience, age, moral character and fee requirements for licensure.

This legislation further authorized the Department to develop regulations necessary to implement it.

3. NEEDS AND BENEFITS:

The purpose of the rule is to remove the references in the existing Regulations of the Commissioner of Education regarding the "authorization" of individuals to practice as occupational therapy assistants and replace them with the term "licensure" to better protect the public by establishing licensure requirements for occupational therapy assistants, which will help insure continuing competency across the State. The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 470 of the Laws of 2015.

The proposed rule also makes changes to statutory references which are no longer accurate.

4. COSTS:

(a) Costs to State government: The proposed rule implements statutory requirements and establishes standards as directed by statute, and will not impose any additional costs on State government beyond those imposed by the statutory requirements.

(b) Costs to local government: The proposed rule does not impose any additional costs on local government.

(c) Costs to private regulated parties: The proposed rule does not impose any additional costs to regulated parties beyond those imposed by statute. As required by section 7904-a(f) of the Education Law, applicants for licensure as occupational therapy assistants must pay a fee for an initial license and a fee for each triennial registration period that is one-half of the fee for initial license and for each triennial registration period established for occupational therapists. Pursuant to section 7904(8) of the Education Law, applicants for licensure as occupational therapists must pay a fee of $140 to the Department for admission to a Department conducted examination and for an initial license, a fee of $70 for each reexamination, a fee of $115 for an initial license for persons not requiring admission to a Department conducted examination, and a fee of $155 for each triennial registration period. In addition, section 6507-a of the Education Law authorizes the Commissioner to impose a fifteen percent surcharge, rounded upward to the nearest dollar, on any professional registration fee imposed under Title VIII of the Education Law. Thus, pursuant to sections 7904(8), 7904-a(f) and 6507-a of the Education Law, applicants for licensure as occupational therapy assistants will pay a fee of $58 for an initial license and a fee of $89 for each triennial registration period. Applicants for licensure as occupational therapy assistants do not take a Department conducted examination. These fees for applicants for licensure as occupational therapy assistants are the same fees that applicants for au-

thorization to practice as occupational therapy assistants currently pay with under section 76.7(g) of the Regulations of the Commissioner of Education.

The proposed amendment to paragraph (1) of subdivision (j) of section 76.10 of the Regulations of the Commissioner of Education provides that, inter alia, those licensed to practice as occupational therapy assistants shall be subject to a $25 mandatory continuing competency fee at the beginning of each triennial registration period. This is the same mandatory continuing competency fee that authorized occupational therapy assistants are currently required to pay.

Moreover, pursuant to Education Law section 7904-a(b), applicants for licensure as occupational therapy assistants will incur the cost of completion of a two-year associate degree program for occupational therapy assistants registered by the Department or accredited by a national accreditation agency which is satisfactory to the Department, or its substantial equivalent as determined by the Board of Regents. This is comparable to the educational requirement that applicants for authorization to practice as occupational therapy assistants must currently comply with under section 76.7(b) of the Regulations of the Commissioner of Education.

(d) Costs to the regulatory agency: The proposed rule does not impose any additional costs to the Department beyond those imposed by statute. Any associated costs to the Department will be offset by fees charged to applicants and no significant cost will result to the Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule implements the requirements of Chapter 470 of the Laws of 2015, by establishing the standards for individuals to be licensed to practice as occupational therapy assistants to ensure that only those properly educated and prepared to be occupational therapy assistants hold themselves out as such. It does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The proposed rule imposes no new reporting or other paperwork requirements beyond those imposed by the statute.

7. DUPLICATION:

The proposed rule is necessary to implement Chapter 470 of the Laws of 2015. 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.

8. ALTERNATIVES:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Chapter 470 of the Laws of 2015. There are no significant alternatives to the proposed rule and none were considered.

9. FEDERAL STANDARDS:

Since, there are no applicable federal standards for occupational therapy assistants, the proposed rule does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 470 of the Laws of 2015. The proposed rule will become effective on May 18, 2016, which is the effective date of the statute. The proposed amendment does not impose any compliance schedules on regulated parties or local governments beyond the May 18, 2016 effective date.

Regulatory Flexibility Analysis

On November 20, 2015, Governor Cuomo signed into law Chapter 470 of the Laws of 2015, which, among other changes to the law, added a new section 7902-a to the Education Law to establish occupational therapy assistants as licensed professionals and restrict the use of the title of "occupational therapy assistant" to those individuals licensed as occupational therapy assistants. Chapter 470 of the Laws of 2015 also sets forth the requirements for licensure as an occupational therapy assistant and makes changes to the composition of the State Board for Occupational Therapy.

The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement the provisions of Chapter 470 of the Laws of 2015. The proposed amendment provides that only a licensed or otherwise authorized person is permitted to practice as an occupational therapy assistant and use the title occupational therapy assistant. The proposed amendment further establishes the requirements for licensure as an occupational therapy assistant, which include, but are not limited to, education, experience, and examination requirements and conforms section 76.7 to Chapter 470 of the Laws of 2015. The proposed amendment provides that occupational therapy assistant students with limited permits to practice as exempt persons, pursuant to section 7906(4) of the Education Law, shall practice under the direction and supervision of an occupational therapist or a licensed occupational therapy assistant who is under the supervision of an occupational therapist. The proposed amendment also amends the definition of licensee to include occupational therapy assistants licensed to practice pursuant to section 7904-a of the Education Law. The proposed amendment also provides that, among other things, those licensed to practice as occupational therapy assistants shall be subject to a $25 mandatory continuing competency fee at the beginning of each triennial registration period.

The statutory licensure requirements for applicants for licensure as occupational therapy assistants, which the proposed amendment implements, are comparable to requirements with which individuals seeking authorization to practice as occupational therapy assistants are currently required to comply under section 76.7 of the Regulations of the Commissioner of Education.

The proposed amendment will not impose any new reporting, recordkeeping, or other compliance requirements, or any adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the proposed amendment 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 NUMBERS OF RURAL AREAS:

The proposed rule will apply to all individuals seeking licensure as occupational therapy assistants, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the 3,881 occupational therapy assistants authorized and registered by the State Education Department, 825 occupational therapy assistants report their permanent address of record is in a rural county.

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

As required by Chapter 470 of the Laws of 2015, the proposed rule establishes and codifies the requirements for licensure as an occupational therapy assistant which, include, but are not limited to, education, experience, and examination requirements. The licensure requirements of Chapter 470 of the Laws of 2015 are comparable to those that individuals seeking authorization to practice as occupational therapy assistants are currently required to comply with under section 76.7 of the Regulations of the Commissioner of Education.

Chapter 470 also provides for a grandparenting licensure pathway for individuals to qualify for a license as an occupational therapy assistant, without an examination, if they had a current registration on February 3, 2012 with the Department as an occupational therapy assistant and satisfy the specified education, experience, age, moral character and fee requirements for licensure.

The proposed amendment to subdivision (a) of section 76.6 of the Regulations of the Commissioner of Education codifies and defines the practice of an occupational therapy assistant and provides that only a person licensed or otherwise authorized is permitted to practice as an occupational therapy assistant and use the title occupational therapy assistant.

The proposed amendment to section 76.7 of the Regulations of the Commissioner of Education establishes the requirements for licensure as an occupational therapy assistant, which include, but are not limited to, education, experience, and examination requirements.

The proposed amendment to subdivision (a) of section 76.8 of the Regulations of the Commissioner of Education provides for written supervision plans for occupational therapy assistants, who are licensed or otherwise authorized to practice as occupational therapy assistants by providing occupational therapy and client related services under the direction and supervision of an occupational therapist or a licensed physician.

The proposed amendment to section 76.9 of the Regulations of the Commissioner of Education provides that occupational therapy assistant students with limited permits to practice as exempt persons, pursuant to section 7906(4) of the Education Law, practice under the direction and supervision of an occupational therapist or a licensed occupational therapy assistant who is under the supervision of an occupational therapist.

The proposed amendment to paragraph (3) of subdivision (a) of section 76.10 of the Regulations of the Commissioner of Education amends the definition of licensee to include occupational therapy assistants licensed pursuant to section 7904-a of the Education Law.

The proposed amendment to paragraph (1) of subdivision (j) of section 76.10 of the Regulations of the Commissioner of Education provides that, inter alia, those licensed to practice as occupational therapy assistants shall be subject to a $25 mandatory continuing competency fee at the beginning of each triennial registration period.

With the exception of individuals seeking licensure under the grandparenting licensure pathway, individuals seeking licensure to practice as occupational therapy assistants in New York State will be required to submit an application to the State Education Department and meet all the requirements for licensure, which include, but are not limited to, education, experience, and examination requirements specified in the proposed rule. Individuals seeking to work in New York State after completing all the requirements for licensure except the examination and/or experience

requirements will be required to submit a limited permit application to the State Education Department.

The proposed rule will not impose any additional professional service requirements on entities in rural areas.

3. COSTS:

With respect to individuals seeking licensure as occupational therapy assistants from the State Education Department, including those in rural areas, the proposed rule does not impose any additional costs beyond those required by statute. As required by section 7904-a(f) of the Education Law, applicants for licensure as occupational therapy assistants must pay a fee for an initial license and a fee for each triennial registration period that is one-half of the fee for initial license and for each triennial registration period established for occupational therapists. Pursuant to section 7904(8) of the Education Law, applicants for licensure as occupational therapists must pay a fee of $140 to the Department for admission to a Department conducted examination and for an initial license, a fee of $70 for each re-examination, a fee of $115 for an initial license for persons not requiring admission to a Department conducted examination, and a fee of $155 for each triennial registration period. In addition, section 6507-a of the Education Law authorizes the Commissioner to impose a fifteen percent surcharge, rounded upward to the nearest dollar, on any professional registration fee imposed under Title VIII of the Education Law. Thus, pursuant to sections 7904(8), 7904-a(f) and 6507-a of the Education Law, applicants for licensure as occupational therapy assistants will pay a fee of $58 for an initial license and a fee of $89 for each triennial registration period. Applicants for licensure as occupational therapy assistants do not take a Department conducted examination. These fees for applicants for licensure as occupational therapy assistants are the same fees that applicants for authorization to practice as occupational therapy assistants are currently required to pay under section 76.7(g) of the Regulations of the Commissioner of Education.

The proposed amendment to paragraph (1) of subdivision (j) of section 76.10 of the Regulations of the Commissioner of Education provides that, inter alia, those licensed to practice as occupational therapy assistants shall be subject to a $25 mandatory continuing competency fee at the beginning of each triennial registration period. This is the same mandatory continuing competency fee that authorized occupational therapy assistants are currently required to pay.

Moreover, pursuant to Education Law section 7904-a(b), applicants for licensure as occupational therapy assistants will incur the cost of completion of a two-year associate degree program for occupational therapy assistants registered by the Department or accredited by a national accreditation agency which is satisfactory to the Department, or its substantial equivalent as determined by the Board of Regents. This is comparable to the educational requirement that applicants for authorization to practice as occupational therapy assistants must currently comply with under section 76.7(b) of the Regulations of the Commissioner of Education.

Therefore, based on the foregoing, the proposed rule does not impose any new or additional fees on or costs to applicants for licensure as occupational therapy assistants.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement the provisions of Chapter 470 of the Laws of 2015, which, inter alia, codifies and establishes the licensure requirements for occupational therapy assistants. These licensure requirements include, but are not limited to education, experience, and examination requirements. The statutory requirements do not make exceptions for individuals who live or work in rural areas. Thus, the State Education Department has determined that the proposed rule's requirements should apply to all individuals seeking licensure as occupational therapy assistants, regardless of the geographic location to help insure continuing competency across the 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 occupational therapy. These organizations included the State Board for Occupational Therapy and the New York State Occupational Therapy Association, which represents occupational therapists and occupational therapy assistants. These groups have members that live, work or provide occupational therapy education in rural areas. These groups have been provided notice of the proposed rule making and opportunity to comment on the proposed amendment.

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements in Chapter 470 of the Laws of 2015 and, therefore, the substantive provisions of the proposed amendment 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 Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed rule is required to implement Chapter 470 of the Laws of 2015, which codifies the definition of occupational therapy assistant, requires at least one occupational therapist assistant to serve on the State Board for Occupational Therapy and establishes the procedure for obtaining an occupational therapy assistant license. The proposed amendment to subdivision (a) of section 76.6 of the Regulations of the Commissioner of Education provides that only a licensed or otherwise authorized person is permitted to practice as an occupational therapy assistant and use the title occupational therapy assistant. The proposed amendment to section 76.7 of the Regulations of the Commissioner of Education establishes the requirements for licensure as an occupational therapy assistant, which include, but are not limited to, education, experience and examination requirements, and conforms section 76.7 to Chapter 470 of the Laws of 2015. The proposed amendment to subdivision (a) of section 76.8 of the Regulations of the Commissioner of Education provides for written supervision plans for occupational therapy assistants, who are licensed or otherwise authorized to practice as occupational therapy assistants by providing occupational therapy and client related services under the direction and supervision of an occupational therapist or a licensed physician. The proposed amendment to section 76.9 of the Regulations of the Commissioner of Education provides that occupational therapy assistant students with limited permits to practice as exempt persons, pursuant to section 7906(4) of the Education Law, shall practice under the direction and supervision of an occupational therapist or a licensed occupational therapy assistant who is under the supervision of an occupational therapist. The proposed amendment to paragraph (3) of subdivision (a) of section 76.10 of the Regulations of the Commissioner of Education amends the definition of licensee to include occupational therapy assistants licensed to practice pursuant to section 7904-a of the Education Law. The proposed amendment to paragraph (1) of subdivision (j) of section 76.10 of the Regulations of the Commissioner of Education provides that, inter alia, those licensed to practice as occupational therapy assistants shall be subject to a $25 mandatory continuing competency fee at the beginning of each triennial registration period.

It is not anticipated that the proposed rule will increase or decrease the number of jobs to be filled because, among other things, the licensure requirements of Chapter 470 of the Laws of 2015 are comparable to the requirements with which individuals seeking authorization to practice as occupational therapist assistants are currently required to comply under section 76.7 of the Regulations of the Commissioner of Education. Chapter 470 also provides for a grandparenting licensure pathway for individuals to qualify for a license as an occupational therapy assistant, without an examination, if they had a current registration on February 3, 2012 with the Department as an occupational therapy assistant, and satisfy the specified education, experience, age, moral character and fee requirements for licensure.

The amendment will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

Department of Environmental Conservation

EMERGENCY RULE MAKING

Peekamoose Valley Riparian Corridor

I.D. No. ENV-23-16-00001-E
Filing No. 789
Filing Date: 2016-08-16
Effective Date: 2016-08-16

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

Action taken: Addition of section 190.35 to Title 6 NYCRR.

Statutory authority: Enviromental Conservation Law, sections 1-0101(3)(b), 3-0301(1)(b), (d), (2)(m), 9-0105(1) and (3)

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

Specific reasons underlying the finding of necessity: The immediate adoption of a new section 190.35 to title 6 of NYCRR, Peekamoose Valley Riparian Corridor, as an emergency rulemaking is necessary for the preservation of the public health, safety and general welfare.

The Peekamoose Valley encompasses more than over 2,000 acres of Forest Preserve land straddling the upper Rondout Creek along Peekamoose Road (Ulster County 42) in the Town of Denning in Ulster County. It is a remote area in the heart of the Catskill Park and New York City's Catskill/Delaware watershed. The upper Rondout Creek flows into the Rondout Reservoir, an important drinking water supply for New York City.

Until recently, most of the public use in the area was concentrated in the Peekamoose primitive camping area. However, day use of the area referred to as the "Blue Hole," a large, deep and very cold swimming hole in the Rondout Creek immediately upstream of the Valley's primitive camping area, has recently increased exponentially, due in part to coverage in social media, several websites, and national magazines which tout the Blue Hole as "one of the best swimming holes in the nation." Due to this dramatic increase in public use, the natural resources of the area are rapidly becoming degraded, fragile ecosystems are being degraded, and serious public health and safety issues are being created. The area is being fouled by human waste, raising concerns about water quality in the Rondout Creek and the New York City reservoir into which it flows. The trampling of vegetation has exposed and compacted the soil. Trees are being stripped of their limbs for firewood, and indiscriminately located campfires are creating numerous carbon scars on the ground. Garbage, trash, and broken glass are despoiling the wild character of the area and raising public safety concerns. The use of portable generators and boom boxes has interfered with the Valley's quiet and solitude. Moreover, the Town of Denning indicates that Peekamoose Road is often not passable by emergency service vehicles because of illegally parked cars, and visitors sometimes stand in the road, putting themselves and passing motorists at risk.

The emergency regulations are tailored to address these problems by creating and delineating a new Peekamose Valley Riparian Corridor ("the Corridor") that will prohibit certain activities within it. Because of the immediate threat to the public health, safety and general welfare posed by the surge in the number of people recreating in the Peekamoose Valley Corridor, it is essential to continue this regulation on an emergency basis, because of heavy use during the summer months. It is essential to immediately take steps to maintain the natural character of the area so that it will be available for sustained public use and enjoyment. Given the significant threats to public health, safety and the environment and the inability of the normal rulemaking process to result in the promulgation of regulations in time for this summer's busy season, it is appropriate to continue this regulation now on an emergency basis.

The use of the emergency rulemaking process is authorized by the State Administrative Procedure Act (SAPA) section 202(6), providing that a State agency may dispense with all or part of the normal rulemaking requirements and adopt a rule on an emergency basis if " the agency finds that the immediate adoption of a rule is necessary for the preservation of the public health, safety or general welfare and that compliance with the normal rulemaking requirements … would be contrary to the public interest …" Because of the immediate threat to the Peekamoose Valley Riparian Corridor as a result of overuse, it is essential to immediately continue this regulation on an emergency basis for the remainder of the 2016 season.

Subject: Peekamoose Valley Riparian Corridor.

Purpose: Protect public health, safety and general welfare, as well as the natural resources on the Peekamoose Valley Riparian Corridor.

Text of emergency rule: Section 190.35 is renumbered 190.36 and a new section 190.35 Peekamoose Valley Riparian Corridor is added to read as follows:

In addition to other applicable general provisions of this Part, the following requirements apply to the Peekamoose Valley Riparian Corridor. In the event of a conflict between this section and another section of this Part, the more restrictive provision will control.

(a) Description. For the purposes of this section, Peekamoose Valley Riparian Corridor means all those state forest preserve lands lying and situated in the Town of Denning in Ulster County located within 300 feet on either side of the centerline of the Roundout Creek, beginning at the New York State land boundary where it crosses Ulster County Route 42 southwest of the Lower Field Parking Area, thence heading northeast for approximately 3.75 miles, and ending with the New York State land boundary approximately one mile east of the Buttermilk Falls parking area, encompassing lands designated by the department as the Sundown Wild Forest and Slide Mountain Wilderness Area of the Catskill Park.

(b) No person shall kindle, build, maintain or use a fire within the Peekamoose Valley Riparian Corridor, including, but not limited to, charcoal fires, wood fires, gas grills, propane stoves or other portable stoves, except at designated campsites.

(c) No person shall possess a glass container within the Peekamoose Valley Riparian Corridor, except when necessary for the storage of prescribed medicines.

(d) No person shall possess a portable generator within the Peekamoose Valley Riparian Corridor, except at designated campsites.

(e) No person shall play a musical instrument or audio device, including, but not limited to, radios, tape players, compact disc or digital players, except at designated campsites unless the noise is rendered inaudible to the public by personal noise-damping devices such as headphones or earbuds. At designated camp sites no person shall use any audio device which is audible outside the immediate area of the campsite.

(f) No person shall deposit or cause to be deposited any solid waste, garbage, food waste, human wastes or other sanitary waste products within the bounds of the Peekamoose Valley Riparian Corridor except at facilities provided and designated by the department.

(g) No person shall park any motor vehicle within the Peekamoose Valley Riparian Corridor except at areas designated and marked by the department as parking areas.

(h) No person shall enter the Peekamoose Valley Riparian Corridor area between one-half hour after sunset and one-half hour before sunrise except for: (1) persons camping at designated campsites; (2) licensed hunters and trappers for the purpose of hunting or trapping; (3) pedestrians using the marked hiking trails crossing the corridor; or (4) persons otherwise authorized by permit issued by the department.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. ENV-23-16-00001-EP, Issue of June 8, 2016. The emergency rule will expire October 14, 2016.

Text of rule and any required statements and analyses may be obtained from: William Rudge, Natural Resources Supervisor, NYS DEC, 21 South Putt Corners Road, New Paltz, NY 12561-1696, (845) 256-3092, email: bill.rudge@dec.ny.gov

Additional matter required by statute: An EAF/Negative Declaration has been prepared in compliance with Article 8 of the Environmental Conservation Law.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law ("ECL") section 1-0101(3) (b) directs the Department of Environmental Conservation (Department) to guarantee "that the widest range of beneficial uses of the environment is attained without risk to health or safety, unnecessary degradation or other undesirable or unintentional consequences." ECL section 3-0301(1)(b) gives the Department the responsibility to "promote and coordinate management of...land resources to assure their protection, enhancement, provision, allocation, and balanced utilization...and take into account the cumulative impact upon all such resources in promulgating any rule or regulation." ECL section 3-0301(1)(d) authorizes the Department to "provide for the care, custody and control of the Forest Preserve." ECL section 9-0105(1) authorizes the Department to ''[e]xercise care, custody, and control of the several preserves, parks and other State lands described in [Article 9 of the ECL]," which includes Forest Preserve lands. Article XIV, Section 1 of the New York State Constitution provides that the lands of the Forest Preserve "shall be forever kept as wild forest lands." ECL section 3-0301(2) (m) authorizes the Department to adopt rules and regulations "as may be necessary, convenient or desirable to effectuate the purposes of [the ECL]," and ECL 9-0105(3) authorizes the Department to "[m]ake necessary rules and regulations to secure proper enforcement of [ECL Article 9]."

2. Legislative objectives:

Paragraph 1 of section 3 of Article XIV of the New York State Constitution provides that "forest and wild life conservation are. . . policies of the State." Article XIV, section 1 of the New York State Constitution provides that the lands of the Forest Preserve "shall be forever kept as wild forest lands," and ECL sections 3-0301(1)(b) and 9-0105(1) give the Department jurisdiction to manage Forest Preserve lands. The Department is also authorized to promulgate rules and regulations for the use of such lands (see ECL sections 3-0301(2) (m) and 9-0105(3)). Consistent with this authority, the proposed regulations are crafted to protect natural resources and the health, safety and general welfare of those who engage in recreational activities within the Peekamoose Valley Riparian Corridor of the Forest Preserve in the Catskill Park.

3. Needs and benefits:

The Peekamoose Valley is an area encompassing more than 2,000 acres of Forest Preserve lands straddling the upper Rondout Creek along Peekamoose Road (Ulster County 42) in the Town of Denning in Ulster County. The Valley is a remote area in the heart of the Catskill Park and New York City's Catskill/Delaware watershed. The upper Rondout Creek flows into the Rondout Reservoir, an important drinking water supply for New York City. Due to the high quality of the Catskill/Delaware water supply, New York City is one of only five large cities in the country with a surface drinking water supply of such high quality that filtration is not required as a form of treatment.

This Peekamoose Valley has been a popular public destination since the State began acquiring land in the Valley in the 1960's. As early as 1971 the area had been discovered by more distant visitors, including those from urban areas to the south. Camping grew increasingly popular in this remote valley (several thousand people over the course of a typical summer), resulting in garbage and other unacceptable impacts. To address these impacts, the Department instituted a camping permit system and limited camping to designated primitive campsites.

Although in the past, public use of the valley has often been loud, occasionally unlawful, and near or above capacity, until recently most of the public use was concentrated in the Peekamoose primitive camping area. However, during the summer of 2015, day use of the area referred to as the "Blue Hole," a large, deep and very cold swimming hole in the Rondout Creek immediately upstream of the primitive camping area, increased exponentially compared to previous years. This was due in part to coverage in social media, several websites, and national magazines touting the Blue Hole as "one of the best swimming holes in the nation."

Due to this dramatic increase in public use, the natural resources of the area are rapidly becoming despoiled, fragile ecosystems are being degraded, and serious public health and safety issues are being created. The area is being fouled by human waste, raising concerns about water quality in the Rondout Creek and the New York City reservoir into which it flows. The trampling of vegetation has exposed and compacted the soil. Trees are being stripped of their limbs for firewood, and indiscriminately located campfires are creating numerous carbon scars on the ground. Garbage, trash, and broken glass are despoiling the wild character of the area and raising public safety concerns. The use of portable generators and boom boxes has interfered with the Valley's quiet and solitude. Moreover, the Town of Denning indicates that Peekamoose Road is often not passable by emergency service vehicles because of illegally parked cars, and visitors sometimes stand in the road, putting themselves and passing motorists at risk.

In 2015, the Department attempted to address the problems associated with overuse by implementing a number of strategies, including: clearly defining parking lots and limiting parking to those lots; prohibiting parking along the road (as posted by the Town of Denning); performing weekly garbage pick-ups; assigning two seasonal back country stewards to work weekends in the Peekamoose Valley from June through Labor Day; updating our twitter and Facebook pages to notify the public of the issues one may encounter in the Peekamoose/Blue Hole region which included limited parking and crowding; providing a map of the area showing the authorized parking areas; recommending alternative swimming/picnicking areas, including Department campgrounds, which are more suitable and with appropriate facilities; suggesting to media outlets who had posts touting the area that they modify their sites to inform the public of the parking and overuse issues; and maintaining a daily presence of up to three Forest Rangers and Environmental Conservation Officers working in conjunction with the Ulster County Sheriff's office and New York State Police in a joint law enforcement effort to curb illegal use of the area.

In spite of the Department's attempts in 2015 to address the area's problems, public use continued to exceed the area's carrying capacity, continuing to create unsanitary conditions, threats to water quality, trampled vegetation and a dramatic degradation of the wild character of the area.

Local municipal leaders, the Department, New York City Department of Environmental Protection (DEP) staff, law enforcement and public safety officials met on September 3, 2015 to address management issues at the Blue Hole. Several additional strategies were agreed upon for the 2016 season. Those at the meeting agreed to increase public outreach and education efforts by erecting new kiosks with information that would present themes related to water quality and drinking water protection (such as "This is Your Drinking Water") as well as emphasizing responsibility for careful treatment of the resource ("leave no trace/carry it in, carry it out" ethics). NYCDEP agreed to seek at least one seasonal bilingual intern to help educate the public about the natural resources at this site. Other agreed upon strategies include: continuing current public outreach efforts using social media, web sites and print media and maintaining a law enforcement presence in partnership with Environmental Conservation Officers, Forest Rangers and County and State Police.

Those at the meeting also agreed that the Department should develop special regulations for the Valley because existing regulations, at 6 NYCRR Part 190, apply generically to all lands under the Department's jurisdiction and do not adequately address the problems that are unique to the Valley and do not enable the Valley's natural resources to be protected. Therefore, the Department proposes to promulgate regulations for the Peekamoose Valley Riparian Corridor.

The proposed regulations define the Peekamoose Valley Corridor as a 600 foot wide corridor on New York State Forest Preserve lands located within 300 feet on either side of the centerline of the Rondout Creek, beginning at the New York State land boundary where it crosses Ulster County Route 42 southwest of the Lower Field Parking Area, thence heading northeast for approximately 3.75 miles, and ending with the New York State land boundary approximately one mile east of the Buttermilk Falls parking area.

The proposed regulations prohibit the deposition of human waste within the Corridor except at designated facilities provided by the Department, thereby protecting the water quality of the Roundout Creek and the Roundout Reservoir, a critical part of New York City's water supply.

To address the problem of broken glass, the regulations will prohibit the use of glass containers in the Corridor except when necessary to store prescription medications. The regulations will prohibit the use of portable generators and audio devices in the Corridor, helping to restore quiet and solitude for the public. The regulations will also restrict the hours of public use in the area to one half hour before sunrise to one half hour after sunset, thereby reducing or eliminating partying at the site by prohibiting the public from being in the area at night, when the greatest amount of abusive partying occurs. The regulations will also protect the public health and safety by requiring the public to leave the area at times when sufficient daylight allows for safe passage over uneven and steep terrain.

Local law enforcement and public safety officials are the first responders to incidents on this property. Local governments support the regulatory proposal and local law enforcement personnel will assist the Department with enforcement.

Information regarding the Department's intent to propose a regulation, content of the regulation and the public process associated with the rulemaking will appear in a widely- distributed newspaper in the area. In addition, a public meeting in the local community will be held during the formal regulatory comment period. All regulatory documents will appear on the Department's website.

4. Costs:

No costs to the regulated community are anticipated to result from the adoption of the proposed regulations. Costs to the State for the additional management actions are minimal and are estimated as follows: $4,000 for a kiosk and new signage; $1,000 for boulders to prohibit parking/define parking areas; $2,500/year for port-a-john rental/service; and $2,000/year for bear-proof refuse container rental/service.

5. Local government mandates:

This proposal will not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district.

6. Paperwork:

The proposed regulations will not impose any reporting requirements or other paperwork on any private or public entity.

7. Duplication:

There is no duplication, conflict, or overlap with State or Federal regulations.

8. Alternatives:

The no-action alternative is not feasible since it does not adequately protect the Peekamoose Valley Riparian Corridor from overuse and abuse and does not protect the public health, safety and general welfare. The existing generic 6 NYCRR Part 190 regulations for State lands are inadequate in protecting the Peekamoose Valley Riparian Corridor because of its unique characteristics, remote location and high level of public use.

Closing the area to public use is also not an acceptable alternative. Forest Preserve land is acquired for the use of and enjoyment by the public. ECL section 9-0301(1) provides that "all lands in the Catskill Park. . . shall be forever reserved and maintained for the free use of all the people. . ." The closure of Forest Preserve land to public use should not occur except when absolutely necessary to protect public health or the resource.

9. Federal standards:

There is no relevant federal standard governing the use of State lands.

10. Compliance schedule:

Once the regulations are adopted, they are effective immediately, and all persons will be expected to comply with them upon their effective date. The Department will educate the public about the regulations through information posted on the Departments' web site, signage posted on the property, and by working with user groups and other stakeholders to help disseminate information regarding the regulations.

Regulatory Flexibility Analysis

Adoption of a new section 190.35 to 6 NYCRR will address overuse and increase public safety on the Peekamoose Valley Riparian Corridor

while still providing a quality outdoor experience for users. A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with these regulations because the proposal will not impose any reporting, record-keeping or other compliance requirements on small businesses or local governments.

Since there are no identified cost impacts for compliance with the proposed regulations on the part of small businesses and local governments, they will bear no economic impact as a result of this proposal. The proposed regulations relate solely to protecting public safety and natural resources on the Peekamoose Valley Riparian Corridor.

Rural Area Flexibility Analysis

Adoption of a new subdivision 190.35 to 6 NYCRR will address overuse and increase public safety on the Peekamoose Valley Riparian Corridor while still providing a quality outdoor experience for users. A Rural Area Flexibility Analysis is not submitted with this proposal because the proposal will not impose any reporting, record-keeping or other compliance requirements on rural areas. The proposed regulations relate solely to protecting public safety and natural resources on the Peekamoose Valley Riparian Corridor.

Job Impact Statement

A Job Impact Statement is not submitted with this proposal because the proposal will have no substantial adverse impacts on existing or future jobs and employment opportunities. The proposed regulations relate solely to protecting natural resources and public safety on the Lower Salmon River State Forest. The proposed regulations should enhance the public's enjoyment of these lands, and local businesses may benefit from the attraction of potential customers to the area.

Assessment of Public Comment

The 45 day public comment period from June 8 thru July 23, 2016 resulted in eight written comments. In addition the Department hosted a public meeting on June 21, 2016 in the local community to explain the regulations and receive public comments. Approximately 20 people attended the meeting and several made verbal comments.

Comment: Strongly support the proposed regulations. Feels that the regulations will help deter abuse and overuse of the property. (eight written comments, several verbal comments)

Response: Thank you.

Comment: Post "Park head-on" signs to encourage people to park in the most efficient way, given the limited parking available.

Response: The Department will look into ways to delineate parking spaces in gravel lots to improve parking.

Comment: Limit the number of people who use the property on a given day. Require permits for camping and day use.

Response: The new regulations are intended to help reduce natural resource damage by addressing the types of uses, not the number of users, which is limited by available parking. If this approach is unsuccessful, limiting the number of users could be considered.

Comment: Need more officers to enforce the regulations.

Response: The Department is working with other agencies including the State Police, New York City Department of Environmental Protection, and Ulster County to assist with law enforcement in the valley.

Comment: Hiking trailhead parking is not useable due to Blue Hole visitors filling it up.

Response: The trailhead parking lot is available to people accessing the forest preserve for a variety of public uses, including hiking, hunting, backpacking, fishing and picnicking.

Comment: What are the results of water samples taken downstream of the Blue Hole?

Response: Water quality samples have not shown adverse impacts to water quality.

Comment: Can New York City Department of Environmental Protection close the road to protect the drinking water supply?

Response: No.

Comment: No cell service delays emergency response.

Response: The Department does not provide cell service, but we recognize this problem and are working to improve radio reception for emergency response.

Comment: Prohibit diving or swinging from a rope in the Blue Hole.

Response: The Department prohibits rope swings and removes them when found.

Comment: Any progress on a radio repeater?

Response: Yes, we are working to develop a repeater on private land that will improve radio reception for law enforcement and emergency response organizations.

Comment: Prohibit shooting.

Response: Hunting with a firearm is allowed on state forest preserve lands consistent with all laws and rules and regulations.

Comment: Get people off the road.

Response: The Department is considering the construction of a pedestrian trail from the trailhead parking lot to the Blue Hole Kiosk to reduce pedestrian use of the road. This proposal will be included in the Sundown Wild Forest Unit Management Plan revision.

Comment: Bear-proof dumpsters and outhouses are needed.

Response: The Department has made arrangements for a bear-proof dumpster and a port-a-john at the Blue Hole from Memorial Day through Columbus Day weekends.

Department of Financial Services

EMERGENCY RULE MAKING

Standard Financial Aid Award Information Sheet for Institutions of Higher Education

I.D. No. DFS-03-16-00003-E

Filing No. 781

Filing Date: 2016-08-12

Effective Date: 2016-08-12

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

Action taken: Addition of Part 421 to Title 3 NYCRR.

Statutory authority: Banking Law, section 9-w

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

Specific reasons underlying the finding of necessity: I, Maria T. Vullo, Superintendent of Financial Services, do hereby certify that the foregoing Part 421 of Title 3 of the Official Compilation of Codes, Rules and Regulations of the State of New York, entitled "Financial Aid Award Information Sheet" was duly adopted on an emergency basis on June 16, 2016 pursuant to the authority granted by Section 9-w of the New York Banking Law.

I determined that it is necessary for the preservation of the general welfare that this regulation be adopted on an emergency basis as authorized by section 202(6) of the State Administrative Procedure Act, effective immediately upon filing with the Department of State.

This regulation is adopted as an emergency measure because time is of the essence. Banking Law Section 9-w requires schools to use a standard financial aid information letter in responding to all financial aid applicants for the 2016-2017 academic year and thereafter. Schools are currently sending award packages and the regulations provide important clarity for schools using the model financial aid information letter. An April 2016 amendment to Banking Law Section 9-w, which took effect immediately, required amended emergency regulations. In order for schools to comply with Banking Law Section 9-w, these rules are being re-adopted on an emergency basis.

No other publication or prior notice is required by statute.

Subject: Standard financial aid award information sheet for institutions of higher education.

Purpose: Provides guidance to institutions of higher education for the implementation of a financial aid award information sheet.

Text of emergency rule: *PART 421*

FINANCIAL AID AWARD INFORMATION SHEET

§ 421.1 Scope and application of this Part

Section 9-w of the Banking Law authorizes the superintendent to adopt rules and regulations for the implementation of a standard financial aid award letter.

§ 421.2 Definitions

For purposes of this Part, unless otherwise stated herein, terms shall have the same meaning as set forth in section 601 of New York State Education Law.

§ 421.3 Content and Delivery of Financial Aid Award Information Sheet On or After May 15, 2016

(a) In responding to an incoming or prospective undergraduate student's financial aid application on or after May 15, 2016, a college, vocational institution or other institution that offers an approved program as defined in section 601 of the Education Law shall provide the letter required in section 9-w of the Banking Law, hereby referred to as the "Financial Aid Award Information Sheet", in the form available at www.dfs.ny.gov/studentprotection.

(b) For purposes of the Financial Aid Award Information Sheet, the

term "Campus" shall mean an institution affiliated with a single U.S. Department of Education Office of Postsecondary Education Identification code.

§ 421.4 Content and Delivery of Financial Aid Award Information Sheet Prior to May 15, 2016

(a) In responding to an incoming or prospective undergraduate student's financial aid application prior to May 15, 2016, a college, vocational institution or other institution that offers an approved program as defined in section 601 of the Education Law shall provide the Financial Aid Award Information Sheet in accordance with section 421.3 of this Part or satisfy the requirements in subsections 421.4(b) and 421.4(c) of this Part.

(b) Beginning on or before February 1, 2016, and ending on or after September 1, 2016, a college, vocational institution or other institution that offers an approved program as defined in section 601 of the Education Law that offers financial aid to undergraduate students shall publish online an "Interim Period Financial Aid Award Information Sheet" in the form available at www.dfs.ny.gov/studentprotection.

(c) In responding to an incoming or prospective undergraduate student's financial aid application before May 15, 2016, a college, vocational institution or other institution that offers an approved program as defined in section 601 of the Education Law shall include in, or accompany with, the response a clear and conspicuous disclosure stating "Additional Information Including Estimated Cost of Attendance Can be Found On the Web Page Below" and setting forth the URL address of the webpage that includes a completed Interim Period Financial Aid Award Information Sheet. For responses to an incoming or prospective undergraduate student's financial aid application between January 1, 2016 and February 1, 2016, this disclosure shall be provided by February 1, 2016.

(d) For purposes of the Interim Period Financial Aid Award Information Sheet, the term "Campus" shall mean an institution affiliated with a single U.S. Department of Education Office of Postsecondary Education Identification code.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-03-16-00003-EP, Issue of January 20, 2016. The emergency rule will expire October 10, 2016.

Text of rule and any required statements and analyses may be obtained from: Max Dubin, Department of Financial Services, One State Street, New York, NY 10004, (212) 480-7232, email: max.dubin@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority: The Superintendent of Financial Services' ("Superintendent") authority for the promulgation of this rule derives from New York Banking Law § 9-w, which calls on the Superintendent to promulgate regulations implementing that section.

2. Legislative Objectives: The Legislature called on the Superintendent to issue this rule to implement New York Banking Law § 9-w, which requires all New York schools to use a uniform financial aid award letter. The Legislature mandated a uniform financial aid letter to give students a better understanding of the costs of a particular school and the options to pay for the education. The uniform letter will also help students to easily compare costs and financial aid options between schools.

3. Needs and Benefits: DFS consulted the New York State Higher Education Services Corporation for thoughts and challenges associated with implementing the form required in Banking Law § 9-w. The rule is required by New York Banking Law § 9-w. The rule provides needed guidance to institutions of higher education, including when and to whom schools must provide the financial aid award letter.

4. Costs: This rule does not create any additional costs to regulated parties or state and local governments. Any costs incurred by higher education institutions in implementing a standard financial aid award information sheet, including building any information technology infrastructure to generate and send the award sheets, were imposed by the Legislature by statute. No new costs are created by this rule, which simply implements New York Banking Law § 9-w.

5. Local Government Mandates: The rule does not create any new local government mandates.

6. Paperwork: There are no new paperwork requirements created by the rule.

7. Duplication: Some institutions of higher education have volunteered to, and in some cases are required, to use a standard student shopping sheet developed by the U.S. Department of Education when responding to financial aid applications. DFS consulted with U.S. Department of Education and designed a model shopping sheet that would meet federal and state requirements. New York schools already committed to using the federal form can add a supplement to their existing form to meet both requirements and avoid duplicative financial aid award information sheets.

8. Alternatives: No significant alternatives to the rule were considered.

9. Federal Standards: The rule does not exceed any federal standards.

10. Compliance Schedule: The rule should not take any time to implement. It has been previously proposed as a permanent rule and adopted on an emergency basis.

Regulatory Flexibility Analysis

The rule will not impose any new adverse economic impact or reporting, record keeping or other compliance requirements on small businesses and local governments. The rule implements Banking Law § 9-w. Some of the covered educational institutions may be small businesses. Any costs or compliance requirements were created statutorily by the Legislature and this rule does not create any additional costs or requirements.

Rural Area Flexibility Analysis

The rule will not impose any new adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in rural areas. The rule implements Banking Law § 9-w. Some of the covered educational institutions are located in rural areas. However, the rule does not impose any new costs or compliance requirements. Any costs or compliance requirements were created statutorily by the Legislature.

Job Impact Statement

The rule should have no adverse impact on jobs and employment opportunities in New York. The rule implements Banking Law § 9-w. It does not create any new burden or costs to businesses that are not already required by statute.

Assessment of Public Comment

The agency received no public comment

EMERGENCY RULE MAKING

Business Conduct of Mortgage Loan Servicers

I.D. No. DFS-35-16-00016-E

Filing No. 790

Filing Date: 2016-08-16

Effective Date: 2016-08-18

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

Action taken: Addition of Part 419 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: The legislature required the registration of mortgage loan servicers as part of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") to help address the existing foreclosure crisis in the state. By registering servicers and requiring that servicers engage in the business of mortgage loan servicing in compliance with rules and regulations adopted by the Superintendent, the legislature intended to help ensure that servicers conduct their business in a manner acceptable to the Department. However, since the passage of the Mortgage Lending Reform Law, foreclosures continue to pose a significant threat to New York homeowners. The Department continues to receive complaints from homeowners and housing advocates that mortgage loan servicers' response to delinquencies and their efforts at loss mitigation are inadequate. These rules are intended to provide clear guidance to mortgage loan servicers as to the procedures and standards they should follow with respect to loan delinquencies. The rules impose a duty of fair dealing on loan servicers in their communications, transactions and other dealings with borrowers. In addition, the rule sets standards with respect to the handling of loan delinquencies and loss mitigation. The rule further requires specific reporting on the status of delinquent loans with the Department so that it has the information necessary to assess loan servicers' performance.

In addition to addressing the pressing issue of mortgage loan delinquencies and loss mitigation, the rule addresses other areas of significant concern to homeowners, including the handling of borrower complaints and inquiries, the payment of taxes and insurance, crediting of payments and handling of late payments, payoff balances and servicer fees. The rule also sets forth prohibited practices such as engaging in deceptive practices or placing homeowners' insurance on property when the servicers has reason to know that the homeowner has an effective policy for such insurance.

Subject: Business conduct of mortgage loan servicers.

Purpose: To implement the purpose and provisions of the Mortgage Lending Reform Law of 2008 with respect to mortgage loan servicers.

Substance of emergency rule: Section 419.1 contains definitions of terms that are used in Part 419 and not otherwise defined in Part 418, including "Servicer", "Qualified Written Request" and "Loan Modification".

Section 419.2 establishes a duty of fair dealing for Servicers in connection with their transactions with borrowers, which includes a duty to pursue loss mitigation with the borrower as set forth in Section 419.11.

Section 419.3 requires compliance with other State and Federal laws relating to mortgage loan servicing, including Banking Law Article 12-D, RESPA, and the Truth-in-Lending Act.

Section 419.4 describes the requirements and procedures for handling to consumer complaints and inquiries.

Section 419.5 describes the requirements for a servicer making payments of taxes or insurance premiums for borrowers.

Section 419.6 describes requirements for crediting payments from borrowers and handling late payments.

Section 419.7 describes the requirements of an annual account statement which must be provided to borrowers in plain language showing the unpaid principal balance at the end of the preceding 12-month period, the interest paid during that period and the amounts deposited into and disbursed from escrow. The section also describes the Servicer's obligations with respect to providing a payment history when requested by the borrower or borrower's representative.

Section 419.8 requires a late payment notice be sent to a borrower no later than 17 days after the payment remains unpaid.

Section 419.9 describes the required provision of a payoff statement that contains a clear, understandable and accurate statement of the total amount that is required to pay off the mortgage loan as of a specified date.

Section 419.10 sets forth the requirements relating to fees permitted to be collected by Servicers and also requires Servicers to maintain and update at least semi-annually a schedule of standard or common fees on their website.

Section 419.11 sets forth the Servicer's obligations with respect to handling of loan delinquencies and loss mitigation, including an obligation to make reasonable and good faith efforts to pursue appropriate loss mitigation options, including loan modifications. This Section includes requirements relating to procedures and protocols for handling loss mitigation, providing borrowers with information regarding the Servicer's loss mitigation process, decision-making and available counseling programs and resources.

Section 419.12 describes the quarterly reports that the Superintendent may require Servicers to submit to the Superintendent, including information relating to the aggregate number of mortgages serviced by the Servicer, the number of mortgages in default, information relating to loss mitigation activities, and information relating to mortgage modifications.

Section 419.13 describes the books and records that Servicers are required to maintain as well as other reports the Superintendent may require Servicers to file in order to determine whether the Servicer is complying with applicable laws and regulations. These include books and records regarding loan payments received, communications with borrowers, financial reports and audited financial statements.

Section 419.14 sets forth the activities prohibited by the regulation, including engaging in misrepresentations or material omissions and placing insurance on a mortgage property without written notice when the Servicer has reason to know the homeowner has an effective policy in place.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire November 13, 2016.

Text of rule and any required statements and analyses may be obtained from: Hadas A. Jacobi, Senior Attorney, NYS Department of Financial Services, 1 State Street, New York, NY 10004, (212) 480-5890, email: hadas.jacobi@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority.

Article 12-D of the Banking Law, as amended by the Legislature in the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), creates a framework for the regulation of mortgage loan servicers. Mortgage loan servicers are individuals or entities which engage in the business of servicing mortgage loans for residential real property located in New York. That legislation also authorizes the adoption of regulations implementing its provisions. (See, e.g., Banking Law Sections 590(2) (b-1) and 595-b.)

Subsection (1) of Section 590 of the Banking Law was amended by the Mortgage Lending Reform Law to add the definitions of "mortgage loan servicer" and "servicing mortgage loans". (Section 590(1)(h) and Section 590(1)(i).)

A new paragraph (b-1) was added to Subdivision (2) of Section 590 of the Banking Law. This new paragraph prohibits a person or entity from engaging in the business of servicing mortgage loans without first being registered with the Superintendent. The registration requirements do not apply to an "exempt organization," licensed mortgage banker or registered mortgage broker.

This new paragraph also authorizes the Superintendent to refuse to register an MLS on the same grounds as he or she may refuse to register a mortgage broker under Banking Law Section 592-a(2).

Subsection (3) of Section 590 was amended by the Subprime Law to clarify the power of the banking board to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations. The functions and powers of the banking board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89.

New Paragraph (d) was added to Subsection (5) of Section 590 by the Mortgage Lending Reform Law and requires mortgage loan servicers to engage in the servicing business in conformity with the Banking Law, such rules and regulations as may be promulgated by the Banking Board or prescribed by the Superintendent, and all applicable federal laws, rules and regulations.

New Subsection (1) of Section 595-b was added by the Mortgage Lending Reform Law and requires the Superintendent to promulgate regulations and policies governing the grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer. Also, the Mortgage Lending Reform Law amends the penalty provision of Subdivision (1) of Section 598 to apply to mortgage loan servicers as well as to other entities.

New Subdivision (2) of Section 595-b was added by the Mortgage Lending Reform Law and authorizes the Superintendent to prescribe regulations relating to disclosure to borrowers of interest rate resets, requirements for providing payoff statements, and governing the timing of crediting of payments made by the borrower.

Section 596 was amended by the Mortgage Lending Reform Law to extend the Superintendent's examination authority over licensees and registrants to cover mortgage loan servicers. The provisions of Banking Law Section 36(10) making examination reports confidential are also extended to cover mortgage loan servicers.

Similarly, the books and records requirements in Section 597 covering licensees, registrants and exempt organizations were amended by the Mortgage Lending Reform Law to cover servicers and a provision was added authorizing the Superintendent to require that servicers file annual reports or other regular or special reports.

The power of the Superintendent to require regulated entities to appear and explain apparent violations of law and regulations was extended by the Mortgage Lending Reform Law to cover mortgage loan servicers (Subdivision (1) of Section 39), as was the power to order the discontinuance of unauthorized or unsafe practices (Subdivision (2) of Section 39) and to order that accounts be kept in a prescribed manner (Subdivision (5) of Section 39).

Finally, mortgage loan servicers were added to the list of entities subject to the Superintendent's power to impose monetary penalties for violations of a law, regulation or order. (Paragraph (a) of Subdivision (1) of Section 44).

The fee amounts for mortgage loan servicer registration and branch applications are established in accordance with Banking Law Section 18-a.

2. Legislative Objectives.

The Mortgage Lending Reform Law was intended to address various problems related to residential mortgage loans in this State. The law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing. Even though mortgage loan servicers perform a central function in the mortgage industry, there had previously been no general regulation of servicers by the state or the Federal government.

The Mortgage Lending Reform Law requires that entities be registered with the Superintendent in order to engage in the business of servicing mortgage loans in this state. The new law further requires mortgage loan servicers to engage in the business of servicing mortgage loans in conformity with the rules and regulations promulgated by the Banking Board and the Superintendent.

The mortgage servicing statute has two main components: (i) the first component addresses the registration requirement for persons engaged in the business of servicing mortgage loans; and (ii) the second authorizes the Superintendent to promulgate appropriate rules and regulations for the regulation of servicers in this state.

Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, addresses the first component of the mortgage servicing statute by setting standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for ap-

proving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as setting financial responsibility standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. This part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Collectively, the provisions of Part 418 and 419 implement the intent of the Legislature to register and supervise mortgage loan servicers.

3. Needs and Benefits.

The Mortgage Lending Reform Law adopted a multifaceted approach to the lack of supervision of the mortgage loan industry, particularly with respect to servicing and foreclosure. It addressed a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Until July 1, 2009, when the mortgage loan servicer registration provisions first became effective, the Department regulated the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also act as agents for owners of mortgages in negotiations relating to loss mitigation when a mortgage becomes delinquent. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot "shop around" for loan servicers, and generally have no input in deciding what company services their loans. The absence of the ability to select a servicer obviously raises concerns over the character and viability of these entities given the central part of they play in the mortgage industry. There also is evidence that some servicers may have provided poor customer service. Specific examples of these activities include: pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; erroneously force-placing insurance when borrowers already have insurance; and failing to engage in prompt and appropriate loss mitigation efforts.

More than 2,000,000 loans on residential one-to-four family properties are being serviced in New York. Of these over 9% were seriously delinquent as of the first quarter of 2012. Despite various initiatives adopted at the state level and the creation of federal programs such as Making Home Affordable to encourage loan modifications and help at risk homeowners, the number of loans modified, have not kept pace with the number of foreclosures. Foreclosures impose costs not only on borrowers and lenders but also on neighboring homeowners, cities and towns. They drive down home prices, diminish tax revenues and have adverse social consequences and costs.

As noted above, Part 418, initially adopted on an emergency basis on July 1 2009, relates to the first component of the mortgage servicing statute – the registration of mortgage loan servicers. It was intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers. It also provided for the suspension, revocation and termination of licensees involved in wrongdoing and establishes minimum financial standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers and establishes certain consumer protections for homeowners whose residential mortgage loans are being serviced. These regulations provide standards and procedures for servicers to follow in their course of dealings with borrowers, including the handling of borrower complaints and inquiries, payment of taxes and insurance premiums, crediting of borrower payments, provision of annual statements of the borrower's account, authorized fees, late charges and handling of loan delinquencies and loss mitigation. Part 419 also identifies practices that are prohibited and imposes certain reporting and record-keeping requirements to enable the Superintendent to determine the servicer's compliance with applicable laws, its financial condition and the status of its servicing portfolio.

Since the adoption of Part 418, 67 entities have been approved for registration or have pending applications and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements.

All Exempt Organizations, mortgage bankers and mortgage brokers that perform mortgage loan servicing with respect to New York mortgages must notify the Superintendent that they do so, and are required to comply with the conduct of business and consumer protection rules applicable to mortgage loan servicers.

These regulations will improve accountability and the quality of service in the mortgage loan industry and will help promote alternatives to foreclosure in the state.

4. Costs.

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publish quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

The ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, and should assist in decreasing the number of foreclosures in this state.

The regulations will not result in any fiscal implications to the State. The Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

5. Local Government Mandates.

None.

6. Paperwork.

Part 419 requires mortgage loan servicers to keep books and records related to its servicing for a period of three years and to produce quarterly reports and financial statements as well as annual and other reports requested by the Superintendent. It is anticipated that the quarterly reporting relating to mortgage loan servicing will be done electronically and would therefore be virtually paperless. The other recordkeeping and reporting requirements are consistent with standards generally required of mortgage bankers and brokers and other regulated financial services entities.

7. Duplication.

The regulation does not duplicate, overlap or conflict with any other regulations. The various federal laws that touch upon aspects of mortgage loan servicing are noted in Section 9 "Federal Standards" below.

8. Alternatives.

The Mortgage Lending Reform Law required the registration of mortgage loan servicers and empowered the Superintendent to prescribe rules and regulations to guide the business of mortgage servicing. The purpose of the regulation is to carry out this statutory mandate to register mortgage loan servicers and regulate the manner in which they conduct business. The Department circulated a proposed draft of Part 419 and received comments from and met with industry and consumer groups. The current Part 419 reflects the input received. The alternative to these regulations is to do nothing or to wait for the newly created federal bureau of consumer protection to promulgate national rules, which could take years, may not happen at all or may not address all the practices covered by the

rule. Thus, neither of those alternatives would effectuate the intent of the legislature to address the current foreclosure crisis, help at-risk homeowners vis-à-vis their loan servicers and ensure that mortgage loan servicers engage in fair and appropriate servicing practices.

9. Federal Standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies, and there are no comprehensive federal rules governing mortgage loan servicing. Federal laws such as the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and regulations adopted thereunder, 24 C.F.R. Part 3500, and the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., govern some aspects of mortgage loan servicing, and there have been some recent amendments to those laws and regulations regarding mortgage loan servicing. For example, Regulation Z, 12 C.F.R. section 226.36(c), was recently amended to address the crediting of payments, imposition of late charges and the provision of payoff statements. In addition, the recently enacted Dodd-Frank Wall Street Reform and Protection Act of 2010 (Dodd-Frank Act) establishes requirements for the handling of escrow accounts, obtaining force-placed insurance, responding to borrower requests and providing information related to the owner of the loan.

Additionally, the newly created Bureau of Consumer Financial Protection established by the Dodd-Frank Act may soon propose additional regulations for mortgage loan servicers.

10. Compliance Schedule.

Similar emergency regulations first became effective on October 1, 2010.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The rule will not have any impact on local governments. The Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") requires all mortgage loan servicers, whether registered or exempt from registration under the law, to service mortgage loans in accordance with the rules and regulations promulgated by the Banking Board or Superintendent. The functions and powers of the Banking Board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89. Of the 67 entities which have been approved for registration or have pending applications and the nearly 400 entities which have indicated that they are exempt from the registration requirements, it is estimated that very few are small businesses.

2. Compliance Requirements:

The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers who are not a bank, mortgage banker, mortgage broker or other exempt organizations (the "MLS Registration Regulations") , and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "Mortgage Loan Servicer Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, sets for the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting of borrower payments, late payments, account statements, delinquencies and loss mitigation, fees and recordkeeping.

3. Professional Services:

None.

4. Compliance Costs:

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publishes quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

Compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

5. Economic and Technological Feasibility:

For the reasons noted in Section 4 above, the rule should impose no adverse economic or technological burden on mortgage loan servicers that are small businesses.

6. Minimizing Adverse Impacts:

As noted in Section 1 above, most servicers are not small businesses. Many of the requirements contained in the rule derive from federal or state laws, existing servicer guidelines utilized by Fannie Mae and Freddie Mac and best industry practices.

Moreover, the ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, help borrowers at risk of foreclosure and decrease the number of foreclosures in this state.

7. Small Business and Local Government Participation:

The Department distributed a draft of proposed Part 419 to industry representatives, received industry comments on the proposed rule and met with industry representatives in person. The Department likewise distributed a draft of proposed Part 419 to consumer groups, received their comments on the proposed rule and met with consumer representatives to discuss the proposed rule in person. The rule reflects the input received from both industry and consumer groups.

Rural Area Flexibility Analysis

Types and Estimated Numbers. Since the adoption of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), which required mortgage loan servicers to be registered with the Department unless exempted under the law, 67 entities have pending applications or have been approved for registration and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements. Only one of the non-exempt entities applying for registration is located in New York and operating in a rural area. Of the exempt organizations, all of which are required to comply with the conduct of business contained in Part 419, approximately 400 are located in New York, including several in rural areas. However, the overwhelming majority of exempt organizations, regardless of where located, are banks or credit unions that are already regulated and are thus familiar with complying with the types of requirements contained in this regulation.

Compliance Requirements. The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers that are not a bank, mortgage banker, mortgage broker or other exempt organization (the "MLS Registration Regulations") , and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law of 2008 requiring registration of mortgage loan servicers which are not mortgage bankers,

mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2010, sets forth the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law of 2008 by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting borrower payments, late payments, account statements, delinquencies and loss mitigation and fees. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Costs. The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. The periodic reporting requirements of Part 419 are consistent with those imposed on other regulated entities. In addition, many of the other requirements of Part 419, such as those related to the handling of loan delinquencies, taxes, insurance and escrow payments, collection of late fees and charges and crediting of payments, derive from federal or state laws, current federal loan modification programs, servicing guidelines utilized by Fannie Mae and Freddie Mac or servicers' own protocols. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, credit unions, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Of the 67 entities that have been approved for registration or that have pending applications, only one is located in a rural area of New York State. Of the few exempt organizations located in rural areas of New York, virtually all are banks or credit unions. Moreover, compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

Minimizing Adverse Impacts. As noted in the "Costs" section above, while mortgage loan servicers may incur some higher costs as a result of complying with the rules, the Department does not believe that the rule will impose any meaningful adverse economic impact upon private or public entities in rural areas.

In addition, it should be noted that Part 418, which establishes the application and financial requirements for mortgage loan servicers, authorizes the Superintendent to reduce or waive the otherwise applicable financial responsibility requirements in the case of mortgage loans servicers that service not more than 12 mortgage loans or more than $5,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden on mortgage loan servicers operating in rural areas.

Rural Area Participation. The Department issued a draft of Part 419 in December 2009 and held meetings with and received comments from industry and consumer groups following the release of the draft rule. The Department also maintains continuous contact with large segments of the servicing industry though its regulation of mortgage bankers and brokers and its work in the area of foreclosure prevention. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. The Department has utilized this knowledge base in drafting the regulation.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Mortgage Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans after July 1, 2009 to be registered with the Superintendent. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2009, sets forth the application, exemption and approval procedures for registration as a mortgage loan servicer, as well as financial responsibility requirements for applicants, registrants and exempted persons.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. Thus, this part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Compliance with Part 419 is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. The vast majority of mortgage loan servicers are sophisticated financial entities that service millions, if not billions, of dollars in loans and have the experience, resources and systems to comply with the requirements of the rule. Moreover, many of the requirements of the rule reflect derive from federal or state laws and reflect existing best industry practices.

Department of Health

NOTICE OF ADOPTION

Hospice Operational Rules

I.D. No. HLT-06-16-00005-A
Filing No. 778
Filing Date: 2016-08-10
Effective Date: 2016-08-31

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

Action taken: Amendment of Parts 700, 717, 793 and 794 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 4010(4)

Subject: Hospice Operational Rules.

Purpose: To implement hospice expansion.

Substance of final rule: This rule amends sections 700.2 and Parts 717 and repeals and replaces Part 793 and 794 of Title 10 (Health) of NYCRR, the operational rules for hospices approved to provide services in New York State under Article 40 of the Public Health Law. The changes will make state regulations consistent with the federal conditions of participation/rules, which were revised and implemented on December 3, 2008, as well as consistent with Article 40 of Public Health Law.

Section 700.2(a)(27) (Definitions) is amended to increase the maximum bed capacity from 8 to 16 beds in a hospice residence.

Section 700.2(c)(55) (Definitions) is amended to define hospice patient as a person certified as being terminally ill, who, alone or in conjunction with designated family member(s), has voluntarily requested admission and been accepted into a hospice for which the Department has issued a certificate of approval; and clarifies that nothing provided herein shall be construed to require provision of services to a patient that are not covered by the patient's payment source.

Section 700.2(c)(58) (Definitions) is amended to clarify that palliative and supportive care is provided to a hospice patient for the reduction and abatement of pain and other symptoms and stresses associated with terminal illness and dying. This terminology (palliative and supportive care) is used in the definition of hospice found in 700.2(a)(23).

Section 700.2(c)(60) (Definitions) is added to include the definition of palliative care, as defined in Public Health Law section 4012-b, provided to a person with advanced, life limiting illness.

Section 717.2 (Construction standards) is amended to increase the maximum bed capacity from 8 to 16 beds in a free standing hospice residence.

Section 717.3 (Patient and service areas in hospice inpatient facilities and units) is amended to reduce maximum room capacity from four to two patients as required by new federal rules.

Section 717.4 (Functional areas in hospice residences) is amended to allow a hospice to operate a maximum of twenty five percent of total residence beds as dually certified beds at any given time.

Section 793.1 (Governing authority) is repealed and replaced with a new section, entitled Patient Rights, which sets forth patient rights for hospice patients and requires alleged violations of mistreatment, neglect or abuse to be investigated and reported to the State, if verified.

Section 793.2 (Contracts) is repealed and replaced with a new section, entitled Eligibility, Election, Admission and Discharge, which sets forth provisions for determining eligibility for and admitting persons into a hospice program as well as requirements for discharging a hospice patient.

Section 793.3 (Administration) is repealed and replaced with a new section, entitled Initial and Comprehensive Assessment, which requires hospices to complete initial and comprehensive assessments and reassess-

ments within specified time periods and identifies the information required in such assessments.

Section 793.4 (Staff Services) is repealed and replaced with a new section, entitled Patient Plan of Care, Interdisciplinary Group and Coordination of Care, which defines the interdisciplinary group members responsible for management of hospice care, identifies the responsibilities of the group, and lists the information required in the hospice plan of care.

Section 793.5 (Personnel) is repealed and replaced with a new section, entitled Quality Assessment and Performance Improvement, which sets forth requirements for the hospice quality assessment and performance improvement program. Hospices will be required to track performance indicators and conduct performance improvement projects.

Section 793.6 (Patient referral, admission and discharge) is repealed and replaced with a new section, entitled Infection Control, which sets forth requirements for management of an infection control program including policies and procedures for preventing and managing persons exposed to blood-borne pathogens and appropriate training of staff.

Section 793.7 (Records and reports) is repealed and replaced with a new section, entitled Staff and Services, which identifies the types of personnel a hospice is expected to employ and their responsibilities. This section also clarifies employment options (direct or contract), qualifications and supervision requirements strengthening the onsite supervision home health aide requirement.

Section 793.8 is repealed.

Section 794.1 (Patient/family rights) is repealed and replaced with a new section, entitled Governing Authority, which lists the responsibilities of the governing authority. It also sets forth requirements for a patient complaint investigation process and emergency plan. This section also requires hospices to obtain and maintain a Health Commerce System account as a communication link with the Department of Health.

Section 794.2 (Patient/family plan of care) is repealed and replaced with a new section, entitled Contracts, which sets forth contract requirements between the hospice and individual, facility or agency providers delivering services on behalf of the hospice. This section also specifies requirements for management contracts and explains those responsibilities that may not be delegated by the governing body.

Section 794.3 (Medical records systems and charts) is repealed and replaced with a new section, entitled Personnel, which sets forth personnel requirements including health requirements, identification and reference checks, maintenance and content of personnel records, job descriptions and orientation, performance appraisal and inservice education.

Section 794.4 (Hospice inpatient and residence services) is repealed and replaced with a new section, entitled Clinical Record, which sets forth requirements for maintenance and content of clinical records. Record retention standards are also included in this section.

Section 794.5 (Short Term Inpatient Service) is added and sets forth structural and operational standards for the provision of short-term inpatient service by the hospice. Physical plant, staffing, quality of life and patient comfort measures are addressed. This section also sets forth operational requirement for management and coordination of care.

Section 794.6 (Hospice Residence Service) is added and sets forth requirements for hospice residences, for those situations when a hospice chooses to offer a hospice operated home to a hospice patient without a suitable home in which to receive services, and increases maximum bed capacity from 8 to 16 beds.

Section 794.7 (Leases) is added and sets forth information which must be included in a lease agreement between a hospice and an inpatient setting or hospice residence.

Section 794.8 (Hospice Care Provided to Residents of a Skilled Nursing Facility (SNF) or Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID)) is added and identifies responsibilities of the hospice and the facility when a resident elects the hospice benefit. Services expected to be provided by the hospice and the facility are clarified, and development and implementation of collaborative plans of care and care coordination between the two entities is required.

Section 794.9 (Records and Reports) is added and identifies those records which must be maintained by the hospice, and the retention timeframes. This section also specifies reports which must be submitted to the Department of Health.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 717.2, 793.1(a) and 793.2.

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

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

The Department received two comments during the public comment period. The comments were received from: Hospice & Palliative Care Association of New York State (HPCANYS) and the State & Local Government Relations of the International Code Council (The Council).

Construction Standards - Section 717.2

COMMENT: The Council commented that The New York State, Department of State recently issued updates on the NYS Uniform Code which included updates to the Uniform Fire Prevention and Building Code (Uniform Code). A notice of adoption for the Uniform Code was published in the April 6, 2016 edition of the State Register and the newly adopted Uniform Code will become fully effective on October 3, 2016. The Uniform Code is enforced by every jurisdiction in the State of New York, (except the City of New York). The commenter recommended adding a reference to the Uniform Fire Prevention and Building Code to § 717.2 Construction Standards.

RESPONSE: Centers for Medicare and Medicaid Services (CMS) requires NFPA 101, Life Safety Code as minimal requirements for hospice inpatient facilities. NFPA 101, Life Safety Code requirements do not apply in a State if CMS finds that a fire and safety code imposed by State Law adequately protects patients in hospices. Language was added: "NFPA 101, Life Safety Code, pursuant to section 711.2 of this Title" to clarify that New York State is currently requiring compliance with NFPA 101, Life Safety Code 2000 edition to comply with the State's technical standards for all health facilities, including hospice units and facilities.

HPCANYS fully supports the proposed regulatory changes with the following two exceptions:

Functional areas in hospice residences - Section 717.4

COMMENT: The Department received a comment proposing that the regulations allow for up to 100% (instead of 25%) of beds in a hospice residence to be dually certified, provided that such dually certified beds have been built to inpatient level of care construction standards, and that the number of dually certified beds does not exceed the number allowed under the needs methodology formula.

RESPONSE: This comment was not incorporated as regulatory language. Public Health Law § 4002 (2-b) states the following: "Hospice residence" means a hospice operated home which is residential in character and physical structure and operated for the purpose of providing more than two hospice patients but not more than sixteen hospice patients with hospice care, which may include dually certified hospice in-patient beds up to twenty-five percent of the hospice residence's patient capacity."

Initial and Comprehensive Assessment - Section 793.3

COMMENT: The Department received a request for clarification as to whether, if the comprehensive assessment is completed within 48 hours, it will satisfy the requirements for both the initial assessment and the comprehensive assessment. The request is deemed important by the commenter especially in a growing managed care environment where such ambiguous provisions could create unintended consequences, delays in the provision of care and numerous reimbursement problems.

RESPONSE: This comment was not incorporated as regulatory language. The regulatory language is consistent with federal regulatory language and with the federal interpretive guidance to surveyors for purposes of surveillance activities. Hospices may choose to complete the comprehensive assessment earlier than five days after the effective date of election (e.g. it may complete the comprehensive assessment at the same time the initial assessment is completed). The purpose, content and person conducting the initial and comprehensive assessments are distinct and different. The comprehensive assessment is not intended to replace the initial assessment if performed earlier than the required five days.

NOTICE OF ADOPTION

Transgender Related Care and Services

I.D. No. HLT-19-16-00008-A

Filing No. 792

Filing Date: 2016-08-16

Effective Date: 2016-08-31

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

Action taken: Amendment of section 505.2(l) of Title 18 NYCRR.

Statutory authority: Public Health Law, sections 201 and 206; Social Services Law, sections 363-a and 365-a(2)

Subject: Transgender Related Care and Services.

Purpose: To revise and clarify the criteria for Medicaid coverage of transgender related care and services.

Text or summary was published in the May 11, 2016 issue of the Register, I.D. No. HLT-19-16-00008-P.

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

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

Assessment of Public Comment

The proposed amendments would revise the Department's existing regulations at 18 NYCRR § 505.2(l) pertaining to Medicaid coverage of transgender related care and services. Section 505.2(l)(5) of the proposed regulation lists certain surgery, services, and procedures presumed to be cosmetic (i.e. performed solely for the purpose of improving appearance); coverage of these services would be available if prior approval is received based on a finding of medical necessity. Seven comments were received: two from lawyers or legal organizations; one from a health center; and four from individuals, one of whom is transgender.

Comment: Some commenters took the position that all gender affirming services for individuals with gender dysphoria (GD) constitute medically necessary treatment.

Response: The Department disagrees, and contends that individuals with GD, like anyone else, may in some instances desire to change their appearance for purely cosmetic reasons, and not for the purpose of treating their GD. For example, an individual with GD who has received medically necessary treatment and has successfully transitioned to the opposite gender, may nevertheless wish to undergo additional procedures, not because it is necessary to address the symptoms of their GD, but simply to enhance their appearance. The Medicaid program is limited to paying for medically necessary care, and thus cannot pay for procedures whose purpose is not medical but cosmetic. No changes were made to the proposed regulation as a result of this comment.

Comment: Some commenters contended that the proposed amendment imposes a stricter standard for obtaining prior approval of the procedures listed in § 505.2(l)(5) to treat GD than is applied to the same procedures when used to treat other conditions or diagnoses. As support for this contention, they pointed to: the proposed regulatory presumption that these services are cosmetic; and the fact that the regulation defines cosmetic procedures as those "performed solely for the purpose of improving an individual's appearance", while in other contexts cosmetic procedures are described as those "provided only because of the enrollee's personal preference".

Response: As always, it is the Department's intent only to ensure that Medicaid pays for medically necessary care, services, and supplies. No change was made to the proposed regulation as a result of this comment, but the Department will take it under advisement, and will consider whether the presumption language should be eliminated or modified in a subsequent rulemaking, in order to dispel any misconception that the Department is setting a stricter standard for coverage of these procedures in the context of transgender care.

Comment: Some commenters urged the Department to eliminate what they referred to as the list of "exclusions" in the regulation.

Response: The services listed in § 505.2(l)(5) are not excluded from coverage. They will be covered if medically necessary and prior approval is received. Nevertheless, the Department will consider whether specifying in the regulation procedures that are subject to prior approval is contributing to the misconception that a stricter standard is being set for coverage of these procedures in the context of transgender care. If the Department decides to omit the list from the regulation, it will do so in a subsequent rulemaking.

Comment: A number of comments addressed topics outside of the scope of the proposed amendments, including the current limitation on coverage of hormone therapy and gender reassignment surgery (GRS) to individuals 18 years of age or older, and the types of practitioners who can provide referral letters for GRS.

Response: Because these comments do not pertain to the amendments proposed in the current rulemaking, no changes were made in response to these comments. However, the Department is considering these comments outside the context of the current rulemaking, and if the Department determines policy changes are advisable, it will address them in a separate rulemaking.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

All Payer Database (APD)

I.D. No. HLT-35-16-00018-P

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

Proposed Action: Addition of Part 350 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 206(18-a)(d) and 2816

Subject: All Payer Database (APD).

Purpose: To define the parameters for operating the APD regarding mandatory data submission by healthcare payers as well as data release.

Text of proposed rule:

A new Part 350 is added to read as follows:

Part 350

All Payer Database (APD)

§ 350.1 Definitions. For the purposes of this Part, these terms shall have the following meanings:

(a) "All Payer Database" or "APD" means the health care database maintained by the Department or its contractor that contains APD data.

(b) "APD data" means covered person data, claims data, and any other such data contained within standard transactions for Electronic Data Interchange (EDI) of health care data adopted by the Accredited Standards Committee (ASC) X12 standards organization, the National Council for Prescription Drug Programs (NCPDP) standards organization, or any other organizations designated by the federal Department and Human Services to develop and maintain standard transactions for EDI of health care data, as provided in section 1320d-2 of Title 42 of the United States Code (USC) or any other federal law.

(c) "claims data" means:

(1) Benefits and coverage data – data specifying the benefits and coverage available to a covered person, such as cost-sharing provisions and coverage limitations and exceptions;

(2) Health care provider network data – data related to the health care provider and service networks associated with third-party health care payer plans and products, such as the services offered, panel size, licensing/certification, National Provider Identifier(s), demographics, locations, accessibility, office hours, languages spoken, and contact information;

(3) Post-adjudicated claims data – data related to health care claims that has been adjudicated by a third-party health care payer, such as the data included in the ASC X12 Post Adjudicated Claims Data Reporting and the NCPDP Post Adjudication Standard transactions; and

(4) Other health care payment data, such as value based payment information, as determined by the Department.

(d) "covered person" means a person covered under a third-party health care payer contract, agreement, or arrangement that is licensed to operate in New York State by the New York State Department of Financial Services.

(e) "covered person data" means data related to covered persons, such as demographics, member identifiers, coverage periods, policy numbers, plan identifiers, premium amounts, and selected primary care providers.

(f) "data user" means any individual or organization that the Department has granted access to APD data, with or without identifying data elements.

(g) "health care provider" means a provider of "medical and other health services" as defined in 42 USC § 1395x(s), a "provider of services" as defined in 42 USC § 1395x(u), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business. This includes a clinical laboratory, a pharmacy, an entity that is an integrated organization of health care providers, and an accountable care organization described in 42 USC § 1395jjj. The term also includes atypical providers that furnish nontraditional services that are indirectly health care-related, such as personal care, taxi, home and vehicle modifications, habilitation, and respite services.

(h) "identifying data elements" means those APD data elements that, if disclosed without restrictions on use or re-disclosure, would constitute an unwarranted invasion of personal privacy consistent with federal and state standards for de-identification of protected health information.

(i) "New York State agency" means any New York State department, board, bureau, division, commission, committee, public authority, public benefit corporation, council, office, or other governmental entity performing a governmental or proprietary function for the State of New York.

(j) "submission specifications" means specifications determined by the Department for submitting covered person data and claims data to the APD, such as the data fields, circumstances, format, time, and method of reporting.

(k) "third-party health care payer" means an insurer, organization, or corporation licensed or certified pursuant to article thirty-two, forty-three, or forty-seven of the Insurance Law or article forty-four of the Public Health Law; or an entity, such as a pharmacy benefits manager, fiscal administrator, or administrative services provider that participates in the administration of a third-party health care payer system, including any

health plan under 42 USC § 1320d. The term does not include self-insured health plans, although such plans that operate in New York State may choose to participate as a third-party health care payer.

§ 350.2 APD data submission.

(a) Third-party health care payers shall submit complete, accurate, and timely APD data to the Department, pursuant to the submission specifications.

(b) The Department shall consult with the Department of Financial Services and third-party health care payers before issuing any submission specifications.

(c) The Department shall set a compliance date of at least 90 days from the date that new or revised submission specifications are issued.

(d) Third-party health care payers shall submit APD data in an electronic, computer-readable format through a secure electronic network of the Department or its designated administrator on a monthly basis, or more frequently, as specified in the submission specifications.

(e) Third-party health care payers shall submit at least 95 percent of APD data within 60 days from the end of the month of the adjudicated claims being submitted for payment.

(f) Third-party health care payers shall submit 100 percent of APD data within 180 days from the end of the month of the adjudicated claims being submitted for payment.

(g) The Department may audit APD data submitted by third-party health care payers to evaluate the quality, timeliness, and completeness of the data. The Department may issue an audit report or statement of deficiencies listing any inadequacies or inconsistencies in the APD data submitted and requiring corrective actions. Any third-party health care payer that receives an audit report or statement of deficiencies shall submit a plan of correction to the Department within 30 days from the date of receipt of the audit report or statement of deficiencies. Third-party heath care payers shall be in full compliance with APD data submission specifications and the plan of correction within 90 days from the date of submission of the plan of correction.

(h) A third-party health care payer may submit a written request to the Department for an extension, variance, or waiver of APD data submission specifications requirements. The written request shall include: the specific requirement to be extended, varied, or waived; an explanation of the reason or cause; the methodology proposed to eliminate the need for future extension, variance, or waiver; and the time frame required to come into compliance.

(i) Any third-party health care payer that violates this section shall be liable pursuant to the provisions of the Public Health Law, including, but not limited to, sections 12 and 12-d of the Public Health Law, and applicable sections of New York State Insurance Law and regulations.

§ 350.3 APD data release.

(a) The Department shall implement quality control and validation processes to provide reasonable assurance that APD data released to the public is complete, accurate, and valid. The Department shall adhere to applicable State and federal laws, regulations, and policies on release of Medicare and Medicaid data.

(b) Upon reasonable assurance that subdivision (a) has been satisfied, the Department may release data in the following manner:

(1) De-identified and/or aggregated APD data of a public use nature may be posted publicly to a consumer facing website.

(2) APD data, including data with identifying data elements, may be released to a New York State agency or the federal government in a manner that appropriately safeguards the privacy, confidentiality, and security of the data.

(3) APD data, including data with identifying data elements, may be released to other data users that have met the Department's requirements for maintaining security, privacy, and confidentiality and have approved data use agreements with the Department.

(c) Data users shall adhere to security, confidentiality, and privacy guidelines established by the Department to prevent breaches or unauthorized disclosures of personal information resulting from any data analysis or re-disclosure. Data users bear full responsibility for breaches or unauthorized disclosures of personal information resulting from use of APD data.

(d)(1) Where the Department grants data users access to APD data that does not include identifying data elements, such access shall be subject to terms and conditions established by the Department.

(2) Data users who wish to request APD data that includes identifying data elements shall submit an application for a proposed project in a form established by the Department, which shall include an explicit plan for preventing breaches or unauthorized disclosures of identifying data elements of any individual who is a subject of the information. The Department's review of the proposed project shall include, but not be limited to: (i) use of the specific identifying data elements; (ii) adherence to the Department's guidance on the appropriate and controlled release of data; and (iii) assurance on whether the release of identifying data elements reflects overall goals of confidentiality, privacy, security, and benefits to public and population health.

(e) Any data user that violates this section or any data use agreement executed under this section shall be liable pursuant to the provisions of the Public Health Law, including, but not limited to, sections 12 and 12 d of the Public Health Law.

(f) The Department may charge reasonable fees for access to APD data, which shall be based upon estimated costs incurred and recurring for data processing, operation of the platform/data center, and software. The Department shall establish a policy describing any APD data that shall be available at no charge, the fees for access to APD data subject to charge, the process for fee payment, and under what circumstances fees may be reduced or waived.

§ 350.4 APD advisory group.

(a) The Department may establish an advisory group to provide recommendations on any or all of the following areas: submission specifications, patient privacy and confidentiality, data release, data aggregation, and security.

(b) The Department may accept, reject, or amend recommendations, in whole or in part, from the advisory group.

§ 350.5 APD guidance.

The Department shall make guidance available on its website that includes:

(a) APD submissions specifications, including the data standards used and the method for reporting to the Department. Submission specifications shall be developed with a goal of minimizing burden on health care providers and third-party health care payers, including utilization of nationally standardized file formats where available and feasible.

(b) APD data access and release policy, including security and usage requirements to become a data user; requirements for maintaining privacy, confidentiality, and security; and data release fee information. Data access and release requirements shall include restrictions on the release of any information that could be used, alone or in combination with other reasonably available information, to identify an individual who is a subject of the information, as well as procedures for request of identifying data elements, including the project application process established pursuant to subdivision (d) of section 350.3 of this Part.

(c) Program operations policy, including program purpose, scope and objectives, and general governance.

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

Public Health Law (PHL) § 2816 establishes the Statewide Planning and Research Cooperative System (SPARCS), which authorizes the New York State Department of Health to collect certain data relating to health care delivery in New York State. In particular, the statute authorizes the Department to collect data relating to insurance claims by persons covered by third-party insurers (hereinafter referred to as "payers"). The statute further provides: "Any component or components of the system may be operated under a different name or names, and may be structured as separate systems."

Accordingly, PHL § 2816 authorizes NYSDOH to collect covered person data and claims data in its All Payer Database (APD). Additionally, under PHL § 206(18-a)(d), the Commissioner of Health has the authority to "make such rules and regulations" on statewide health information systems, such as the APD, as recommended by the Health Information Technology Workgroup established pursuant to PHL § 206(18-a)(b)(ii).

Legislative Objectives:

In 2011, PHL § 2816 was amended specifically to authorize NYSDOH to develop and implement an All Payer Database for New York State. The Legislature further authorized NYSDOH to develop regulations establishing the necessary parameters, guidance, and requirements for a functional APD. These regulations are critical to the successful collection and use of

covered person data and claims data from commercial health care payers, which have previously not been done in New York State.

Needs and Benefits:

Currently, New York State has fragmented, inconsistent, and incomplete information about how the state's health care system is performing. With an array of state agencies and offices carrying out health care planning, along with a myriad of private efforts, data currently collected are specific to the goals of the distinct organization and sub-populations served.

This approach is administratively inefficient and costly, as it requires the redundant collection, cleansing, and storage of duplicative information. The lack of linkages and interoperability of data assets hinders the ability of health care and policy experts to fully assess issues, such as the impact of disease burden and treatment trends, the ability to inform policy on innovative payment and care coordination models, and other targeted interventions.

Advancing health care transformation in New York State requires a broad view of population health and system performance, which current data resources do not permit. States that currently have All Payer Claims Databases (APCDs) have proven that they are important tools for filling gaps in health care information. By streamlining health care system data processing, an APD will enable policymakers to monitor efforts to reduce health care costs and improve population health.

The APD will provide a robust dataset that will support a variety of comparative analyses. Further, the APD will transform New York State's health care system by evaluating care delivery and payment models, and identifying opportunities to avoid waste, over/under utilization, misuse of treatments, and conflicting plans of care.

The APD will also yield findings that can be used to inform health care and finance decisions for policy makers, payers, providers, and consumers. For example, the APD will facilitate assessments of health care resource needs. APD data can also be used to effectively plan for and improve disease prevention, and to help ensure effective diagnosis, treatment, and rehabilitation services. APD data will allow the State to establish policies for risk adjustment, including mandatory risk adjustment calculations under the Federal Patient Protection and Affordable Care Act. In addition, the APD will enhance and expedite the ability of health payers and regulators to prescribe and determine appropriateness of premium rates.

Costs:

Costs to Regulated Parties:

Many health care insurance payers are already required to submit claims and records of care encounters to New York State. These include payers that have plans included in Medicaid Managed Care and in the New York State of Health Official Health Plan Marketplace (NYSoH), both of which require data submission as part of contractual agreements to participate in their respective programs. In addition, many payers voluntarily participate with private regional claims database initiatives, or submit data to other state APCDs.

Many of these public insurance program participants are also payers of commercial insurance plans, which lack access to claims history, and which have no other mechanisms to mandate data submission. As a result, many of the payers participate in both public and private programs that involve some form of data submission.

For this reason, much of the staffing and information technology (IT) infrastructure required for mandatory participation in New York State's APD is already in place. There may be some initial increased implementation costs for payers who only participate in the private commercial market. Payers that currently report data in a proprietary format may also be exposed to costs associated with transitioning to a national standardized reporting format. However, because so much of the IT infrastructure is already in place, it is anticipated that regulated parties' long term costs associated with a fully functional APD will be minimal.

Costs to the NYSDOH:

As referenced in the prior section, many health care insurance payers are already required to submit claims and records of care encounters to New York State. While there is some infrastructure currently in place within NYSDOH, there is still a NYSDOH cost for the design, development, and implementation of infrastructure to operate the APD.

Costs include major system components of data intake, data warehousing, and data analytics, with a current estimate of $55 million for a three and a half-year development period. Following this development, the annual recurring operating costs for the system is estimated to be $20 million, inclusive of annual recurring NYSDOH staff costs of approximately $2 million. Total costs are covered by a combination of State appropriations, federal matching Medicaid and Child Health Plus funds, and federal Health Benefit Exchange grants.

Other systems in the NYSDOH, and the expenditures required to maintain them, will be partially reduced as the APD will assume some of the functions associated with them.

Costs to State and Local Governments:

There are no anticipated costs to local governments, as the APD will be fully developed and administered at the State level. There are minimal costs that may be incurred by the NYS Department of Financial Services to utilize the data and tools of the APD in the regulation of the commercial health insurance industry. These are not expected to be significant, however, and will be offset by the utility achieved through analysis of health insurance claims data.

Local Government Mandates:

The All Payer Database will be administered at the New York State level. This rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

Paperwork:

Payers will be required to submit registration forms and paperwork to NYSDOH or its designated administrator in order to submit claims data with protected information to the State. This paperwork is only required for initial registration with the APD, and subsequent communication is handled electronically. For this reason, the reporting requirements, forms, or other paperwork upon regulated parties are not expected to be a significant burden.

Duplication:

There are no relevant rules or other legal requirements of the federal or State governments that duplicate, overlap, or conflict with this rule.

Alternatives:

There are no alternatives that could serve as a substitute for the All Payer Database. Although New York State currently collects Medicaid and NYSoH data, the collection of commercial claims data is unprecedented. The APD is a significant new initiative that will allow for a comprehensive and valuable analysis of the health care system in New York State.

Federal Standards:

The rule does not exceed any minimum standards of the federal government for the same or similar subject area as the federal government does not operate an All Payer Database.

Compliance Schedule:

Development of the APD data intake component is being executed in a phased manner. The first phase included NYSoH Qualified Health Plans, and data collection began in January 2015. The second phase encompasses Medicaid and Child Health Plus Managed Care Plans, which went into production September 2015.

The third phase addresses commercial health insurance payers and the design and development process has already begun. This information is critical to the success of the APD. It is expected that production will begin for commercial payers in late 2016, with substantial attention to testing and user support to ensure all payers have the necessary tools to successfully participate.

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not being submitted because amendments will not impose any adverse impact or significant reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

Job Impact Statement

Nature of Impact:

The rule will have minimal impact on jobs and employment opportunities. The regulated payers are largely established. In many cases, they are national health insurance companies that have an existing and deep data reporting infrastructure per the nature of the industry.

Many payers already report certain claims data to NYS and, with the APD, will now be required to send a higher volume. There may be some increase in hiring and jobs to ensure compliance with APD requirements; however, this impact is not expected to be significant. Much of the infrastructure already exists and many payers already submit data to public health insurance programs, regional voluntary databases, and other state APCDs. There will be some impact on employment in the IT contracting field as there will be contracts with NYSDOH to design, develop, implement, and operate the APD at the state level, as well as potential IT development work with some of the payers. There are no anticipated job impacts in any other segments or sectors of the job market. With regard to adverse employment effects, there is no expectation of job losses as a result of the rule.

Categories and Numbers Affected:

The types of jobs impacted by the rule are in the areas of IT and data

analysis. The number of expected job additions is not specifically known but is expected to be minimal as payers have much of the existing resources needed to comply with data submission requirements. Most new work on the part of payers will be in the initial stages of implementation. Payers that do not currently submit data to NYS will need to establish processes and set up IT systems to submit claims data.

Certain payers will have some level of system modification to comply with national standards and submission specifications. Some payers will utilize contract vendors for these activities who may already be familiar with the required transaction and buildout processes. IT contractors at the state level will see a short term increase for the design, development, and implementation of the system build, but ongoing operations support will rely on less staffing.

Regions of Adverse Impact:

There is no expectation of adverse impact on jobs in any region of NYS as a result of the rule.

Minimizing Adverse Impact:

There is no expectation of adverse impact on jobs in any region of NYS as a result of the rule.

Self-Employment Opportunities:

There is no expectation of any self-employment opportunities.

Higher Education Services Corporation

EMERGENCY RULE MAKING

New York State Masters-in-Education Teacher Incentive Scholarship Program

I.D. No. ESC-35-16-00002-E

Filing No. 779

Filing Date: 2016-08-11

Effective Date: 2016-08-11

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

Action taken: Addition of section 2201.17 to Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2016 term, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students attending a New York State public institution of higher education who pursue a graduate program of study in an education program leading to a career as a teacher in public elementary or secondary education. Decisions on applications for this Program are made prior to the beginning of the term. Therefore, it is critical that the terms of the program as provided in the regulation be effective immediately so that students can make informed choices and in order for HESC to process scholarship applications in a timely manner. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Masters-in-Education Teacher Incentive Scholarship Program.

Purpose: To implement the New York State Masters-in-Education Teacher Incentive Scholarship Program.

Text of emergency rule: New section 2201.17 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.17 New York State Masters-in-Education Teacher Incentive Scholarship Program.

(a) Definitions. As used in section 669-f of the Education Law and this section, the following terms shall have the following meanings:

(1) "Academic excellence" shall mean the attainment of a cumulative grade point average of 3.5 or higher upon completion of an undergraduate program of study from a college or university located within New York State.

(2) "Approved master's degree in education program" shall mean a program registered at a New York State public institution of higher education pursuant to Part 52 of the Regulations of the Commissioner of Education.

(3) "Award" shall mean a New York State Masters-in-Education Teacher Incentive Scholarship Program award pursuant to section 669-f of the New York State education law.

(4) "Elementary and secondary education" shall mean pre-kindergarten through grade 12 in a public school recognized by the board of regents or the university of the state of New York, including charter schools authorized pursuant to article fifty-six of the education law.

(5) "Full-time study" within an approved master's degree in education program shall be defined by the institution.

(6) "Initial certification" shall mean any certification issued pursuant to part 80 of this title which allows the recipient to teach in a classroom setting on a full-time basis.

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

(8) "Program" shall mean the New York State Masters-in-Education Teacher Incentive Scholarship Program codified in section 669-f of the education law.

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

(10) "Rank" shall mean an applicant's position, relative to all other applicants, based on cumulative grade point average upon completion of an undergraduate program of study from a college or university located within New York State.

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

(12) "Successful completion of a term" shall mean that at the end of any academic term, the recipient: (i) met the eligibility requirements for the award pursuant to sections 661 and 669-f of the Education Law; (ii) maintained full-time status as defined in this section; and (iii) possessed a cumulative grade point average of 3.5 or higher as of the date of the certification by the institution.

(13) "Teach in a classroom setting on a full-time basis" shall mean continuous employment providing classroom instruction in a public elementary or secondary school, including charter schools and public pre-kindergarten programs, located within New York State, for at least 10 continuous months, each school year, for a number of hours to be determined by the labor contract between the teacher and employer, or if none of the above apply, the chief administrator of the school.

(b) Eligibility. An applicant must satisfy the eligibility requirements contained in both sections 669-f and 661 of the education law, provided however that an applicant for this Program must meet the good academic standing requirements contained in section 669-f of the education law.

(c) Priorities. If there are more applicants than available funds, the following provisions shall apply:

(1) First priority shall be given to applicants who have received payment of an award pursuant to section 669-f of the education law for the academic year immediately preceding the academic year for which payment is sought and have successfully completed the academic term for which payment is sought. First priority shall include applicants who received payment of an award pursuant to section 669-f of the education law, were subsequently granted an interruption in graduate study by the corporation for the academic year immediately preceding the academic year for which payment is sought and have successfully completed the academic term for which payment is sought. If there are more applicants than available funds, recipients shall be chosen by lottery.

(2) Second priority shall be given to up to five hundred new applicants, within the remaining funds available for the Program, if any. If there are more applicants than available funds, recipients shall be chosen by rank, starting at the applicant with the highest cumulative grade point average beginning in the 2016-17 academic year. In the event of a tie, distribution of any remaining funds shall be done by lottery.

(d) Administration.

(1) Applicants for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.

(2) Recipients of an award shall:

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

(ii) request payment at such times, on forms and in a manner specified by the corporation;

(iii) receive such awards for not more than four academic terms, or its equivalent, of full-time graduate study leading to certification as a public elementary or secondary classroom teacher, including charter schools, excluding any allowable interruption of study;

(iv) facilitate the submission of information from their employer attesting to the recipient's job title, the full-time work status of the recipient, and any other information necessary for the corporation to determine compliance with the program's employment requirements on forms and in a manner prescribed by the corporation; and

(v) provide any other information necessary for the corporation to determine compliance with the program's requirements.

(e) Amounts.

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

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

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

(f) Failure to comply.

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

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

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

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

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

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 November 8, 2016.

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

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Masters-in-Education Teacher Incentive Scholarship Program ("Program") is codified within Article 14 of the Education Law. In particular, Subpart A of Chapter 56 of the Laws of 2015 created the Program by adding a new section 669-f to the Education Law. Subdivision 6 of section 669-f of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

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

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

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

Legislative objectives:

The Education Law was amended to add a new section 669-f to create the "New York State Masters-in-Education Teacher Incentive Scholarship Program" (Program). The objective of this Program is to incent New York's highest-achieving undergraduate students to pursue teaching as a profession.

Needs and benefits:

According to a recent Wall Street Journal article, many experts call teacher quality the most important school-based factor affecting learning. Studies underscore the impact of highly effective teachers and the need to put them in classrooms with struggling students to help them catch up. To improve teacher quality, New York State has significantly raised the bar by modifying the three required exams and adding the Educative Teacher Performance Assessment, known as edTPA, as part of the licensing requirement for all teachers. To supplement this effort, this Program aims to incentivize top undergraduate students to pursue their master's degree in New York State and teach in public elementary and secondary schools (including charter schools) across the State.

The Program provides for annual tuition awards to students enrolled full-time, at a New York State public institution of higher education, in a master's degree in education program leading to a career as a classroom teacher in elementary or secondary education. Eligible recipients may receive annual awards for not more than two academic years of full-time graduate study. The maximum amount of the award is equal to the annual tuition charged to New York State resident students attending a graduate program full-time at the State University of New York (SUNY). Payments will be made directly to schools on behalf of students upon certification of their successful completion of the academic term.

Students receiving a New York State Masters-in-Education Teacher Incentive Scholarship Program award must sign a service agreement and agree to teach in the classroom at a New York State public elementary or secondary school, which includes charter schools, for five years following completion of their master's degree. Recipients who do not fulfill their service obligation will have the value of their awards converted to a student loan and be responsible for interest.

Costs:

a. There are no application fees, processing fees, or other costs to the applicants of this Program.

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

c. The maximum cost of the Program to the State is $1.5 million in the first year, based upon budget estimates.

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

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

Local government mandates:

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

Paperwork:

This proposal will require applicants to file an electronic application, together with supporting documentation, for eligibility. Each year recipients will file an electronic request for payment together with supporting documentation for up to two years of award payments. Recipients are required to sign a contract for services in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

Duplication:

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

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to the State Education Department, the State University of New York and the City University of New York with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 679-g of the Education Law, a "no action" alternative was not an option.

Federal standards:

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

Compliance schedule:

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

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

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

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master's degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which benefits rural areas around the State as well.

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

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master's degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

NOTICE OF ADOPTION

Tuition Awards for Part-Time Undergraduate Students

I.D. No. ESC-26-16-00012-A
Filing No. 787
Filing Date: 2016-08-16
Effective Date: 2016-08-31

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

Action taken: Amendment of section 2207.1(d)(1)(i) of Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 666

Subject: Tuition awards for part-time undergraduate students.

Purpose: The purpose of the rule is to conform the provision regarding income to a recent statutory change.

Text or summary was published in the June 29, 2016 issue of the Register, I.D. No. ESC-26-16-00012-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Law

NOTICE OF ADOPTION

Clarification of Protections for Senior and Disabled Tenants During Condominium or Cooperative Ownership Conversions

I.D. No. LAW-47-15-00007-A
Filing No. 793
Filing Date: 2016-08-16
Effective Date: 2016-09-01

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

Action taken: Addition of sections 18.1(e)(5), (6), 18.5(e)(10), 23.1(e)(5), (6) and 23.5(e)(10); amendment of sections 18.3(d), (l), 23.3(d), (m) and (n)(8) of Title 13 NYCRR.

Statutory authority: General Business Law, section 352-e(2-b)

Subject: Clarification of Protections for Senior and Disabled Tenants During Condominium or Cooperative Ownership Conversions.

Purpose: To clarify the Martin Act's non-purchasing tenant protections for eligible senior citizens and eligible disabled persons.

Text or summary was published in the November 25, 2015 issue of the Register, I.D. No. LAW-47-15-00007-EP.

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

Revised rule making(s) were previously published in the State Register on February 24, 2016.

Text of rule and any required statements and analyses may be obtained from: Jacqueline Dischell, Assistant Attorney General, Department of Law, 120 Broadway, 23rd Floor, New York, NY 10271, (212) 416-8655, email: jackie.dischell@ag.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 2017, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Office of Mental Health

NOTICE OF ADOPTION

Telepsychiatry Services

I.D. No. OMH-17-16-00010-A
Filing No. 780
Filing Date: 2016-08-11
Effective Date: 2016-08-31

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

Action taken: Addition of Part 596; and repeal of section 599.17 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.02 and 31.04

Subject: Telepsychiatry Services.

Purpose: Establish basic standards to approve telepsychiatry in certain OMH-licensed programs; repeal unnecessary existing provisions.

Text of final rule: 1. Section 599.17 of Title 14 NYCRR is repealed.

2. A new Part 596 is added to Title 14 NYCRR to read as follows:

Part 596

TELEPSYCHIATRY SERVICES

§ 596.1 Background and intent.

(a) Telepsychiatry is defined as the use of two-way real-time interactive audio and video equipment to provide and support mental health services at a distance. Such services do not include a telephone conversation, electronic mail message or facsimile transmission between a provider and a recipient, or a consultation between two professional or clinical staff.

(b) Telepsychiatry can be beneficial to a mental health care delivery system, particularly when on-site services are not available or would be delayed because of distance, location, time of day, or availability of resources. The benefits of telepsychiatry can include improved access to care, provision of care locally in a more timely fashion, improved continuity of care, improved treatment compliance, and coordination of care.

(c) The Office of Mental Health supports the use of telepsychiatry as an appropriate component of the mental health delivery system to the extent that it is in the best interests of the person served and is performed in compliance with applicable federal and state laws and regulations and the provisions of this Part in order to address legitimate concerns about privacy, security, patient safety, and interoperability.

§ 596.2 Legal base.

(a) Section 7.09 of the Mental Hygiene Law grants the Commissioner of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

(b) Sections 31.02 and 31.04 of the Mental Hygiene Law authorize the Commissioner of Mental Health to set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the rendition of services for persons diagnosed with mental illness, pursuant to an operating certificate.

§ 596.3 Applicability.

The provisions of this Part shall apply to any provider licensed pursuant to Article 31 of the Mental Hygiene Law who has been authorized by the Office under this Part to include the use of telepsychiatry as a means of rendering licensed services, provided, however, that telepsychiatry shall not be utilized in Personalized Recovery Oriented Services (PROS) programs subject to Part 512 of this Title or Assertive Community Treatment (ACT) programs approved pursuant to Part 551 of this Title.

§ 596.4 Definitions.

For purposes of this Part:

(a) Distant or "hub" site means the distant location at which the practitioner rendering the telepsychiatry service is located.

(b) Encounter means a telepsychiatry event involving patient contact, whereby the care of the patient is the direct responsibility of both the originating (spoke site) provider and the distant (hub site) provider.

(c) Encryption means a system of encoding data on a Web page or email where the information can only be retrieved and decoded by the person or computer system authorized to access it.

(d) Originating or "spoke" site means the site where the patient is physically located at the time mental health services are delivered to her/him by means of telepsychiatry.

(e) Nurse practitioner in psychiatry means a person currently certified as a nurse practitioner with an approved specialty area of psychiatry (NPP) by the New York State Education Department or who possesses a permit from the New York State Education Department.

(f) Physician means a physician currently licensed to practice medicine in New York State who (i) is a diplomat of the American Board of Psychiatry and Neurology or is eligible to be certified by that Board, or (ii) is certified by the American Osteopathic Board of Neurology and Psychiatry or is eligible to be certified by that Board.

(g) Practitioner means a physician or nurse practitioner in psychiatry who is providing telepsychiatry services from a distant or hub site in accordance with the provisions of this Part.

(h) Provider of services means a provider of mental health services licensed pursuant to Article 31 of the Mental Hygiene Law.

(i) Qualified mental health professional means a practitioner possessing a license or a permit from the New York State Education Department who is qualified by credentials, training, and experience to provide direct services related to the treatment of mental illness and shall include physicians and nurse practitioner in psychiatry, as defined in subdivisions (e) and (f) of this Section, as well as the following:

(1) Creative arts therapist: a person currently licensed as a creative arts therapist by the New York State Education Department or who possesses a creative arts therapist permit from the New York State Education Department.

(2) Licensed practical nurse: a person currently licensed as a licensed practical nurse by the New York State Education Department or who possesses a licensed practical nurse permit from the New York State Education Department.

(3) Licensed psychoanalyst: a person currently licensed as a psychoanalyst by the New York State Education Department or who possesses a permit from the New York State Education Department.

(4) Licensed psychologist: a person currently licensed as a psychologist by the New York State Education Department, or who possesses a permit from the New York State Education Department and who possesses a doctoral degree in psychology, or an individual who has obtained at least a master's degree in psychology who works in a federal, state, county or municipally operated clinic.

(5) Marriage and family therapist: a person currently licensed as a marriage and family therapist by the New York State Education Department or who possesses a permit from the New York State Education Department.

(6) Mental health counselor: a person currently licensed as a mental health counselor by the New York State Education Department or who possesses a permit from the New York State Education Department.

(7) Nurse practitioner: a person currently certified as a nurse practitioner by the New York State Education Department or who possesses a permit from the New York State Education Department.

(8) Physician: a person currently licensed as a psychiatrist by the New York State Education Department or who possesses a permit from the New York State Education Department.

(9) Physician assistant: a person currently registered as a physician assistant by the New York State Education Department or who possesses a permit from the New York State Education Department.

(10) Registered professional nurse: a person currently licensed as a registered professional nurse by the New York State Education Department or who possesses a permit from the New York State Education Department.

(11) Social worker: a person who is either currently licensed as a licensed master social worker or as a licensed clinical social worker (LCSW) by the New York State Education Department, or who possesses a permit from the New York State Education Department to practice and use the title of either licensed master social worker or licensed clinical social worker.

(j) Telecommunication system means an interactive telecommunication system that is used to transmit data between the originating/ spoke and distant/hub sites.

(k) Telepsychiatry means the use of two-way real-time interactive audio and video to provide and support clinical psychiatric care at a distance. Such services do not include a telephone conversation, electronic mail message, or facsimile transmission between a provider and a patient or a consultation between two physicians or nurse practitioners, or other staff, although these activities may support telepsychiatry services.

§ 596.5 Approval to Utilize Telepsychiatry Services.

(a) Telepsychiatry services may be authorized by the Office for assessment and treatment services provided by physicians or nurse practitioners, as defined in Section 596.4 of this Part, from a site distant from the location of a patient, where the patient is physically located at an originating/spoke site licensed by the Office, and the physician or nurse practitioner is physically located at a distant/hub site that participates in the New York State Medicaid program.

(b) A provider of services must obtain prior written approval of the Office before utilizing telepsychiatry services.

(c) Approval shall be based on receipt by the Office of the following:

(1) Sufficient written demonstration that telepsychiatry will be used for assessment and treatment services consistent with the provisions of this Part, and that the services are being requested because they are necessary to improve the quality of care of individuals receiving services;

(2) Submission of a written plan to provide telepsychiatry services that satisfies the provisions of this Part and includes:

(i) confidentiality protections for persons who receive telepsychiatry services, including measures to ensure the security of the electronic transmission;

(ii) informed consent of persons who receive telepsychiatric services;

(iii) procedures for handling emergencies with persons who receive telepsychiatric services; and

(iv) contingency procedures to use when the delivery of telepsychiatric service is interrupted, or when the transmission of the two-way interactions is deemed inadequate for the purpose of service provision.

(d) Requests for approval to offer telepsychiatry services shall be submitted to the Field Office serving the area in which the originating/spoke site is located. The request for approval shall be submitted by the originating site. Such Field Office may make an on-site visit to either or both sites prior to issuing approval.

(e) The Office shall provide its approval to utilize telepsychiatry services in writing. The provider of services must retain a copy of the approval document and shall make it available for inspection upon request of the Office.

(f) Failure to adhere to the requirements set forth in this Part may be grounds for revocation of such approval. In the event that the Office determines that approval to utilize telepsychiatry services must be

revoked, it will notify the provider of services of its decision in writing. The provider of services may request an informal administrative review of such decision.

(1) The provider of services must request such review in writing within 15 days of the date it receives notice of revocation of approval to utilize telepsychiatry services to the Commissioner or designee. The request shall state specific reasons why such provider considers the revocation of approval incorrect and shall be accompanied by any supporting evidence or arguments.

(2) The Commissioner or designee shall notify the provider of services, in writing, of the results of the informal administrative review within 20 days of receipt of the request for review. Failure of the Commissioner or designee to respond within that time shall be considered confirmation of the revocation of deemed status.

(3) The Commissioner's determination after informal administrative review shall be final and not subject to further administrative review.

§ 596.6 Requirements for Telepsychiatry Services.

(a) General requirements.

(1) The distant/ hub site practitioner must:

(i) possess a current, valid license to practice in New York State;

(ii) directly render the telepsychiatry service;

(iii) abide by the laws and regulations of the State of New York including the New York State Mental Hygiene Law and any other law, regulation, or policy that governs the assessment or treatment service being provided;

(iv) exercise the same standard of care as in-house delivered services; and

(v) deliver services from a site that is enrolled in the New York State Medicaid program.

(2) The distant/hub provider and originating/spoke site provider of service must not be terminated, suspended, or barred from the Medicaid or Medicare program.

(3) If the originating/spoke site is a hospital, the practitioner at the distant/hub site must be credentialed and privileged by such hospital, consistent with applicable accreditation standards.

(4) Telepsychiatry services must be rendered using an interactive telecommunication system.

(5) A notation must be made in the clinical record that indicates that the service was provided via telepsychiatry and which specifies the time the service was started and the time it ended.

(6) Telepsychiatry services provided to patients under age 18 may include staff that are qualified mental health professionals, as such term is defined in this Part, or other appropriate staff of the originating/spoke site in the room with the patient. Such determinations shall be clinically based, consistent with clinical guidelines issued by the Office.

(7) For the purposes of this Part, telepsychiatry services shall be considered face-to-face contacts when the service is delivered in accordance with the provisions of the plan approved by the Office pursuant to Section 596.5 of this Part.

(8) Culturally competent interpreter services shall be provided in the patient's preferred language when the patient and distant/hub practitioners do not speak the same language.

(9) The practitioner providing telepsychiatry services at a distant/hub site shall be considered an active part of the patient's treatment team and shall be available for discussion of the case or for interviewing family members and others, as the case may require. Such practitioner shall prepare appropriate progress notes and securely forward them to the originating/spoke provider as a condition of reimbursement.

(10) Telepsychiatry services shall not be used:

(i) for purposes of ordering medication over objection or restraint or seclusion, as defined in section 526.4 of this Title; or

(ii) to satisfy any specific statutory examination, evaluation or assessment requirement necessary for the involuntary removal from the community, or involuntary retention in a hospital pursuant to any of the provisions of Article 9 of the Mental Hygiene Law. Physicians conducting such examinations, evaluations or assessments may only utilize telepsychiatry on a consultative basis.

(b) Protocols and Procedures. A provider of services approved to utilize telepsychiatry services must have written protocols and procedures that address the following:

(1) Informed Consent: Protocols must exist affording persons receiving services the opportunity to provide informed consent to participate in any services utilizing telepsychiatry, including the right to refuse these services and to be apprised of the alternatives to telepsychiatry services, including any delays in service, need to travel, or risks associated with not having the services provided by telepsychiatry. Such informed consent may be incorporated into the informed consent process for in-person care, or a separate informed consent process for telepsychiatry services may be developed and used.

(i) The patient must be provided with basic information about telepsychiatry and shall provide his or her informed consent to participate in services utilizing this technology.

(ii) For patients under age 18, such information shall be shared with and informed consent obtained from the patient's parent or guardian.

(iii) The patient has the right to refuse to participate in telepsychiatry services, in which case evaluations must be conducted in-person by appropriate clinicians.

(iv) Telepsychiatry sessions shall not be recorded without the patient's consent.

(2) Confidentiality: Protocols and procedures should be maintained as required by Mental Hygiene Law Section 33.13 and the Health Insurance Portability and Accountability Act (HIPAA) at 45 CFR Parts 160 and 164. Such protocols shall ensure that all current confidentiality requirements and protections that apply to written clinical records shall apply to services delivered by telecommunications, including the actual transmission of the service, any recordings made during the time of transmission, and any other electronic records.

(i) All confidentiality requirements that apply to written medical records shall apply to services delivered by telecommunications, including the actual transmission of the service, any recordings made during the time of transmission, and any other electronic records.

(ii) The spaces occupied by the patient at the originating/spoke site and the practitioner at the distant/hub site must meet the minimum standards for privacy expected for patient-clinician interaction at a single Office of Mental Health licensed location.

(3) Security of Electronic Transmission: All telepsychiatry services must be performed on dedicated secure transmission linkages that meet minimum federal and state requirements, including but not limited to 45 C.F.R. Parts 160 and 164 (HIPAA Security Rules), and which are consistent with guidelines of the Office. Transmissions must employ acceptable authentication and identification procedures by both the sender and the receiver.

(4) Psychiatric emergencies: Protocols should exist to address psychiatric emergencies, which may override the right to confidentiality to require the presence of others if, for instance, an individual receiving services is suicidal, homicidal, dissociated, or acutely psychotic during the evaluation or treatment service. In general this individual should not be managed via telepsychiatry without qualified mental health professionals present at the originating/spoke site, unless there are no adequate alternatives and immediate intervention is deemed essential for patient safety. All telepsychiatry sites must have a written procedure detailing the availability of in-person assessments by a physician or nurse practitioner in an emergency situation.

(5) Prescribing medications via telepsychiatry: Procedures for prescribing medications through telepsychiatry must be identified and must be in accordance with applicable New York State and federal regulations.

(6) Procedures for first evaluations for involuntary commitments: Under New York State law, physicians must conduct first evaluations for involuntary commitments of individuals. If these evaluators want additional consultation before rendering their decision, they may obtain consultation from psychiatrists via telepsychiatry. The responsibility for signing the commitment papers remains with the physician who actually conducted the evaluation of the individual at the facility, not the psychiatrist who provided the telepsychiatric consultation.

(7) Patient rights: Patient rights policies must ensure that each individual receiving telepsychiatry services:

(i) is informed and made aware of the role of the practitioner at the distant/hub site, as well as qualified professional staff at the originating/spoke site who are going to be responsible for follow-up or on-going care;

(ii) is informed and made aware of the location of the distant/hub site and all questions regarding the equipment, the technology, etc., are addressed;

(iii) has the right to have appropriately trained staff immediately available to him/her while receiving the telepsychiatry service to attend to emergencies or other needs;

(iv) has the right to be informed of all parties who will be present at each end of the telepsychiatry transmission; and

(v) if the patient is a minor, the patient and his or her parent or guardian shall be given the opportunity to provide input regarding who will be in the room with the patient when telepsychiatry services are provided.

(8) Quality of Care: All telepsychiatry sites shall have established written quality of care protocols to ensure that the services meet the requirements of New York state and federal laws and established patient care standards. A review of telepsychiatry services shall be included in the provider's quality management process

(9) Contingency Plan: All telepsychiatry sites must have a written procedure detailing the contingency plan when there is a failure of the

transmission or other technical difficulties that render the service undeliverable.

(c) Guidelines of the Office. The Office shall develop guidelines to assist providers in complying with the provisions of this Part and in achieving treatment goals through the use of telepsychiatry. The Office shall post such guidelines on its public website.

§ 596.7 Reimbursement for Telepsychiatry Services.

(a) The originating/spoke site where the patient is admitted is authorized to bill Medicaid for telepsychiatry services.

(b) Under the Medicaid program, telepsychiatry services are covered when medically necessary and under the following circumstances:

(1) the person receiving services is located at the originating/spoke site and the practitioner is located at the distant/hub site;

(2) the originating/spoke site is the provider of services where the person receiving services is located;

(3) the distant/hub site is the site where the practitioner is located;

(4) the person receiving services is present during the telepsychiatry encounter or consultation;

(5) the physician/nurse practitioner is not conducting the telepsychiatry encounter consultation at the originating/spoke site;

(6) the request for telepsychiatry services and the rationale for the request are documented in the individual's clinical record;

(7) the clinical record includes documentation that the telepsychiatry encounter or consultation occurred and that the results and findings were communicated to the requesting provider of services;

(8) the practitioner at the distant/hub site is:

(i) licensed in New York State;

(ii) practicing within his/her scope of specialty practice;

(iii) providing services from a site that participates in New York Medicaid;

(iv) affiliated with the originating/spoke site facility; and

(v) if the originating/spoke site is a hospital, credentialed and privileged at the originating/spoke site facility.

(c) If the person receiving services is not present during the provision of the telepsychiatry service, the service is not eligible for Medicaid reimbursement and remains the responsibility of the originating/spoke facility.

(d) The following interactions do not constitute reimbursable telepsychiatry services;

(1) telephone conversations;

(2) video cell phone interactions;

(3) e-mail messages.

(e) The originating/spoke site may bill for administrative expenses only when a telepsychiatric connection is being provided and a physician or nurse practitioner is not present at the originating/spoke site with the patient at the time of the encounter.

(f) Reimbursement for services provided via telepsychiatry must be in accordance with the rates and fees established by the Office and approved by the Director of the Budget.

(g) If a telepsychiatry service is undeliverable due to a failure of transmission or other technical difficulty, reimbursement shall not be provided.

§ 596.8 Contracts for the Provision of Telepsychiatry Services.

(a) Nothing in this Part shall be deemed to prohibit a provider of services from providing assessment and treatment services, consistent with applicable regulations of the Office, as a distant/hub site via telepsychiatry pursuant to contract with an originating/spoke site provider that is not licensed or operated by the Office, but which is enrolled in the New York State Medicaid program.

(b) Although prior approval of the Office is not required before entering into such contracts, notice of such contracts or agreements shall be provided by the distant/hub provider of services within 30 days after execution of such contract to the Field Office serving the area where such provider of services is located.

(c) Reimbursement for telepsychiatry service shall be pursuant to such contracts and are not separately billable by the distant/hub site.

(d) Providers of service shall not engage in distant/hub telepsychiatric services that violate the provisions of paragraph (10) of subdivision (a) of Section 596.6 of this Part.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 596.1(a), (b), 596.3, 596.5(a), (d), 596.6(a)(1)(v), (6), (b)(1), (7)(v), 596.7(b)(2), (8)(iii), (e) and 596.8(a).

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

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

A revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not required because the changes made to the last published rule do not necessitate revision to the previously published documents. The changes to the text are not substantial, do not change the meaning of any provision and therefore do not change any statements in the document.

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 2021, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The Office of Mental Health has received public comments from five stakeholder entities, including providers and provider organizations. All of the comments were reviewed, assessed and taken into consideration. Below are the collective responses to each of the issues presented.

1. Comment: Several comments suggested that the range of licensed clinicians authorized to provide services remotely be expanded to include those outside of psychiatry. The definition of "practitioner" was brought into question due to the fact that it currently limits those authorized to provide these services to psychiatrists and nurse practitioners.

Response: These comments address issues beyond the intended scope of the regulation, and no changes were made to the proposed regulation in response to them. However, the Office will take these comments under advisement as it continues to evaluate and develop the use of technology in the delivery of mental health services.

2. Comment: Locations outside of OMH-licensed programs should have the ability to receive telepsychiatry services, such as in-home" telepsychiatry.

Response: The use of telepsychiatry in settings not licensed by OMH, such as in-home settings, implicates significant challenges such as emergency situations, privacy and confidentiality, and security of data OMH is not prepared to amend the regulations to accommodate this comment at this time. However, the Office will take these comments under advisement as it continues to evaluate and develop the use of technology in the delivery of mental health services.

3. Comment: The regulation should specify that when a minor is receiving telepsychiatry services, the minor and his/her parents/guardian may choose who they would like to have present in the room.

Response: The regulations have been clarified to reflect this comment. This provision now reads: (v) if the patient is a minor, the patient and his or her parent or guardian shall be given the opportunity to choose who will be in the room with the patient when telepsychiatry services are provided. 596.6 (b)(7)(v).

4. Comment: A suggestion was made to establish a procedure for prescription refills and the reporting/addressing of side effects of such medication in between telepsychiatry sessions.

Response: This is not a telepsychiatry regulatory issue. These types of issues should be managed consistent with the agency policy/practice for medication orders and renewals and documenting side effect, etc.

5. Comment: Adding to the list of telepsychiatry benefits a decrease in the cost of overall services.

Response: No changes to the regulations were made as a result of this comment. This regulation is not being proposed as a vehicle for cost savings.

6. Comment: It was suggested that the regulation expand the use of telepsychiatry to allow for ordering medication over objection or restraint or seclusion.

Response: These comments address issues beyond the intended scope of the regulation, some of which require statutory change, and no changes were made to the proposed regulation in response to them. However, the Office will take these comments under advisement as it continues to evaluate and develop the use of technology in the delivery of mental health services.

7. Comment: The issue of consent for telepsychiatry was raised by several commenters, who recommended that specific consent should not be deemed necessary for this type of service.

Response: No changes to the proposed regulation were made as a result of these comments. Obtaining informed consent for services delivered via telepsychiatry is considered a "best practice" and is recommended by groups such as the American Telemedicine Association. Providers have flexibility in either expanding the information provided in the consent process for in-person care, or in developing a separate consent for telepsychiatry. Informed consent for telepsychiatry incorporates issues that are different than in-person care. For example, technical issues like encryption or the potential for technical failure should be addressed. Other key topics include confidentiality and the limits to confidentiality in electronic communication; an agreed upon emergency plan, process by which patient information will be documented and stored; and the potential for technical failure.

8. Comment: OMH was asked to clarify the language detailing who determines if "all or part" of the telepsychiatry service is undeliverable.

Response: In response to this comment, language in subdivision (g) of

Section 596.7 has been clarified such that it now reads: "If a telepsychiatry service is undeliverable due to a failure of transmission or other technical difficulty, reimbursement shall not be provided."

9. Comment: A few comments expressed that telepsychiatry services should also be utilized by Assertive Community Treatment (ACT) programs and Personalized Recovery Oriented Services (PROS) programs.

Response: These comments address issues beyond the intended scope of the regulation, and no changes were made to the proposed regulation in response to them. However, the Office will take these comments under advisement as it continues to evaluate and develop the use of technology in the delivery of mental health services.

10. Comment: Concerns were raised about the OMH approval process for the use of telepsychiatry services. It was thought to be an unnecessary extra layer of approval for the delivery of mental health care. Additionally, commenters speculated about a possible delay in services that may come from this approval process.

Response: No changes to the regulations were made to address this comment. First, the ability to offer telepsychiatry services is an optional choice for providers – they are not required to offer this service. Second, the approval process established in the regulations is essential in order to ensure standards regarding equipment and technology are in place, which are essential to safeguard privacy. This administrative process is local (through the regional office) abbreviated and OMH anticipates requests for approval will be issued in a timely manner.

11. Comment: Some commenters had issue with the requirement of the distant/hub site practitioner to be enrolled in New York Medicaid. Much like the requests for expansion of services, it was thought by some that telepsychiatry should be available in non-Medicaid settings. One comment suggested that both the distant/hub site and the originating/spoke site be able to bill Medicaid, as is the case with Medicare.

Response: The regulations were not changed in response to this comment. Enrollment in the New York State Medicaid program does not preclude the ability to serve persons who are not Medicaid beneficiaries. There are numerous reasons for requiring Medicaid enrollment (e.g., Medicaid enrollment is a prerequisite for participation in the NYS Medicaid Electronic Health Records (EHR) Incentive Program), and physicians or providers ordering/referring services provided under the state plan or under a waiver of the state plan must enroll in Medicaid.

12. Comment: Clarification was requested regarding the term "affiliated" and what would be required to document an "affiliation".

Response: No changes to the regulation are required in light of this question. Clarification regarding the affiliation requirement will be provided in guidelines of the Office.

13. Comment: One comment suggested removing the restriction on the use of video cell phone interactions in order to achieve optimal access and maximal participation for both patients and providers.

Response: No changes to the regulations were made to address this comment. The restriction on cell phone interactions is designed to address legitimate concerns regarding patient confidentiality and security of transmission.

14. Comment: Several questions were raised regarding the billing for telepsychiatry services, specifically asking for clarification as to which providers can bill for clinical or administrative fees (hub or spoke?).

Response: No changes to the regulations is necessary to address this comment. The regulations direct OMH to develop guidelines to assist in implementation. Questions with respect to billing issues will be addressed in this guidance.

15. Comment: An additional billing question was presented requesting detailed guidance to providers on the billing and reimbursement for telepsychiatry services.

Response: No changes to the regulations is necessary to address this comment. The regulations direct OMH to develop guidelines to assist in implementation. Questions with respect to billing issues will be addressed in this guidance.

16. Comment: One comment suggested removing the phrase "and referring physician" from § 596.7(b)(2) as there are important circumstances in which the patient has not been referred by a physician.

Response: In response to this comment, OMH has removed the phrase "and referring physician" from § 596.7(b)(2).

17. Comment: There was a request to modify § 596.6(b)(6) to allow the telepsychiatric consultant to complete one of the two Physician Certificates in support of involuntary admission (9.27) with the remaining two signatories (Applicant, other Physician Certificate) present at the facility with the patient.

Response: These comments address issues beyond the intended scope of the regulation, and no changes were made to the proposed regulation in response to them. However, the Office will take these comments under advisement as it continues to evaluate and develop the use of technology in the delivery of mental health services.

18. Comment: One commenter recommended that the definition of telepsychiatry include a consultation between two physicians or nurse practitioners, or other staff when directly related to the treatment of an individual.

Response: No revisions or changes to the regulation are necessary to address this comment. The regulations do not preclude administrative use of telepsychiatry, although billing for administrative use is not permitted.

Department of Motor Vehicles

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notices of Hearing

I.D. No. MTV-35-16-00003-P

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

Proposed Action: This is a consensus rule making to amend section 127.1 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 303(f) and 415(9-a)

Subject: Notices of hearing.

Purpose: Provides for mailing by first class mail for most DMV hearings.

Text of proposed rule: Subdivision (b) of section 127.1 is amended to read as follows:

(b) In a hearing initiated through a complaint or investigation of the Division of Vehicle Safety, notice shall be mailed at least 30 days prior to the scheduled date of the hearing, unless a hearing is required by law to be held at an earlier time. Notices of vehicle safety hearings shall be mailed by [certified] *first class* mail*, unless otherwise required by the Vehicle and Traffic Law,* to the respondent at his or her last-known address on file with the department.

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

Data, views or arguments may be submitted to: Ida Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

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

Consensus Rule Making Determination

The Department of Motor Vehicles (DMV) conducts hearings related to alleged violations committed by repair shops, dealers, dismantlers and inspection stations. Currently, the Commissioner's Regulation, set forth in Part 127.1(b), provides that notice of such hearings shall be mailed by certified mail. However, since 2011, the DMV has been mailing such notices by first class mail, unless otherwise required by statute.

The DMV instituted the procedure to send notices by first class mail in order to save staff time and reduce cost. Over the past 5 years, the DMV has saved approximately $30,000 by using first class mail. This proposed rule codifies by regulation the DMV's practice of sending notices by first class mail, unless the Vehicle and Traffic Law directs otherwise.

Since the proposed rule simply reflects current practice, for which we have received no complaints over the past five years, a consensus rule is appropriate.

Job Impact Statement

A Job Impact Statement is not submitted with this rule because it will not have an adverse impact on job creation or development.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Proposed Acquisition of 100% of the Assets of Hoey-DeGraw by NYAW and to Address Other Matters Related to the Acquisition

I.D. No. PSC-35-16-00014-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 Joint Petition filed by New York American Water Company Inc. (NYAW) and Hoey-DeGraw Water Works Inc. (Hoey-DeGraw) for the purchase of all assets of Hoey-DeGraw by NYAW and other related matters.

Statutory authority: Public Service Law, sections 4(1), 5(1), 89-c(1), (10) and 89-h(1)

Subject: Proposed acquisition of 100% of the assets of Hoey-DeGraw by NYAW and to address other matters related to the acquisition.

Purpose: To consider the proposed acquisition of 100% of assets of Hoey-DeGraw by NYAW and other matters related to the acquisition.

Substance of proposed rule: The Public Service Commission is considering a joint petition filed on August 11, 2016 by Hoey-DeGraw Water Works Inc. (Hoey-DeGraw) and New York American Water Company Inc. (NYAW) for approval of an Agreement of Sale under which Hoey-DeGraw will sell and NYAW will purchase 100% of the water supply assets of Hoey-DeGraw. Hoey-DeGraw provides flat rate water service to 18 customers in the Town of Forestburgh, Sullivan County, New York. NYAW proposes, upon close of the transaction, the installation of meters at each connection which would be funded by the capital budget of NYAW. NYAW also proposes transitioning the customers of Hoey-DeGraw to the Lynbrook District Tariff and monthly billing in arrears. NYAW also requests the authority to maintain the books and records of Hoey-DeGraw outside of New York State, seeks recovery of certain costs related to the acquisition, and requests waiver of certain requirements of 16 NYCRR § 31.1 related to information required to be provided in the petition. The Commission may adopt, reject, or modify, in whole or in part, the joint petition and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

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

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

(16-W-0432SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

NYSRC's Revisions to Its Rules and Measurements

I.D. No. PSC-35-16-00015-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 revisions to the rules and measurements of the New York State Reliability Council (NYSRC) contained in Version 37 of the NYSRC's Reliability Rules.

Statutory authority: Public Service Law, sections 4(1), 5(2), 65(1), 66(1), (2), (4) and (5)

Subject: NYSRC's revisions to its rules and measurements.

Purpose: To consider revisions to various rules and measurements of the NYSRC.

Substance of proposed rule: The Public Service Commission (PSC) is considering revisions to the rules and measurements of the New York State Reliability Council (NYSRC) contained in Version 37 of the NYSRC's Reliability Rules, which were filed with the PSC on July 15, 2016. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: 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.

(05-E-1180SP16)

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Supplemental Nutrition Assistance Program

I.D. No. TDA-22-15-00005-A

Filing No. 786

Filing Date: 2016-08-15

Effective Date: 2016-08-31

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

Action taken: Amendment of section 387.1; and addition of section 387.25 to Title 18 NYCRR.

Statutory authority: 7 United States Code, section 2020(s); Social Services Law, sections 20(3)(d) and 95

Subject: Supplemental Nutrition Assistance Program.

Purpose: Update regulations for the Transitional Benefits Alternative program.

Text or summary was published in the June 3, 2015 issue of the Register, I.D. No. TDA-22-15-00005-P.

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

Revised rule making(s) were previously published in the State Register on June 15, 2016.

Text of rule and any required statements and analyses may be obtained from: Matthew Tulio, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, New York 12243-0001, (518) 486-9568, email: Matthew.Tulio@otda.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 2019, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Emergency Shelters

I.D. No. TDA-25-16-00002-A

Filing No. 788

Filing Date: 2016-08-16

Effective Date: 2016-08-31

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

Action taken: Addition of section 352.38 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 17(a)-(b), (j), 20(2)-(3), 34, 460-c and 460-d

Subject: Emergency shelters.

Purpose: To address security measures and incident reporting in shelters for the homeless.

Text or summary was published in the June 22, 2016 issue of the Register, I.D. No. TDA-25-16-00002-EP.

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

Text of rule and any required statements and analyses may be obtained from: Richard P. Rhodes, Jr., New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16-C, Albany, NY 12243-0001, (518) 486-7503, email: richard.rhodesjr@otda.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 2019, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Office of Temporary and Disability Assistance (OTDA) received comments relative to emergency regulation 18 NYCRR § 352.38 (§ 352.38), which addresses security measures and incident reporting in shelters for the homeless. The comments pertaining to § 352.38 have been reviewed and are duly considered in this Assessment of Public Comments.

One comment characterized § 352.38 as an unfunded mandate and requested that OTDA fully reimburse the social services districts (SSDs) for any and all expenses related to the administration of § 352.38. As previously stated in the Regulatory Impact Statement, OTDA anticipates the fiscal impact of the emergency regulation will be minimal so long as SSDs are in compliance with existing security and fire safety standards.

One comment asserted that SSD employees do not generally have the expertise to assess the adequacy of security plans or to provide the oversight and guidance necessary to ensure that a security plan is operational. However, SSL § 62(1) explicitly provides that "each public welfare district shall be responsible for the assistance and care of any person who resides or is found in its territory and who is in need of public assistance and care which he is unable to provide for him or herself." SSDs are therefore statutorily mandated to take appropriate measures to help ensure the safety and welfare of persons in need of public assistance and care.

Another comment requested that commercial hotels and motels used to provide emergency shelter be excluded from consideration under § 352.38(a), which requires each emergency shelter to submit a security plan to both the SSD in which it is located and to OTDA. The comment reasoned that in some SSDs commercial hotels and motels are utilized only occasionally for emergency shelter, and it would be impractical, if not impossible, to prospectively obtain, review and assess safety plans for commercial hotels or motels. OTDA notes that the emergency regulation, by its explicit terms, applies only to "facilit[ies] with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter to recipients of temporary housing assistance" (emphasis added). Consequently, under the current emergency regulation, a hotel or motel is required to submit a security plan for approval only when more than 50 percent of its space is used to provide emergency shelter; therefore, commercial hotels and motels used only occasionally to provide emergency shelter when no other suitable housing is available generally will not be required to submit security plans.

In view of the foregoing, OTDA does not believe that revisions to the current emergency regulation are necessary.