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.

Office of Alcoholism and Substance Abuse Services

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Repeal Part 830 and Add New Part 830 Regarding Ancillary Services and Therapies

I.D. No. ASA-52-16-00012-P

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

Proposed Action: Repeal of Part 830; and addition of new Part 830 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b) and 32.01; Education Law, art. 160

Subject: Repeal Part 830 and add new Part 830 regarding Ancillary Services and Therapies.

Purpose: Repeal obsolete regulations and incorporate provisions into a new Part with additional provisions.

Substance of proposed rule (Full text is posted at the following State website:http://www.oasas.ny.gov): The Proposed Rule repeals Part 830 and adds certain provisions of that Part to a new Part 830 (Ancillary Services and Therapies) which includes new provisions for "telepractice," an optional technological means of delivering medical assessment, medication assisted treatment and monitoring from a practitioner located at a remote site from the certified program where the patient is admitted for treatment.

Section 830.1 sets forth the Applicability of this new Part.

§ 830.2 sets forth the legal basis for the provisions in this Part.

§ 830.3 defines terms applicable to this Part.

§ 830.4 consolidates certain provisions related to acupuncture in treatment programs from the previous Part 830.

§ 830.5 sets forth the requirements for Office approval for a certified provider to offer certain medical services (assessment, medication assisted treatment and monitoring) via real-time audio-video systems referred to as "telepractice."

§ 830.6 Standard severability clause.

Text of proposed rule and any required statements and analyses may be obtained from: Sara Osborne, Associate Attorney, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2317, email: Sara.Osborne@oasas.ny.gov

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

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

Regulatory Impact Statement

1. Statutory Authority:

(a) Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner ("Commissioner") of the Office to adopt standards including necessary rules and regulations pertaining to chemical dependence services.

(b) Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

(c) Section 19.40 of the Mental Hygiene Law authorizes the Commissioner to issue operating certificates for the provision of chemical dependence services.

(d) Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

(e) Section 32.07(a) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations to effectuate the provisions and purposes of Article 32 of the Mental Hygiene Law.

(f) Article 160 of the Education Law provides for the licensure or certification of acupuncturists and limited practice of unlicensed persons in treatment of substance use disorder.

2. Legislative Objectives: The legislature has authorized OASAS to establish standards and regulations governing the treatment of persons suffering from substance use disorders, which standards reflect best practices for treatment specific to the needs of the treatment programs certified by the Office. This rule was approved for advancement by the Behavioral Health Services Advisory Council on September 20, 2016.

3. Needs and Benefits: The proposal consolidates provisions of an existing regulation into a new Part, which Part can be added to as new optional services are recognized as effective means for treatment of substance use disorder. Telepractice as a cost effective means of delivering essential medical services, and can alleviate a challenge for providers in rural areas who have difficulty recruiting and maintaining MDs and other prescribing professionals. This will allow the population in under-served areas to receive services, particularly buprenorphine, for treatment of opioid dependence in the midst of the opioid addiction crisis statewide and increase the availability of such treatment in all areas of the state.

The practice of medicine and behavioral health methods of effective treatment of substance use disorder, including use of technology, have evolved considerably in recent decades. To accommodate those changes, statutes have changed, practices once considered experimental have become mainstream. This proposal repeals outdated provisions of a standalone regulation for acupuncture treatment, consolidates language and retains provisions which can be regulated by the Office. The proposal also adds a new ancillary (optional) service of telepractice which providers with adequate technology may choose to implement. Telepractice will make it possible for providers to offer medical assessments, medication assisted treatment (MAT) and monitoring in a means that is a more efficient and cost effective use of limited medical personnel.

4. Costs: No additional administrative costs to the agency are anticipated since review of applications for ancillary services is an existing function; no additional costs to programs/providers are anticipated if providers already have acupuncture staff or already have appropriate audio/video technology. If new technology is needed, adding technology for telepractice is more cost effective than hiring an on-site medical practitioner.

5. Paperwork: The proposed regulation will require an application process for telepractice.

6. Local Government Mandates: There are no new local government mandates.

7. Duplications: This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule.

8. Alternatives: Continue with outdated regulations that are not consistent with current standards, or create a new stand-alone regulation. Acupuncture, once considered experimental, is now an accepted part of medical treatment for many physiological conditions. The regulated profession of acupuncture and its application has been integrated into OASAS treatment programs since 1990 such that the extent of specificity in regulation was no longer necessary to ensure continued quality treatment. The new rule does not reduce standards but consolidates language into a more concise regulation. No rule exists for Telepractice; since it will be utilized only by providers who request authorization to use this as an ancillary service it was deemed that a stand-along regulation for this service was not necessary.

9. Federal Standards: This regulation does not conflict with federal standards.

10. Compliance Schedule: This rulemaking will be effective upon publication of a Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

OASAS has determined that the rule will not impose any adverse impact on small businesses or local governments. This rulemaking proposal has been reviewed by the Behavioral Health Services Advisory Council (approved for advancement September 20, 2016) consisting of affected OASAS providers of all sizes from diverse municipalities, and including local governments. The proposal is supported by providers of all modalities because it consolidates an existing acupuncture regulation more appropriately as an ancillary service, and adds the option of "telepractice" allowing for more provider flexibility.

The proposed rule is posted on the agency website. Agency review process involves input from trade organizations representing providers in diverse geographic locations, local governments, and other behavioral health providers.

Rural Area Flexibility Analysis

OASAS has determined that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This rulemaking proposal has been reviewed by the Behavioral Health Services Advisory Council (approved for advancement September 20, 2016) consisting of affected OASAS providers of all sizes from diverse municipalities, and including local governments. The proposal is supported by providers of all modalities because it consolidates an acupuncture regulation more appropriately as an ancillary service, and adds the option of "telepractice" allowing for more provider flexibility.

The proposed rule is posted on the agency website. Agency review process involves input from trade organizations representing providers in diverse geographic locations and other behavioral health providers.

Job Impact Statement

No change in the number of jobs and employment opportunities is anticipated as a result of the proposed new regulation because the amendments either clarify or streamline provider actions which will not be eliminated or supplemented. Treatment providers already providing acupuncture or telepractice services will not need to hire additional staff or reduce staff size; the proposed changes will not adversely impact jobs outside of the agency; the proposed changes will not result in the loss of any jobs within New York State.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Repeal Parts 321 and 1055; Add New Part 813 Regarding Financing Capital Improvements

I.D. No. ASA-52-16-00013-P

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

Proposed Action: Repeal of Parts 321 and 1055; and addition of Part 813 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.09(b), 19.21(b), 32.01, 32.05 and art. 25; L. 1968, ch. 359

Subject: Repeal Parts 321 and 1055; add new Part 813 regarding financing capital improvements.

Purpose: Repeal DSAS/DAAA regulations; consolidate provisions into new Part 813.

Substance of proposed rule (Full text is posted at the following State website: http://www.oasas.ny.gov): The Proposed Rule Repeals Parts 321 and 1055 and adds a new Part 813 (Financial Assistance for Capital Improvement Projects) to centralize in the Part 800 series requirements for eligible providers to access OASAS state aid and bond sale revenues through the Dormitory Authority of the State of New York (DASNY) to finance capital improvements and investments for the development and maintenance of treatment facilities.

Section 813.1 sets forth the Background and Intent of this new Part.

§ 813.2 indicates to whom this Part is applicable.

§ 813.3 sets forth the legal basis for the provisions in this Part.

§ 813.4 defines terms applicable to this Part.

§ 813.5 reviews the requirements for application for a state aid grant, or for a letter of understanding and intent to refinance a state aid grant via a DASNY loan.

§ 813.6 sets forth the requirements for a DASNY loan pursuant to the Facilities Development Corporation Act.

§ 813.7 Liens of the Office explains the mutual rights and obligations of the Office and eligible providers regarding security for a state aid grant or DASNY loan.

§ 814.8 Standard severability clause.

Text of proposed rule and any required statements and analyses may be obtained from: Sara Osborne, Associate Attorney, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2317, email: Sara.Osborne@oasas.ny.gov

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

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

Regulatory Impact Statement

1. Statutory Authority:

(a) Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner ("Commissioner") of the Office to adopt standards including necessary rules and regulations pertaining to chemical dependence services.

(b) Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

(c) Section 19.40 of the Mental Hygiene Law authorizes the Commissioner to issue operating certificates for the provision of chemical dependence services.

(d) Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

(e) Section 32.07(a) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations to effectuate the provisions and purposes of Article 32 of the Mental Hygiene Law.

(f) Article 25 of the Mental Hygiene Law authorizes the Office, subject to the approval of the Office of the Budget (DOB), to provide state aid funding to programs or local agencies for the provision of addiction services and expenses related to the capital costs of such programs upon such terms and conditions as the Office deems appropriate.

(g) The Facilities Development Corporation Act (Chapter 359 of the Laws of 1968), authorizes the commissioner to promulgate regulations regarding financing or refinancing by voluntary agencies of treatment facilities with proceeds realized from the sale of tax exempt bonds and notes issued by the Medical Care Facilities Finance Agency and provided to the Facilities Development Corporation (FDC) for such purposes.

(h) Section five (5) of the Facilities Development Corporation Act authorizes The Dormitory Authority of the State of New York ("DASNY"), created pursuant to chapter 392 of the Laws of 1973 as successor to the Facilities Development Corporation, to issue negotiable bonds and notes to provide funds for the financing or refinancing of capital improvements to mental hygiene facilities.

2. Legislative Objectives: The legislature has authorized OASAS to provide state aid financing for certain capital improvements to facilities operated by certain certified providers. The Office may also make available to eligible providers a means of financing major capital projects through participation in a Dormitory Authority of the State of New York (DASNY) bond program. This rule was approved for advancement by the BHSAC on September 20, 2016.

3. Needs and Benefits: OASAS is proposing to repeal Part 321 and 1055

because they are old regulations applicable to the two Divisions (DAAA and DSAS) which were consolidated into OASAS. The provisions of both, plus updates, are consolidated into a new Part 813. This regulation reviews the requirements for securing state aid for capital improvements to facilities owned or leased by certified providers. This rule adds an option for providers to secure initial private financing to be refinanced through participation in the Dormitory Authority program of tax exempt bonds (previously Facilities Development Corporation), which has been an option since 1968.

4. Costs: No additional administrative costs to the agency are anticipated; no additional costs to programs/providers are anticipated.

5. Paperwork: The proposed regulation will not require increased paperwork.

6. Local Government Mandates: There are no new local government mandates.

7. Duplication: This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule.

8. Alternatives: Continue with outdated regulations that are not consistent with current standards.

9. Federal Standards: This regulation does not conflict with federal standards.

10. Compliance Schedule: This rulemaking will be effective upon publication of a Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

OASAS has determined that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This rulemaking proposal has been reviewed and approved (September 20, 2016) by the Behavioral Health Services Advisory Council consisting of affected OASAS providers of all sizes from diverse municipalities, and including local governments. The proposal is supported by providers because it centralizes existing requirements for accessing state aid and DASNY bond funds for financing and refinancing capital improvements. The rule does not change any existing procedures or requirements for funding; it only consolidates those procedures into one regulation in the Part 800 series.

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in diverse geographic locations.

Rural Area Flexibility Analysis

OASAS has determined that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This rulemaking proposal has been reviewed and approved by the Behavioral Health Services Advisory Council (September 20, 2016) consisting of affected OASAS providers of all sizes from diverse municipalities, and including local governments. The proposal is supported by providers because it centralizes existing requirements for accessing state aid and DASNY bond funds for financing and refinancing capital improvements. The rule does not change any existing procedures or requirements for funding; it only consolidates those procedures into one regulation in the Part 800 series.

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in diverse geographic locations.

Job Impact Statement

A Job Impact Statement (JIS) is not being submitted with this notice because it is evident from the subject matter of the regulation that it will have no impact on jobs and employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Repeal of Obsolete Rules: Outpatient Chemical Dependency Services for Youth Programs and Services

I.D. No. ASA-52-16-00014-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 repeal Part 823 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b), 32.01 and 32.07(a)

Subject: Repeal of obsolete rules: Outpatient Chemical Dependency Services for Youth Programs and Services.

Purpose: To repeal obsolete rules of the Office.

Text of proposed rule: The following Part of 14 NYCRR is REPEALED:

823 Outpatient Chemical Dependency Services for Youth Programs and Services

Text of proposed rule and any required statements and analyses may be obtained from: Sara Osborne, Associate Attorney, NYS OASAS, 1450 Western Ave., Albany, NY 12204, (518) 485-2312, email: Sara.Osborne@oasas.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

14 NYCRR Part 823, "Outpatient Chemical Dependency Services for Youth Programs and Services," was added and became effective November 23, 1994. Part 822 was added August 7, 2002 pursuant to which outpatient services were available to any person over the age of eighteen. As of August 1, 2016 all programs certified pursuant to Part 823 have converted to certification pursuant to Part 822, making Part 823 obsolete and irrelevant.

This rule making is filed as a Consensus rule because its purpose is to repeal obsolete regulations to which no person is likely to object. This proposal has been circulated within the provider community and received no objections. The Behavioral Health Services Advisory Council approved advancing this rule without objection on September 20, 2016.

Job Impact Statement

OASAS is not submitting a Job Impact Statement for this amendment because OASAS does not anticipate a substantial adverse impact on jobs and employment opportunities. The proposed rulemaking repeal an obsolete rule of the Office because no programs are subject to provisions of this Part; all provisions have been incorporated into existing rules of the Office (14 NYCRR Part 822).

Education Department

EMERGENCY
RULE MAKING

Teacher Certification in Career and Technical Education

I.D. No. EDU-26-16-00016-E
Filing No. 1144
Filing Date: 2016-12-13
Effective Date: 2016-12-17

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 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 safety and general welfare.

Specific reasons underlying the finding of necessity: The proposed amendment to section 80-3.5 is necessary to provide additional pathway options for a Transitional A certification in the CTE subjects for candidates who meet the requirements in one of the following pathway options:

- Option G. Have a minimum of two years of experience in the CTE subject area of certificate sought and hold an industry-related credential or pass an industry accepted examination as approved by the Department and have an employment and support commitment
- Option H. 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
- Option I. Are currently certified 7-12 grade teachers in any 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

A Notice of Proposed Rule Making was published in the State Register on June 29, 2016. Since then the proposed amendment was revised and a Notice of Revised Rule Making was published in the State Register on November 16, 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 30-day public comment period provided for in the State Administrative Procedure Act (SAPA) for a revised rulemaking, would be the January Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed

rule, if adopted at the January meeting, would be January 25, 2017, the date a Notice of Adoption would be published in the State Register. The emergency rule adopted at the October 2016 Regents meeting will expire on December 16, 2017. Therefore, emergency action is necessary is therefore necessary to allow those who do not meet the current requirements but who possess industry experience, credentials, or are in the process of completing certification, but meet one of the three proposed new pathways, to begin teaching at the grade 7-12 level as early as possible during the 2016-2017 school year and to ensure that the proposed amendment adopted at the June and July Regents meetings and revised and adopted at the September and October Regents meetings as an emergency rule, remain 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. The emergency taken at the July 2016 Regents meeting to add new paragraphs (5), (6) and (7) to section 80-3.5 of the Regulations of the Commissioner of Education, is rescinded, effective December 17, 2016.

2. Paragraph (2) of subdivision (b) of section 80-3.5 of the Regulations of the Commissioner of Education shall be amended, effective December 17, 2016, to read as follows:

(2) The candidate shall meet the requirements for the transitional A certificate by successfully completing the requirements in paragraph (1) [or (2)] *through (7)* of this subdivision.

3. New paragraphs (5), (6), and (7) are added to subdivision (b) of section 80-3.5 of the Regulations of the Commissioner of Education, effective December 17, 2016, to read as follows:

(5) Option G: The requirements of this paragraph are applicable to candidates who seek an initial certificate and who hold an industry acceptable credential in a career and technical education subject and have at least two years of acceptable work experience in the certificate area to be taught or in a closely related subject area acceptable to the department. The candidate shall meet the requirements in each of the following subparagraphs:

(i) Education. The candidate shall complete at least two clock hours of course work 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 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) Industry Related Credential or Industry Accepted Examination. The candidate shall either:

(a) hold an industry related credential in the certificate area taught or in a closely related subject area acceptable to the department; or

(b) receive a passing score on an industry accepted career and technical examination that demonstrates mastery in the career and technical education subject for which a certificate is sought or a closely related area as approved by the department through a request for qualifications process.

(iv) Experience. The candidate shall have at least two years of satisfactory work experience in the career and technical education subject for which a certificate is sought or a closely related subject area, as determined by the Commissioner;

(v) 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 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.

(6) Option H: The requirements of this paragraph are applicable to candidates who seek an initial certificate and who are enrolled in an approved career and technical education program registered pursuant to section 52.21 of this Title, or its equivalent in the certificate area to be taught or in a closely related subject area acceptable to the department; and have either at least one year of satisfactory experience in the career and technical area to be taught or in a closely related area or receive a passing score on an industry accepted career and technical examination that demonstrates mastery in the career and technical education subject for which a certificate is sought or a closely related area as approved by the department through a request for qualifications process. The candidate shall meet the requirements in each of the following subparagraphs:

(i) Education.

(a) The candidate shall complete at least two clock hours of course work 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 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; and

(b) the candidate shall be enrolled in an approved career and technical education program registered pursuant to section 52.21 of this Title.

(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 and/or Examination. The candidate shall either:

(a) have at least one year of satisfactory work experience in the career and technical education subject for which a certificate is sought or a closely related area, as determined by the Commissioner; or

(b) receive a passing score on an industry accepted career and technical examination that demonstrates mastery in the career and technical education subject for which a certificate is sought or a closely related area as approved by the department through a request for qualifications process.

(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 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.

(7) Option I: The requirements of this paragraph are applicable to candidates who seek an initial certificate and who are currently certified as a teacher in grades 7-12 in any subject area acceptable to the department, and who either: hold an industry related credential the career and technical education subject to be taught or in a closely related subject area acceptable to the department or have two years of satisfactory experience in the certificate area sought or a closely related subject area, as determined by the Commissioner. The candidate shall meet the requirements in each of the following subparagraphs:

(i) Education. The candidate shall complete at least two clock hours of course work 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) Certification. The candidate shall hold certification as a teacher in grades 7-12 in any certification area pursuant to Part 80 of this Title that is acceptable to the department.

(iv) Experience or Industry Related Credential. The candidate shall either:

(a) hold an industry related credential in the certificate area sought or in a related area, as determined by the Department; or

(b) have at least two years of documented and satisfactory work experience in the career and technical education subject for which a certificate is sought, or a related area, as determined by the Commissioner.

(v) 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 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 February 10, 2017.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, New York State Education Department, 89 Washington Avenue, Room 148, (518) 474-8966, Albany, NY 12234, (518) 474-8966, 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:

To provide additional certification pathways in CTE fields to address the immediate shortages in the field, the Department recommends establishing new pathway options G, H, and I for Transitional A certificates for candidates who meet one of the three requirements listed below:

- Option G. 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
- Option H. 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
- Option I. Are currently certified 7-12 grade teachers in any 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

The proposed amendment provides additional opportunities and flexibility for individuals with specific technical and career experience to obtain a Transitional A teaching certificate in their area of expertise, or a related area, 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 in order to satisfy the increasing demand for those teachers.

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 the proposed amendment is to address concerns raised by school districts and Board of Cooperative Educational Services (BOCES), and particularly the New York City school district, wherein they have expressed difficulty filling Career and Technical Education (CTE) positions at the secondary level. The proposed amendment will create three new 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.

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 three new pathway options to address immediate shortage areas for candidates who meet one of the following three requirements:

To provide additional certification pathways in CTE fields to address the immediate shortages in the field, the Department recommends establishing new pathway options G, H, and I for Transitional A certificates for candidates who meet one of the three options for a Transitional A certificate listed below:

• Option G. 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

• Option H. 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

• Option I. Are currently certified 7-12 grade teachers in any 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

2. COMPLIANCE:

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:

To provide additional certification pathways in CTE fields to address the immediate shortages in the field, the Department recommends establishing new pathway options G, H, and I for Transitional A certificates for candidates who meet one of the three requirements listed below:

• Option G. 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

• Option H. 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

• Option I. Are currently certified 7-12 grade teachers in any 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

The proposed amendment provides additional opportunities and flexibility for individuals with specific technical and career experience to obtain a Transitional A teaching certificate in their area of expertise, or a related area, 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 in order 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 school districts and BOCES have expressed relating to difficulties finding certified teachers to serve as CTE teachers at the secondary level. The proposed amendment seeks to provide flexibility to these school districts by providing additional certification pathways 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 three new 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. This would allow those who qualify to teach CTE subjects at the secondary level.

This amendment applies to all districts and BOCES in New York, 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:

Over the past several years, the Board of Regents has discussed the expansion of career and technical education (CTE) programs in school districts and BOCES generally and of integrated credit allowance which will in turn create a greater demand for teachers certified in CTE titles. At its November 2013 meeting, the Board of Regents was presented with recommendations that would support existing and anticipated demand for teachers certified in CTE titles.

Currently, a Transitional A certificate in a specific CTE subject is issued to permit the employment of an individual in a specific CTE 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 prior to the May 2016 Board of Regents meeting were:

• 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 Examination 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.

Establishment of Additional Pathways

At its May 2016 Board of Regents meeting, the Board adopted by emergency action a proposed amendment to provide an additional opportunity for teachers to obtain a Transitional A certificate through a Pathway D Option. It is anticipated that this will be permanently adopted by the Board at its September 2016 meeting. Candidates may be eligible for a Transitional A certificate if they hold a full private career school teacher license issued by the Department's Bureau of Proprietary School Supervision (BPSS) and have taught under that license for two years in a New York State licensed private career school and meet certain other requirements.

Currently, pursuant to Section 126.6 of the Commissioner's Regulations, there are three license levels (permit, provisional and full license) for teachers licensed by BPSS. To apply for a permit, provisional or full license, candidates must complete an application and provide BPSS with all necessary documentation required for the level and license area(s) in which the candidate wishes to be licensed in. Currently, the requirements for a full Private Career School Teacher License by BPSS are (for most CTE subject areas):

(1) To qualify for a full license, candidates must have completed a total of 90-clock hours in Professional Education, including methods of teaching or a total of 9 semester credits of college course work in Professional Education.

Full licenses are valid for 4 years and are renewable.

During the three years that a candidate has a Transitional A certificate, he/she may apply for and complete all requirements for an Initial Certificate. These requirements include completion of college coursework, receiving a passing score on the NYSTCE exams, and completion of a 40 day student teaching placement in the certificate area sought.

Proposed Amendment

To provide additional certification pathways in CTE fields to address the immediate shortages in the field, the Department recommends establishing new pathway options G, H, and I for Transitional A certificates for candidates who meet one of the three requirements listed below:

- Option G. 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
- Option H. 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
- Option I. Are currently certified 7-12 grade teachers in any 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

The proposed amendment provides additional opportunities and flexibility for individuals with specific technical and career experience to obtain a Transitional A teaching certificate in their area of expertise, or a related area, 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 in order 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 concerns raised by 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 three new 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.

Because the proposed amendment seeks to address an issue raised by the field in employing CTE teachers at the secondary level, 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

Since publication of a Notice of Proposed Rule Making in the State Register on June 29, 2016, the State Education Department (SED) received the following comment:

1. COMMENT:

One commenter raised the concern that the proposed pathways for CTE certification are a "patchwork approach" and that a broader discussion of CTE certification, including a more comprehensive and system-wide approach to CTE teacher certification is required moving forward. The commenter suggested that NYSED convene a work group to look at a more comprehensive approach to CTE certification and to re-convene the CTE Content Advisory Panel to discuss future changes to advance the CTE certification pathways. However, the commenter also expressed appreciation that the Department is recognizing the value of work experience and industry-credentials within the proposed amendment.

The commenter also expressed concern over the requirement that the amendment requires an employment and support commitment on the part of the candidate, and that districts and BOCES do not have the ability to connect with candidates as the need for a CTE teacher arises.

DEPARTMENT RESPONSE:

SED agrees that a more comprehensive approach to the CTE teacher certification pathways is needed, and is currently in the process of working with the field to further revise the regulations relating to CTE teacher certification. However, the proposed amendment seeks to address the immediate concerns raised by the field relating to shortages in CTE teachers by providing an additional pathway to obtain a Transitional A teaching certificate.

In response to the request to convene a work group to look at a more comprehensive approach to CTE certification, the Department will take this under advisement, and will work to address this concern in the most appropriate way given the understaffing of the Department.

With respect to the concerns relating to the need for employment and support commitment, this is required for all candidates seeking a Transitional A certificate and therefore the Department does not believe a revision to the regulations is needed. Moreover, the purpose behind the employment and support commitment is to ensure that the teacher has the needed supports and mentoring when he/she enters the classroom.

EMERGENCY RULE MAKING

Superintendent Determination as to Academic Proficiency for Certain Students with Disabilities to Graduate with a Local Diploma

I.D. No. EDU-27-16-00002-E

Filing No. 1141

Filing Date: 2016-12-13

Effective Date: 2016-12-17

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

Action taken: Amendment of sections 100.5 and 200.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1), (2), 308(not subdivided), 309(not subdivided), 3204(3) and (4)

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

Specific reasons underlying the finding of necessity: All students with

disabilities must be held to high expectations and be provided meaningful opportunities to participate and progress in the general education curriculum to prepare them to graduate with a regular high school diploma. The majority of students with disabilities can meet the State's learning standards for graduation. However, there are some students who, because of their disabilities, are unable to demonstrate their proficiency on standard State assessments, even with testing accommodations. For these students, the proposed amendment, which was adopted by the Board of Regents at its June 2016 meeting, provides a superintendent review option in order for certain students with disabilities to graduate with a local diploma, beginning with students graduating in June 2016.

The proposed amendment was readopted as a second emergency measure, effective September 18, 2016, to ensure that the emergency rule adopted at the June Regents meeting remained continuously in effect until it could be adopted as a permanent rule.

The proposed amendment was then substantially revised in response to public comment. For instance, section 100.5(d)(12)(iii) of the proposed amendment has been added to provide that on or after October 18, 2016 a superintendent may only make a determination whether a student has met the requirements for graduation through the superintendent determination pathway option upon receipt of a written request from an eligible student's parent or guardian. In order to ensure appropriate transition planning, section 200.4 has also been amended to require that the development of transition goals and services must include a discussion with the student's parents of the student's progress toward receiving a diploma and that parents be provided with information explaining graduation requirements, including eligibility criteria and process for requesting the superintendent determination. The proposed amendment was readopted as a third emergency measure, effective October 18, 2016, to ensure that the emergency rule adopted at the June Regents meeting remained continuously in effect until it could be adopted as a permanent rule.

A Notice of Emergency Adoption and Revised Rule Making was published in the State Register on November 2, 2016. Following the 30 day public comment period prescribed in the State Administrative Procedure Act for revised rule makings, the proposed amendment will be presented to the Board of Regents at its December meeting for permanent adoption. If adopted, the proposed amendment will become effective on December 28, 2016 and the emergency action taken at the October Regents meeting will expire on December 16, 2016. Therefore, a fourth emergency adoption is necessary to ensure that the rule adopted at the October meeting remains continuously in effect until the effective date of its adoption as a permanent rule, and thereby ensure that certain students with disabilities who are graduating from high school and their parents are aware that if they do not meet the graduation standards through the existing appeal and safety net options, that the student's parent may request that the superintendent make a determination as to whether the student has met the academic standards and is eligible for a diploma if the student meets the requirements of the proposed amendment. It is also necessary to ensure that superintendents are on notice that upon receipt of a written request from an eligible student's parent, they must make a determination as to whether certain students with disabilities are eligible for local diploma if the student meets the requirements of the proposed amendment.

Subject: Superintendent determination as to academic proficiency for certain students with disabilities to graduate with a local diploma.

Purpose: To expand the safety net options for students with disabilities to graduate with local diplomas when certain conditions are met.

Text of emergency rule: 1. A new paragraph (12) shall be added to subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education, effective December 17, 2016, to read as follows:

(12) Superintendent determination pathway for certain students with disabilities for eligibility for a local diploma.

(i) For purposes of this paragraph only, superintendent shall mean the superintendent of a school district or the principal, head of school, or their equivalent, of a charter school or nonpublic school, as applicable.

(ii) School districts, registered nonpublic high schools and charter schools shall ensure that every student who is identified as a student with a disability as defined in Education Law section 4401(1) and section 200.1(zz) of this Title and who does not meet the assessment requirements for graduation through the existing appeal options, including the compensatory score option or the 55-64 low pass safety net option available under this section but who is otherwise eligible to graduate in June 2016 and thereafter shall be considered for a local diploma through the superintendent determination pathway in accordance with the requirements of this paragraph, provided that the student:

(a) has a current individualized education program and is receiving special education programs and/or related services pursuant to Education Law section 4402 and section 200.4 of this Title; and

(b) took the English Regents examination required for graduation pursuant to this section and achieved a minimum score of 55 or successfully appealed a score of between 52 and 54 on such examination pursuant to paragraph (7) of this subdivision; and

(c) took a mathematics Regents examination required for graduation pursuant to this section and achieved a minimum score of 55 or successfully appealed a score of between 52 and 54 on such examination pursuant to paragraph (7) of this subdivision; and

(d) participated in the remaining Regents examinations required for graduation pursuant to clauses (c), (d), (e) and (f) of subparagraph (a)(5)(i) of this section, but was unable to achieve a minimum score of 55 on one or more of the remaining assessments required for graduation or did not initiate an appeal of a score of between 52 and 54 on one or more such examinations pursuant to paragraph (7) of this subdivision, or was unable to use the compensatory score option for one or more such examinations pursuant to clause (b)(7)(vi)(c) of this section, and

(e) has earned the required course credits pursuant to this section and passed, in accordance with district policy, all courses required for graduation.

(iii) For each eligible student under this paragraph, the superintendent shall conduct a review to determine whether the student has otherwise demonstrated proficiency in the knowledge, skills and abilities in the subject area(s) where the student was not able to demonstrate his/her proficiency of the State's learning standards as measured by the corresponding Regents examination(s) and document such determination in accordance with the following procedures:

(a) the superintendent shall consider evidence that the student attained a grade for the course that meets or exceeds the required passing grade by the school for the subject area(s) under review and such grade is recorded on the student's official transcript with grades achieved by the student in each quarter of the school year. Such evidence may include, but need not be limited to, the student's final course grade, student work completed throughout the school year and/or any interim grades on homework, class work, quizzes and tests; and

(b) the superintendent shall consider the evidence that demonstrates that the student actively participated in the Regents examination(s) for the subject area(s) under review; and

(c) the superintendent shall, as soon as practicable, in a form and manner prescribed by the commissioner, document the evidence reviewed for an eligible student with disability under this paragraph and make a determination as to whether the student met the requirements for issuance of a local diploma pursuant to this paragraph and certify that the information provided is accurate; and

(d) the superintendent shall, as soon as practicable, provide each student and parent or person in parental relation to the student with a copy of the completed form and written notification of the superintendent's determination, and place a copy of the completed form in the student's record.

(1) Where the superintendent determines that the student has not met the requirements for graduation pursuant to this paragraph, the written notice shall inform the student and parent or person in parental relation to the student that the student has the right to attend school until receipt of a local or Regents diploma or until the end of the school year in which the student turns age 21, whichever shall occur first.

(2) Where the superintendent determines that the student has met the requirements for graduation pursuant to this paragraph, the parent shall receive prior written notice pursuant to the requirements of section 200.5(a)(5)(ii) of this Title indicating that the student is not eligible to receive a free appropriate public education after graduation with the receipt of the local diploma pursuant to this paragraph; and

(e) the superintendent shall, no later than August 31 of each year, provide the commissioner with a copy of the completed form for each student; and

(f) the commissioner may conduct audits of compliance with the requirements of this paragraph.

(iv) On or after October 18, 2016, a superintendent shall only make a determination under this paragraph upon receipt of a written request from an eligible student's parent or guardian. Such request shall be submitted in writing to the student's school principal or chairperson of the district's committee on special education. A written request received by the school principal, chairperson of the district's committee on special education, or any other employee of the school as applicable, shall be forwarded to school superintendent immediately upon its receipt.

2. Clause (c) of subparagraph (i) of paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner is amended, effective December 17, 2016, as follows:

(c) A student who is otherwise eligible to graduate in January 2016 or thereafter, is identified as a student with a disability as defined in section 200.1(zz) of this Title, and fails, after at least two attempts, to attain a score of 55 or above on up to two of the required Regents examinations for graduation shall be given an opportunity to appeal such score in accordance with the provisions of this paragraph for purposes of graduation with a local diploma, provided that the student:

(1) has scored within three points of a score of 55 on the required Regents examination under appeal and has attained at least a 65 course average in the subject area of the Regents examination under appeal; and

(2) has met the criteria specified in subclauses (a)(2)-(4) of this subparagraph.

[Notwithstanding the provisions of this clause, a student with a disability who makes use of the compensatory option in clause (b)(7)(vi)(c) of this section to obtain a local diploma may not also appeal a score below 55 on the English language arts or mathematics Regents examinations pursuant to this clause.]

3. Subparagraph (ix) of paragraph (2) of subdivision (d) of section 200.4 of the Regulations of the Commissioner is amended, effective December 17, 2016, as follows:

(ix) Transition services. *(a)* For those students beginning not later than the first IEP to be in effect when the student is age 15 (and at a younger age, if determined appropriate), and updated annually, the IEP shall, under the applicable components of the student's IEP, include:

[(a)] *(1)* …
[(b)] *(2)* …
[(c)] *(3)* …
[(d)] *(4)* …
[(e)] *(5)* …

(b) To ensure appropriate transition planning for the student, the development of transition goals and services pursuant to subclause (a) of this clause, shall include a discussion with the student's parents of:

(1) the graduation requirements that apply to the student depending upon the year in which he or she first enters grade nine;

(2) how the student is progressing toward receipt of a diploma including:

(i) the courses the student has passed and the number of credits the student has earned as required for graduation;

(ii) the assessments required for graduation that the student has taken and passed; and

(3) the appeal, safety net and superintendent determination pathway options that may be available to the student through section 100.5 of this Title to allow the student to meet the graduation assessment requirements.

(c) At the CSE meeting in which transition services will be discussed, the student's parents shall be provided with written information explaining the graduation requirements. Such information must include the eligibility criteria and processes for seeking an appeal to graduate with a lower score on a Regents examination and for requesting that a student be considered for a local diploma through the superintendent determination pathway pursuant to section 100.5 of this Title. Parents shall also be informed that graduation from high school with a local diploma or Regents diploma shall terminate their child's entitlement to a free public education pursuant to Education Law section 3202(1) and their eligibility for special education services pursuant to this Part.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-27-16-00002-EP, Issue of July 6, 2016. The emergency rule will expire February 10, 2017.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, New York State Education Department, 89 Washington Avenue, Room 148, (518) 474-8966, Albany, NY 12234, (518) 474-8966, email: legal@nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges the Department with the general management and supervision of public schools and the educational work of the State.

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

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

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of graduation and of admission to colleges; to confer certificates or diplomas on students who satisfactorily pass such examinations; and requires the admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

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

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

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

Education Law 3204(3) and (4) sets forth the course of study and requires students with disabilities to receive a free appropriate public education.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Regents relating to a superintendent review option for students with disabilities to graduate with a local diploma.

3. NEEDS AND BENEFITS:

It is essential that we have high expectations for what students with disabilities can learn and to provide reasonable accommodations for them to demonstrate that they have reached the standards. With these high expectations for students, we must also have high expectations for teaching with appropriate opportunities, supports, services and instruction provided to students with disabilities.

Superintendent's Review

The proposed amendment to the Commissioner's regulations was adopted to ensure that students with disabilities have demonstrated that they have met the State's learning standards. The proposed amendment requires superintendents (or the principal/head of school of a registered nonpublic school or charter school, as applicable) to review, document and provide a written certification/assurance that there is evidence that the student has otherwise met the standards for graduation with a local high school diploma. Based on public comment, the proposed amendment was revised at the October 2016 Regents meeting to require that on or after October 18, 2016 (the effective date of the revised rule), a superintendent may only make a determination whether an eligible student has met the requirements for graduation through the superintendent determination pathway option upon receipt of a written request from an eligible student's parent or guardian.

The conditions of the review are detailed below:

Applicability

This option is open to students with disabilities with a current Individualized Education Program (IEP) only.

Process

Under this pathway, a school superintendent has the responsibility to determine if a student with a disability has otherwise met the standards for graduation with a local diploma when such student has not been successful, because of his/her disability, at demonstrating his/her proficiency on the Regents exams required for graduation.

Conditions

1. The student has a current IEP and is receiving special education programs and/or related services.

2. The student did not meet the graduation requirements through the low pass (55-64) safety net option[1] or the compensatory option[2] [section 100.5(b)(7)(vi)(c) and (d)(7)].

3. The student must have earned the required course credits and have passed, in accordance with district policy, all courses required for graduation, including the Regents courses to prepare for the corresponding required Regents exam areas (ELA, math, social studies, and science).

4. The student must have received a minimum score of 55 on both the Regents ELA and math exams or a successful appeal of a score between 52 and 54.

5. There must be evidence that the student participated in the other exams required for graduation pursuant to section 100.5(a)(5), but has not passed one or more of these as required for graduation.

6. In a subject area where the student was not able to demonstrate his/her proficiency of the State's learning standards through the corresponding Regents assessment required for graduation, there must be evidence that the student has otherwise demonstrated graduation level proficiency in the subject area.

Review and Documentation

In conducting a review to ensure the student has met the academic standards, the superintendent must consider evidence that demonstrates that the student:

1. Passed courses culminating in the exam required for graduation, in accordance with the grading policies of the district.

2. Actively participated in the exam required for graduation.

The superintendent must sign an assurance on the form that certifies that the information is accurate and the superintendent attests that the

student has met graduation requirements. A copy of the form must be placed in the student's record and a copy must be submitted to the Department no later than by August 31st following the student's graduation.

Decision

A determination by the superintendent is final.

Audit

The Commissioner shall periodically audit the determinations granted by superintendents to ensure that conditions described above are being met.

Allowance of Low Pass Appeal in Addition to Compensatory Option

Prior to the adoption of the emergency rule at the June Regents meeting, students with disabilities who made use of the compensatory option described above were not eligible to also make use of the low pass appeal wherein they are able to appeal scores of 52-54. The amendment adopted in June removes this prohibition.

The proposed amendment also requires that the student and the parent of the student receive written notice of the superintendent's determination with the copy of the completed superintendent's determination form and, where the superintendent determines that the student has met the requirements for graduation, the district must provide prior written notice that the student is not eligible to receive a free appropriate public education after graduation with a local diploma. Where the superintendent determines that the student has not met the requirements for graduation, the written notice shall inform the student and his/her parent that the student has the right to attend school until receipt of a local or Regents diploma or until the end of the school year in which the student turns age 21, whichever shall occur first;

In addition, in order to ensure appropriate transition planning, amendments to section 200.4(d)(2)(ix) are proposed to require that, for students of transition age, the development of transition goals and services at a CSE meeting must include a discussion with the student's parents of the student's progress toward receiving a diploma and that parents be provided with information explaining graduation requirements, including eligibility criteria and process for requesting the superintendent determination.

4. COSTS:

(a) Costs to State: none.

(b) Costs to local governments: There may be costs associated with extending the population of students with disabilities that can earn a local diploma. School districts, BOCES and registered non-publics may also incur costs for the superintendent review and with recording the evidence reviewed and the decision rendered by the superintendent in these reviews.

However, these costs are anticipated to be minimal and capable of being absorbed by districts using existing staff and resources.

In the long term, the proposed amendment is expected to be a cost-saving measure in that it will boost the graduation rate, allowing more students to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in local communities.

(c) Costs to private regulated parties: See (b) above.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment requires the school principal and superintendent to review, document and provide a written certification/assurance that there is evidence that a student eligible for superintendent review has otherwise met the standards for graduation with a local high school diploma. This only applies to students with disabilities with a current Individualized Education Program (IEP) only. On or after October 18, 2016 (the effective date of the revised rule), a superintendent may only make a determination whether an eligible student has met the requirements for graduation through the superintendent determination pathway option upon receipt of a written request from an eligible student's parent or guardian.

The proposed amendment further requires that the student and the parent of the student receive written notice of the superintendent's determination with the copy of the completed superintendent's determination form and, where the superintendent determines that the student has met the requirements for graduation, the district must provide prior written notice that the student is not eligible to receive a free appropriate public education after graduation with a local diploma. Where the superintendent determines that the student has not met the requirements for graduation, the written notice shall inform the student and his/her parent that the student has the right to attend school until receipt of a local or Regents diploma or until the end of the school year in which the student turns age 21, whichever shall occur first;

In order to ensure appropriate transition planning, the proposed amendments to section 200.4(d)(2)(ix) also require that, for students of transition age, the development of transition goals and services at a CSE meeting must include a discussion with the student's parents of the student's progress toward receiving a diploma and that parents be provided with information explaining graduation requirements, including eligibility criteria and process for requesting the superintendent determination.

6. PAPERWORK:

The proposed rule does not impose any significant paperwork requirements, upon local government, including school districts or BOCES. However, when a superintendent makes a determination that a student has met the requirements for a local diploma, he/she must sign an assurance certifying that the information is accurate and attesting that the student has met graduation requirements. A copy of the form must be placed in the student's record and a copy must be submitted to the Department no later than by August 31st following the student's graduation.

Also, see Section 5 Local Government Mandates for additional paperwork requirements.

7. DUPLICATION:

The proposed rule does not duplicate any existing State or federal requirements.

8. ALTERNATIVES:

There were no significant alternatives and none were considered. The proposed rule is necessary to implement Regents policy relating to safety net options for students with disabilities to graduate with a local diploma.

9. FEDERAL STANDARDS:

There are no related federal standards in this area.

10. COMPLIANCE SCHEDULE:

Beginning with students with disabilities who are otherwise eligible to graduate in June 2016 and thereafter, a school superintendent (or the principal of a registered nonpublic school or charter school, as applicable) has the responsibility to determine if a student with a disability has otherwise met the standards for graduation with a local diploma when such student has not been successful, because of his/her disability, at demonstrating his/her proficiency on the Regents exams required for graduation. On or after October 18, 2016 (the effective date of the revised rule), a superintendent may only make a determination whether an eligible student has met the requirements for graduation through the superintendent determination pathway option upon receipt of a written request from an eligible student's parent or guardian.

---

[1] A student also has the option to appeal a score of 52-54 on up to two Regents exams pursuant to section 100.5(b)(7)(vi)(c). While the appeal option exists, it is not required in order for a student to be considered for the superintendent's determination option.

[2] A student also has the option to appeal the ELA and/or math scores pursuant to section 100.5(d)(7). While the appeal option exists, it is not required in order for a student to be considered for the superintendent's determination option.

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed amendment is necessary to implement policy enacted by the Board of Regents relating to a the expansion of the available safety net options for students with disabilities to graduate with a local diploma upon the determination of the superintendent that such student has met certain other conditions for graduation. The proposed amendment requires the school principal and superintendent to review, document and provide a written certification/assurance that there is evidence that the student has otherwise met the standards for graduation with a local high school diploma. Because ELA and math are foundation skills for which there must be a standardized measure of achievement, this option does require a minimum score on the ELA and math Regents exams. However, for the other three exams required for graduation, this option allows review of other documentation of proficiency when the student cannot pass one or more of these exams.

Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 689 public school districts in the State, and to charter schools and nonpublic schools that are authorized to issue regular high school diplomas with respect to State assessments and high school graduation and diploma requirements.

2. COMPLIANCE REQUIREMENTS:

Superintendent's Review

The proposed amendment to the Commissioner's regulations was adopted to ensure that students with disabilities have demonstrated that they have met the State's learning standards. The proposed amendment requires superintendents (or the principal/head of school of a registered nonpublic school or charter school, as applicable) to review, document and provide a written certification/assurance that there is evidence that the

student has otherwise met the standards for graduation with a local high school diploma. Based on public comment, the proposed amendment was revised at the October 2016 Regents meeting to require that on or after October 18, 2016 (the effective date of the revised rule), a superintendent may only make a determination whether an eligible student has met the requirements for graduation through the superintendent determination pathway option upon receipt of a written request from an eligible student's parent or guardian.

The conditions of the review are detailed below:

Applicability

This option is open to students with disabilities with a current Individualized Education Program (IEP) only.

Process

Under this pathway, a school superintendent has the responsibility to determine if a student with a disability has otherwise met the standards for graduation with a local diploma when such student has not been successful, because of his/her disability, at demonstrating his/her proficiency on the Regents exams required for graduation.

Conditions

1. The student has a current IEP and is receiving special education programs and/or related services.

2. The student did not meet the graduation requirements through the low pass (55-64) safety net option[1] or the compensatory option[2] [section 100.5(b)(7)(vi)(c) and (d)(7)].

3. The student must have earned the required course credits and have passed, in accordance with district policy, all courses required for graduation, including the Regents courses to prepare for the corresponding required Regents exam areas (ELA, math, social studies, and science).

4. The student must have received a minimum score of 55 on both the Regents ELA and math exams or a successful appeal of a score between 52 and 54.

5. There must be evidence that the student participated in the other exams required for graduation pursuant to section 100.5(a)(5), but has not passed one or more of these as required for graduation.

6. In a subject area where the student was not able to demonstrate his/her proficiency of the State's learning standards through the corresponding Regents assessment required for graduation, there must be evidence that the student has otherwise demonstrated graduation level proficiency in the subject area.

Review and Documentation

In conducting a review to ensure the student has met the academic standards, the superintendent must consider evidence that demonstrates that the student:

1. Passed courses culminating in the exam required for graduation, in accordance with the grading policies of the district.

2. Actively participated in the exam required for graduation.

The superintendent must sign an assurance on the form that certifies that the information is accurate and the superintendent attests that the student has met graduation requirements. A copy of the form must be placed in the student's record and a copy must be submitted to the Department no later than by August 31st following the student's graduation.

Decision

A determination by the superintendent is final.

Audit

The Commissioner shall periodically audit the determinations granted by superintendents to ensure that conditions described above are being met.

Allowance of Low Pass Appeal in Addition to Compensatory Option

Prior to the adoption of the emergency rule at the June Regents meeting, students with disabilities who made use of the compensatory option described above were not eligible to also make use of the low pass appeal wherein they are able to appeal scores of 52-54. The amendment adopted in June removes this prohibition.

The proposed amendment also requires that the student and the parent of the student receive written notice of the superintendent's determination with the copy of the completed superintendent's determination form and, where the superintendent determines that the student has met the requirements for graduation, the district must provide prior written notice that the student is not eligible to receive a free appropriate public education after graduation with a local diploma. Where the superintendent determines that the student has not met the requirements for graduation, the written notice shall inform the student and his/her parent that the student has the right to attend school until receipt of a local or Regents diploma or until the end of the school year in which the student turns age 21, whichever shall occur first;

In addition, in order to ensure appropriate transition planning, amendments to section 200.4(d)(2)(ix) are proposed to require that, for students of transition age, the development of transition goals and services at a CSE meeting must include a discussion with the student's parents of the student's progress toward receiving a diploma and that parents be provided with information explaining graduation requirements, including eligibility criteria and process for requesting the superintendent determination.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

There may be costs associated with extending the population of students with disabilities that can earn a local diploma. School districts, BOCES and registered non-publics may also incur costs for the superintendent review and with recording the evidence reviewed and the decision rendered by the superintendent in these reviews. However, these costs are anticipated to be minimal and capable of being absorbed by districts using existing staff and resources.

In the long term, the proposed amendment is expected to be a cost-saving measure in that it will boost the graduation rate, allowing more students to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in local communities.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements on school districts or charter schools. Economic feasibility is addressed in the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement Regents policy relating to the expansion of the available safety net options for students with disabilities to graduate with a local diploma upon the determination of the superintendent that such student has met certain other conditions for graduation.

Because the Regents policy upon which the proposed amendment is based applies to all school districts in the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt school districts from coverage by the proposed amendment. The proposed amendment does not directly impose any additional compliance requirements or costs on school districts. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing school resources.

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

8. 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 rule is necessary to implement long-range Regents policy providing for an additional safety net option for students with disabilities to graduate with a local diploma when certain conditions are met. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Emergency Adoption published herewith, and must be received within 45 days of the State Register publication date of the Notice.

---

[1] A student also has the option to appeal a score of 52-54 on up to two Regents exams pursuant to section 100.5(b)(7)(vi)(c). While the appeal option exists, it is not required in order for a student to be considered for the superintendent's determination option.

[2] A student also has the option to appeal the ELA and/or math scores pursuant to section 100.5(d)(7). While the appeal option exists, it is not required in order for a student to be considered for the superintendent's determination option.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to each of the 689 public school districts in the State, charter schools, and registered nonpublic schools in the State, to the extent that they offer instruction in the high school grades, 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. At present, there is one charter school located in a rural area that is authorized to issue Regents diplomas.

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

Superintendent's Review

The proposed amendment to the Commissioner's regulations was adopted to ensure that students with disabilities have demonstrated that they have met the State's learning standards. The proposed amendment

requires superintendents (or the principal/head of school of a registered nonpublic school or charter school, as applicable) to review, document and provide a written certification/assurance that there is evidence that the student has otherwise met the standards for graduation with a local high school diploma. Based on public comment, the proposed amendment was revised at the October 2016 Regents meeting to require that on or after October 18, 2016 (the effective date of the revised rule), a superintendent may only make a determination whether an eligible student has met the requirements for graduation through the superintendent determination pathway option upon receipt of a written request from an eligible student's parent or guardian.

The conditions of the review are detailed below:

Applicability

This option is open to students with disabilities with a current Individualized Education Program (IEP) only.

Process

Under this pathway, a school superintendent has the responsibility to determine if a student with a disability has otherwise met the standards for graduation with a local diploma when such student has not been successful, because of his/her disability, at demonstrating his/her proficiency on the Regents exams required for graduation.

Conditions

1. The student has a current IEP and is receiving special education programs and/or related services.

2. The student did not meet the graduation requirements through the low pass (55-64) safety net option[1] or the compensatory option[2] [section 100.5(b)(7)(vi)(c) and (d)(7)].

3. The student must have earned the required course credits and have passed, in accordance with district policy, all courses required for graduation, including the Regents courses to prepare for the corresponding required Regents exam areas (ELA, math, social studies, and science).

4. The student must have received a minimum score of 55 on both the Regents ELA and math exams or a successful appeal of a score between 52 and 54.

5. There must be evidence that the student participated in the other exams required for graduation pursuant to section 100.5(a)(5), but has not passed one or more of these as required for graduation.

6. In a subject area where the student was not able to demonstrate his/her proficiency of the State's learning standards through the corresponding Regents assessment required for graduation, there must be evidence that the student has otherwise demonstrated graduation level proficiency in the subject area.

Review and Documentation

In conducting a review to ensure the student has met the academic standards, the superintendent must consider evidence that demonstrates that the student:

1. Passed courses culminating in the exam required for graduation, in accordance with the grading policies of the district.

2. Actively participated in the exam required for graduation.

The superintendent must sign an assurance on the form that certifies that the information is accurate and the superintendent attests that the student has met graduation requirements. A copy of the form must be placed in the student's record and a copy must be submitted to the Department no later than by August 31st following the student's graduation.

Decision

A determination by the superintendent is final.

Audit

The Commissioner shall periodically audit the determinations granted by superintendents to ensure that conditions described above are being met.

Allowance of Low Pass Appeal in Addition to Compensatory Option

Prior to the adoption of the emergency rule at the June Regents meeting, students with disabilities who made use of the compensatory option described above were not eligible to also make use of the low pass appeal wherein they are able to appeal scores of 52-54. The amendment adopted in June removes this prohibition.

The proposed amendment also requires that the student and the parent of the student receive written notice of the superintendent's determination with the copy of the completed superintendent's determination form and, where the superintendent determines that the student has met the requirements for graduation, the district must provide prior written notice that the student is not eligible to receive a free appropriate public education after graduation with a local diploma. Where the superintendent determines that the student has not met the requirements for graduation, the written notice shall inform the student and his/her parent that the student has the right to attend school until receipt of a local or Regents diploma or until the end of the school year in which the student turns age 21, whichever shall occur first;

In addition, in order to ensure appropriate transition planning, amendments to section 200.4(d)(2)(ix) are proposed to require that, for students of transition age, the development of transition goals and services at a CSE meeting must include a discussion with the student's parents of the student's progress toward receiving a diploma and that parents be provided with information explaining graduation requirements, including eligibility criteria and process for requesting the superintendent determination.

3. COMPLIANCE COSTS:

There may be costs associated with extending the population of students with disabilities that can earn a local diploma. School districts, BOCES and registered non-publics may also incur costs for the superintendent review and with recording the evidence reviewed and the decision rendered by the superintendent in these reviews. However, these costs are anticipated to be minimal and capable of being absorbed by districts using existing staff and resources.

In the long term, the proposed amendment is expected to be a cost-saving measure in that it will boost the graduation rate, allowing more students to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in local communities.

4. MINIMIZING ADVERSE IMPACT:

There were no significant alternatives and none were considered. The proposed rule is necessary to implement Regents policy relating to safety net options for students with disabilities to graduate with a local diploma.

5. RURAL AREA PARTICIPATION:

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

---

[1] A student also has the option to appeal a score of 52-54 on up to two Regents exams pursuant to section 100.5(b)(7)(vi)(c). While the appeal option exists, it is not required in order for a student to be considered for the superintendent's determination option.

[2] A student also has the option to appeal the ELA and/or math scores pursuant to section 100.5(d)(7). While the appeal option exists, it is not required in order for a student to be considered for the superintendent's determination option.

Job Impact Statement

All students with disabilities must be held to high expectations and be provided meaningful opportunities to participate and progress in the general education curriculum to prepare them to graduate with a regular high school diploma. The majority of students with disabilities can meet the State's learning standards for graduation. However, there are some students who, because of their disabilities, are unable to demonstrate their proficiency on standard State assessments, even with testing accommodations. For these students, the proposed amendment requires a superintendent review option for eligible students to graduate with a local diploma. On or after October 18, 2016, a superintendent (or the principal/head of school of a registered nonpublic school or charter school, as applicable) shall only make a determination under this paragraph upon receipt of a written request from an eligible student's parent or guardian. The proposed amendment requires the school principal and superintendent to review, document and provide a written certification/assurance that there is evidence that the student has otherwise met the standards for graduation with a local high school diploma. Because ELA and math are foundation skills for which there must be a standardized measure of achievement, this option does require a minimum score on the ELA and math Regents exams. However, for the other three exams required for graduation, this option allows review of other documentation of proficiency when the student cannot pass one or more of these exams.

In addition, in order to ensure appropriate transition planning, amendments are proposed to require that, for students of transition age, the development of transition goals and services at a CSE meeting must include a discussion with the student's parents of the student's progress toward receiving a diploma and that parents be provided with information explaining graduation requirements, including eligibility criteria and process for requesting the superintendent determination.

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

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on November 2, 2016, the State Education Department (SED) received the following comments on the proposed amendment.

1. COMMENT:

Generally support providing more flexibility to students who master New York State (NYS) standards but struggle to demonstrate knowledge and skills on Regents exams. Support superintendent determination as

revised, particularly revisions made in response to concerns raised regarding the automatic review process possibly denying students their entitlement to a free appropriate public education (FAPE). Also support language concerning transition planning to require discussion of graduation requirements, availability of appeal, and safety net and superintendent determination options as it will help ensure families are aware of options available to their children and can plan accordingly.

DEPARTMENT RESPONSE:

Comments are supportive in nature and no response is necessary.

2. COMMENT:

While requirement for a "local determination" is imposed equally upon public school superintendents and principals of nonpublic and charter schools, the title of the determination, language in the rule, and the various descriptors and communications from the department, imply that only a public school superintendent shall make such determinations. Singular and cursory reference to "registered nonpublic high schools and charter schools" is insufficient in conveying the fact that this requirement is imposed on such schools principals.

To eliminate confusion, in the proposed rule and other communications (e.g., Superintendent Determination form), change "superintendent determination" to "local determination"; and change references to "superintendent" to "superintendent or principal of the registered nonpublic or charter school, as the case may be." On the certification form, change heading to "Local Determination…" and "Name of School District" to "Name of School District, Nonpublic School or Charter School" and clarify that the name and signature of the school superintendent is not required for students enrolled in a registered nonpublic school or charter school.

DEPARTMENT RESPONSE:

The emergency rule was revised at the October 2016 Board of Regents meeting to clarify for purposes of section 100.5(d)(12) that the superintendent shall mean "the superintendent of a school district or the principal, head of school, or their equivalent, of a charter school or nonpublic school, as applicable." We believe this additional clarification and the existing language in the proposed rule is sufficiently clear that registered nonpublic high schools and charter schools are required to conduct a superintendent determination upon parent request. The mandatory superintendent determination form has also been revised to provide additional clarity as to what information is to be included on the form for students enrolled in charter and nonpublic high schools.

3. COMMENT:

Concerned about parents needing to submit a written request for Superintendent Determination, especially parents who do not speak English or are not involved. Concerned about unintended consequences of change that the determination be initiated only upon written request by the parent and that for students whose parents are not available for whatever reasons (e.g. parent is missing or a district is unable to reach or engage a parent or get them to respond) this process will not be available. Most students eligible for determination are likely to be 18, age of majority, and not allowing a student to initiate this process seems inconsistent with SED's Blueprint for Improved Results for Students with Disabilities, which identifies student self-advocacy as a core priority. Suggest having process for a superintendent's determination be initiated in a manner similar to that for the appeals process, whereby the request for a superintendent's determination be initiated by the student, a parent or guardian, a teacher or principal, or additionally, when recommended by the committee on special education (CSE).

DEPARTMENT RESPONSE:

The proposed rule was revised at the October 2016 Board of Regents (BOR) meeting to require a superintendent determination only upon the written request of the parent. This change by the Department was in response to several comments from the field on the initial proposed amendment that requiring the superintendent to automatically consider all eligible students with disabilities for the superintendent determination could inadvertently deny students their entitlement to FAPE. Under federal and State law/regulations, graduation with a regular school diploma constitutes a change in placement and ends a student's entitlement to FAPE. In addition, once a student is determined eligible for a local or Regents diploma, parents and students do not have the right to decline such diploma. In addition, because NYS law does not allow procedural rights under the Individuals with Disabilities Education Act and Part 200 of the Regulations of the Commissioner of Education to transfer from parents to students with disabilities when they reach the age of majority, a student may not request a superintendent determination that could result in graduation with a regular diploma, unless such student is an emancipated minor in accordance with State law. Therefore, we decline to allow a student's teacher, principal or CSE to make a request for a superintendent determination that could end a student's eligibility for FAPE.

4. COMMENT:

Recommend individualized education program (IEP) form be revised so that transition section documents student progress towards a high school diploma and steps to be taken to help students work towards a diploma.

DEPARTMENT RESPONSE:

SED will take this comment under advisement when considering any possible changes to the State's mandatory IEP form. Although not required by law or regulation to be included in a student's IEP, nothing would preclude the CSE from documenting a student's progress towards a high school diploma in the optional Student Information Summary form as a supplement to a student's IEP.

5. COMMENT:

Urge Department to extend superintendent determination to all students as students with disabilities are not the only population that struggles with Regents exams and students should not be penalized for not being able to demonstrate mastery of NYS standards on high-stakes standardized exams. All students who pass English and Math and otherwise met NYS standards in required subjects as evidenced by classroom performance should have opportunity to graduate with a local diploma and not have to fail Regents exams to have access to the superintendent determination.

Concerned superintendent determination pathway continues to operate on one size fits all framework that unfairly penalizes students who struggle on high-stakes tests. Urge SED to develop performance-based assessments and make them available to all students in lieu of Regents exams.

DEPARTMENT RESPONSE:

The proposal recognizes that the majority of students, including students with disabilities, can meet State's learning standards for graduation but that there are certain students with disabilities with an IEP who, because of their disability, are unable to demonstrate proficiency on standard State assessments. The BOR will continue to discuss multiple diploma pathways for all students and alternative ways to assess proficiency toward State's learning standards for purposes of graduation, including the use of performance-based assessments.

NOTICE OF ADOPTION

Dental Anesthesia Certification Requirements for Licensed Dentists

I.D. No. EDU-10-16-00018-A

Filing No. 1143

Filing Date: 2016-12-13

Effective Date: 2017-07-01; 2018-01-01

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

Action taken: Amendment of section 61.10 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6506(1), 6507(2)(a), 6601(not subdivided) and 6605-a(2)

Subject: Dental Anesthesia Certification Requirements for Licensed Dentists.

Purpose: To conform regulations to the current practice of dental anesthesia administration.

Text or summary was published in the March 9, 2016 issue of the Register, I.D. No. EDU-10-16-00018-P.

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

Revised rule making(s) were previously published in the State Register on September 28, 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

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

Superintendent Determination As to Academic Proficiency for Certain Students with Disabilities to Graduate with a Local Diploma

I.D. No. EDU-27-16-00002-A
Filing No. 1142
Filing Date: 2016-12-13
Effective Date: 2016-12-28

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

Action taken: Amendment of sections 100.5 and 200.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1), (2), 308 (not subdivided), 309(not subdivided), 3204(3) and (4)

Subject: Superintendent determination as to academic proficiency for certain students with disabilities to graduate with a local diploma.

Purpose: To expand the safety net options for students with disabilities to graduate with local diplomas when certain conditions are met.

Text or summary was published in the July 6, 2016 issue of the Register, I.D. No. EDU-27-16-00002-EP.

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

Text of rule and any required statements and analyses may be obtained from: 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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on November 2, 2016, the State Education Department (SED) received the following comments on the proposed amendment.

1. COMMENT:

Generally support providing more flexibility to students who master New York State (NYS) standards but struggle to demonstrate knowledge and skills on Regents exams. Support superintendent determination as revised, particularly revisions made in response to concerns raised regarding the automatic review process possibly denying students their entitlement to a free appropriate public education (FAPE). Also support language concerning transition planning to require discussion of graduation requirements, availability of appeal, and safety net and superintendent determination options as it will help ensure families are aware of options available to their children and can plan accordingly.

DEPARTMENT RESPONSE:

Comments are supportive in nature and no response is necessary.

2. COMMENT:

While requirement for a "local determination" is imposed equally upon public school superintendents and principals of nonpublic and charter schools, the title of the determination, language in the rule, and the various descriptors and communications from the department, imply that only a public school superintendent shall make such determinations. Singular and cursory reference to "registered nonpublic high schools and charter schools" is insufficient in conveying the fact that this requirement is imposed on such schools principals.

To eliminate confusion, in the proposed rule and other communications (e.g., Superintendent Determination form), change "superintendent determination" to "local determination"; and change references to "superintendent" to "superintendent or principal of the registered nonpublic or charter school, as the case may be." On the certification form, change heading to "Local Determination…" and "Name of School District" to "Name of School District, Nonpublic School or Charter School" and clarify that the name and signature of the school superintendent is not required for students enrolled in a registered nonpublic school or charter school.

DEPARTMENT RESPONSE:

The emergency rule was revised at the October 2016 Board of Regents meeting to clarify for purposes of section 100.5(d)(12) that the superintendent shall mean "the superintendent of a school district or the principal, head of school, or their equivalent, of a charter school or nonpublic school, as applicable." We believe this additional clarification and the existing language in the proposed rule is sufficiently clear that registered nonpublic high schools and charter schools are required to conduct a superintendent determination upon parent request. The mandatory superintendent determination form has also been revised to provide additional clarity as to what information is to be included on the form for students enrolled in charter and nonpublic high schools.

3. COMMENT:

Concerned about parents needing to submit a written request for Superintendent Determination, especially parents who do not speak English or are not involved. Concerned about unintended consequences of change that the determination be initiated only upon written request by the parent and that for students whose parents are not available for whatever reasons (e.g. parent is missing or a district is unable to reach or engage a parent or get them to respond) this process will not be available. Most students eligible for determination are likely to be 18, age of majority, and not allowing a student to initiate this process seems inconsistent with SED's Blueprint for Improved Results for Students with Disabilities, which identifies student self-advocacy as a core priority. Suggest having process for a superintendent's determination be initiated in a manner similar to that for the appeals process, whereby the request for a superintendent's determination be initiated by the student, a parent or guardian, a teacher or principal, or additionally, when recommended by the committee on special education (CSE).

DEPARTMENT RESPONSE:

The proposed rule was revised at the October 2016 Board of Regents (BOR) meeting to require a superintendent determination only upon the written request of the parent. This change by the Department was in response to several comments from the field on the initial proposed amendment that requiring the superintendent to automatically consider all eligible students with disabilities for the superintendent determination could inadvertently deny students their entitlement to FAPE. Under federal and State law/regulations, graduation with a regular school diploma constitutes a change in placement and ends a student's entitlement to FAPE. In addition, once a student is determined eligible for a local or Regents diploma, parents and students do not have the right to decline such diploma. In addition, because NYS law does not allow procedural rights under the Individuals with Disabilities Education Act and Part 200 of the Regulations of the Commissioner of Education to transfer from parents to students with disabilities when they reach the age of majority, a student may not request a superintendent determination that could result in graduation with a regular diploma, unless such student is an emancipated minor in accordance with State law. Therefore, we decline to allow a student's teacher, principal or CSE to make a request for a superintendent determination that could end a student's eligibility for FAPE.

4. COMMENT:

Recommend individualized education program (IEP) form be revised so that transition section documents student progress towards a high school diploma and steps to be taken to help students work towards a diploma.

DEPARTMENT RESPONSE:

SED will take this comment under advisement when considering any possible changes to the State's mandatory IEP form. Although not required by law or regulation to be included in a student's IEP, nothing would preclude the CSE from documenting a student's progress towards a high school diploma in the optional Student Information Summary form as a supplement to a student's IEP.

5. COMMENT:

Urge Department to extend superintendent determination to all students as students with disabilities are not the only population that struggles with Regents exams and students should not be penalized for not being able to demonstrate mastery of NYS standards on high-stakes standardized exams. All students who pass English and Math and otherwise met NYS standards in required subjects as evidenced by classroom performance should have opportunity to graduate with a local diploma and not have to fail Regents exams to have access to the superintendent determination.

Concerned superintendent determination pathway continues to operate on one size fits all framework that unfairly penalizes students who struggle on high-stakes tests. Urge SED to develop performance-based assessments and make them available to all students in lieu of Regents exams.

DEPARTMENT RESPONSE:

The proposal recognizes that the majority of students, including students with disabilities, can meet State's learning standards for graduation but that there are certain students with disabilities with an IEP who, because of their disability, are unable to demonstrate proficiency on standard State assessments. The BOR will continue to discuss multiple diploma pathways for all students and alternative ways to assess proficiency toward State's learning standards for purposes of graduation, including the use of performance-based assessments.

NOTICE OF ADOPTION

Substitute Teachers

I.D. No. EDU-39-16-00009-A
Filing No. 1140
Filing Date: 2016-12-13
Effective Date: 2016-12-28

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

Action taken: Amendment of section 80-5.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 305(1), (2), 3001(2), 3004(1), 3006(1), 3007(1), (2) and 3009(1)

Subject: Substitute Teachers.

Purpose: To provide a sunset date for the amendments made to 80-5.4 at the July Regents meeting.

Text or summary was published in the September 28, 2016 issue of the Register, I.D. No. EDU-39-16-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: 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

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

Assessments for the New York State Career Development and Occupational Studies (CDOS) Commencement Credential

I.D. No. EDU-39-16-00033-A
Filing No. 1138
Filing Date: 2016-12-13
Effective Date: 2016-12-28

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

Action taken: Amendment of section 100.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1), (2), 308(not subdivided) and 309(not subdivided)

Subject: Assessments for the New York State Career Development and Occupational Studies (CDOS) Commencement Credential.

Purpose: Establish conditions and procedures for approval of work-readiness assessments for the CDOS credential.

Text or summary was published in the September 28, 2016 issue of the Register, I.D. No. EDU-39-16-00033-EP.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Uniform Violent or Disruptive Incident Reporting System (VADIR)

I.D. No. EDU-39-16-00034-A
Filing No. 1148
Filing Date: 2016-12-13
Effective Date: 2017-07-01

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

Action taken: Amendment of section 100.2(gg) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), 308 and 2802

Subject: Uniform Violent or Disruptive Incident Reporting System (VADIR).

Purpose: To revise the categories of violent and disruptive incidents for VADIR reporting.

Text or summary was published in the September 28, 2016 issue of the Register, I.D. No. EDU-39-16-00034-P.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, New York State Education Department, 89 Washington Avenue, Room 138, Albany, NY 12234, (518) 474-6400, email: legal@nysed.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

Since publication of a Notice of Proposed Rule Making in the State Register on September 28, 2016, the State Education Department (SED) received the following comments. A full Assessment of Public Comment may be found at http://www.regents.nysed.gov/common/regents/files/1216p12a2.pdf.

1. COMMENT:

I would ask that bomb threat include bomb/terror threat. Administrators deal with threats much broader and more encompassing than bomb threats alone. We have students threaten to ''shoot up'' schools, ''burn'' schools, etc.

DEPARTMENT RESPONSE:

The proposed amendment does not make any revisions to the definition of bomb threat. The amendment does include material incidents of harassment, bullying, and/or discrimination as a reportable category based upon the recommendations of the New York State Safe Schools Task Force, which included representatives from law enforcement. This category includes as a reportable incident the broader use of threats, intimidation or abuse. Therefore, the Department believes that no revisions are necessary.

2. COMMENT:

I am in favor of a change in VADIR from 9 to 20 categories due to continued inconsistencies in reporting and categories which are important but are not delineated as "Violent" nor contribute to the Violence Index.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

3. COMMENT:

NYSED should adopt the proposed VADIR amendments, insofar as it promotes safety and equality in education for LGBT students. It will provide clear reporting guidelines and more efficient reporting mechanisms for bullying and harassment that targets LGBT students.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

4. COMMENT:

Please provide clarity around the threshold for what behaviors and consequences determine what is a VADIR incident.

DEPARTMENT RESPONSE:

The amendment only relates to clarifying the definitions of and streamlining the categories for VADIR reportable offenses. The consequences/interventions attached to a particular offense are determined by each school district in accordance with its code of conduct pursuant to Education Law § 2801. Therefore, the comment is outside the scope of the amendment. The Department will revise the implementing guidance to provide schools with more information on the applicable indicators for determining the seriousness of a particular incident for purposes of calculating the school violence index(SVI) on the basis of VADIR data reported by schools.

5. COMMENT:
The Department should encourage schools to consider a system that will identify students in need of support and intervention, not just one that tallies incidents based on mandatory reporting requirements.
DEPARTMENT RESPONSE:
The intended purpose of both the statute and the regulation, are to provide disaggregated data on violent incidents for the purpose of identifying which public schools are persistently dangerous. The methods for identifying of students in need of appropriate supports and interventions are determined at the local level, and within each district's code of conduct. However, the collection of VADIR data is vitally important to inform the work of schools and the Department in improving both student safety and student outcomes. The Department continues to work with schools and stakeholders, outside of the scope of VADIR data collection, to implement systems which promote positive school climates. Therefore, the Department does not believe that revisions are necessary.
6. COMMENT:
Commenter expressed concern about transparency, and questioned the usefulness of data under the amendments. The abbreviated categories consolidate the current system's twenty distinct categories into nine broader categories. As a result, the public will lose the ability to distinguish between severe and minor incidents. Consolidating categories of disparate severity and eliminating others entirely, the new system would only weaken the state's ability to assess school violence and deprive the public of vital information.
DEPARTMENT RESPONSE:
Education Law § 2802 provides the Commissioner, in conjunction with DCJS, broad discretion in defining violent incidents. The proposed amendments were borne out of recommendations from the New York State Safe Schools Task Force, whose membership included representatives from DCJS. One of the recommendations was to:
"[d]evelop a new process and criteria for the Persistently Dangerous designation and a new set of definitions of incident categories for reporting using a School Climate Index. The reporting process for Dignity for All Students Act (DASA) and Violent and Disruptive Incident Reporting (VADIR) should be combined and renamed into one system that is not punitive and is reflective of the school climate and can be used for prevention and intervention purposes; also, that it includes positive measures and incorporates most improved schools."
The purpose of the amendment and the reduction of categories is to more accurately capture the types of incidents that occur in schools and to reduce the punitive effect of VADIR, to instead serve as a tool for schools to identify strategies to reduce violence and improve school climate for the purpose of improving student outcomes. While the categories are streamlined, the distinction between the degrees of severity of most incident categories will still be captured. The regulation continues to provide for a weighted SVI calculation to reflect the most serious violent incidents. For purposes of SVI, each incident will still have a corresponding weight identifying it's severity. The VADIR incident weighting will continue to allow the public to distinguish between the more severe incidents as evidenced by the SVI. Furthermore, in accordance with Ed.L.§ 2801, the summary of such information must be in the school district report cards.
7. COMMENT:
Commenter supports reducing violence in schools but expressed concern that the requirements overburden schools and increase confusion and inconsistency in reporting. Expanded reporting requirements would result in charter schools spending less time educating students and keeping them safe, and more time and resources reporting to NYSED.
DEPARTMENT RESPONSE:
The existing regulation requires school districts, BOCES, charter schools and county vocational education and extension boards to submit to the Commissioner annual VADIR reports. The amendment does not impose additional reporting requirements on charter schools. Rather, the proposed amendment streamlines the VADIR categories from 20 to 9, thus allowing less time reporting and more time on instruction. Therefore, no revisions are necessary.
8. COMMENT:
Data is not publicly available for up to two years after an incident occurs. The Department should develop a technology platform, available to schools at no cost, to facilitate real-time reporting of incidents of school violence.
DEPARTMENT RESPONSE:
The proposed amendments do not adjust the required timetable for annual reporting. As such, the comment is outside the scope of the proposed amendment. However, commencing with the 2015-16 schoolyear, the Department employed technology resources to address concerns related to the timeliness of VADIR and DASA reporting. Beginning in the 2015-16 schoolyear, schools now report VADIR and DASA data immediately following the school year, but no later than the end of July. That data is used to determine the list of Persistently Dangerous schools by August 1. Thereafter, this raw incident data is posted on the Department's website, listed by school. The Department continues efforts to streamline the data verification process to ensure timely and accurate data to assist schools in creating more positive climates within their buildings, within existing resources.
Additionally, while the statute and regulation require data submitted annually, school personnel have the responsibility and the opportunity to thoroughly investigate incidents, and respond accordingly in real time.
9. COMMENT:
Commenter concerned about gang-related activity in schools. Where a reportable incident is gang-related, that information should be collected through VADIR. Gang activity in schools can begin suddenly, escalate quickly, and frequently necessitates the involvement of law enforcement and should be reported immediately.
DEPARTMENT RESPONSE:
The existing regulation requires, and the amendments do not alter the obligation of schools to report whether an incident was bias-related, drug-related, or gang or group-related. The annual VADIR data collection VADIR is required for the annual calculation of persistently dangerous schools pursuant to State and federal law(20 U.S.C.A. § 7912; N.Y. Ed.L. § 2801) VADIR data collection does not preclude schools from addressing such incidents in a timely and more comprehensive manner.
In addition to reporting requirements, while the statute and the regulation require the annual submission of data, school personnel have the responsibility and the opportunity to thoroughly investigate incidents, and respond accordingly in real time.
10. COMMENT:
While evidence is clear that many students have been the victims of violence, bullying, and harassment on the basis of sexual orientation, transgender status, religion, race, or sex, among other factors, the proposed rule does not explicitly provide for the collection of data regarding bias when a reportable incident such as an assault or sexual offense is hate-or bias-motivated.
DEPARTMENT RESPONSE:
Both the existing regulation and the amendment continue the authority of the Commissioner to prescribe the form, and manner of the VADIR report. Commissioner's regulation§ 100.2(gg)(4) still requires the report to include whether the incident was bias-related, drug-related, or gang or group-related. The Department agrees that it is important to collect such data when there is evidence that such incident is motivated by the factors outlined in DASA. For this reason, and based upon the recommendation of the Safe Schools Task Force, the Department is revising the VADIR/DASA data submission form to prompt schools to include additional information on the incident, including whether or not it was based on one of the above categories.
11. COMMENT:
Threats, intimidation, or abuse based upon gender identity or gender expression should be explicitly included as reportable material incidents. To promote accurate reporting, gender identity or expression should be a distinct category.
DEPARTMENT RESPONSE:
In addition to the obligations under DASA and Commissioner's regulations §§ 100.2(jj),100.2(kk), the amendment clarifies that material incidents of harassment, bullying and/or discrimination based on, among other things, a person's actual or perceived race, color, weight, sexual orientation, gender, or sex are included as a VADIR category. In an effort to streamline reporting and to ensure accuracy, the Department will be revising the standard VADIR form by which school districts report such incidents. It will prompt schools to include additional information on the reported incident, including whether or not the incident was based on one of the above categories.
12. COMMENT:
The national epidemic of heroin and opiate abuse is costing thousands of young lives each year with prescription painkiller abuse frequently opening the door to addiction. The proposed rule appears to place drug and alcohol use in single categories. However the disparity in lethality between heroin use when compared to alcohol and marijuana warrant more detailed reporting.
DEPARTMENT RESPONSE:
The Department agrees that the increasing abuse of opioids is a serious matter. The scope of the existing regulation and the amendments are to merely establish a framework within which schools are required to report certain incidents for the purpose of identifying persistently dangerous schools in accordance with State and federal law, under which both substances are considered illegal. The amendments require schools to report incidents of the use, possession or sale of drugs, and the use, possession or sale of alcohol. As such, the comment is outside the scope of the proposed amendment and no revisions are necessary.
13. COMMENT:

Commenter expressed concern that the amendments only require reporting of "verified" incidents of harassment, discrimination, or bullying and that many incidents go unreported by schools, despite their obligation to do so under VADIR and DASA. When a student, parent, faculty or staff member reports an incident of harassment, discrimination, or bullying, it should be documented and reported through VADIR because verifying such incidents when they occur in the back of a school bus, on a playground, in a busy hallway, or a locker room is simply not practical.

DEPARTMENT RESPONSE:

DASA governs the reporting and investigation of incidents of harassment, discrimination, or bullying on school property or at a school function which would include the scenarios suggested by the commenter. School districts continue to have a duty to investigate and verify reports of such incidents, pursuant to Commissioner's regulation § 100.2(kk). For a suggested sample form for receiving such reports, please see recently released guidance, http://www.p12.nysed.gov/dignityact/documents/SED-AGLttrandGuidance8-31-16.pdf

The amendment explicitly includes material incidents of harassment, bullying and/or discrimination and mirrors the definition in Commissioner's regulation § 100.2(kk) as a VADIR reportable category. The proposed amendment adopts such definition, to ensure clarity and consistency in reporting incidents within schools.While this does not relieve a school district of the obligation to comply with the many provisions of DASA, it will provide a streamlined reporting process through which districts report the disaggregated data relating to such incidents. For additional guidance on how to address such reports and how to comply with DASA, please see http://www.p12.nysed.gov/dignityact/.

NOTICE OF ADOPTION

Establishment of Tuition Rates

I.D. No. EDU-42-16-00001-A

Filing No. 1139

Filing Date: 2016-12-13

Effective Date: 2016-12-28

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

Action taken: Amendment of section 200.18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 4003, 4401, 4403, 4405, 4408 and 4410

Subject: Establishment of tuition rates.

Purpose: To clarify that the Education Department maintains discretion in establishing tuition rates based on a financial audit.

Text or summary was published in the October 19, 2016 issue of the Register, I.D. No. EDU-42-16-00001-EP.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Physical Presence in New York

I.D. No. EDU-52-16-00011-P

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

Proposed Action: Amendment of section 3.56 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 210-c and 212; State Finance Law, section 97-III; L. 2015, ch. 220

Subject: Physical Presence in New York.

Purpose: Establish Fees and Procedures for Higher Education Out-of-State Institutions to Operate with a Physical Presence in New York.

Text of proposed rule: 1. Section 3.56 of the Rules of the Board of Regents is amended, effective March 29, 2017 to read as follows:

§ 3.56. Consent of the Board of Regents to operation in New York by institutions of higher education operating outside New York.

[An individual, association, copartnership or corporation authorized to confer degrees or offer courses of study at the higher education level] *An institution authorized to confer degrees* in a state other than New York, which seeks the permission of the Regents to offer educational programs in New York, shall comply with the following procedures and requirements:

(a) *Application.* An application *for initial approval and applications for renewal of such approval* shall be submitted to the Regents [for their approval] on forms prescribed by the [department] *Department*, setting forth evidence of educational quality and resources equivalent *to those set forth in Part 52 of this Title for the programs the institution is seeking permission to operate in New York* [of New York institutions of higher education offering similar programs], as determined by the [commissioner] *Commissioner*. Such application shall include *the fees set forth in subdivision (f) of this section*, and evidence, satisfactory to the [commissioner] *Commissioner*, of the need for the proposed program [or programs], and that the long-range plan for the program is in accordance with the [Regents statewide plan for the development of post-secondary education, 1980] Regents 2012-2020 Statewide Plan for Higher Education (University of the State of New York, *State Education Department*, Albany, NY [12230: October 1980] *12234*, available at [Bureau of Postsecondary Planning] *Office of Higher Education*, [Room 5B44, Cultural Education Center] *State Education Building*, Albany, NY [12230] *12234*).

(b) [A proposed program must be registered with the department. Registration of a proposed program shall be accomplished in accordance with the provisions of Part 52 of this Title.] *Terms of Initial Approval and Renewal. The term for initial approval for permission to operate in New York shall be five years, unless otherwise modified by the Board of Regents. The institution shall apply for renewal of its permission to operate every five years.*

(c) Scope of Permission to Operate.

(1) Out-of-state institutions applying for initial approval or renewal of such approval under this section on or after March 29, 2017 may only hold permission to operate one program at one location in New York State unless otherwise authorized by this subdivision. For the purposes of this part, program shall mean courses or instructional or other field experiences (e.g., clinical placements) that are offered by the institution in New York for purposes of earning credit, a degree, certificate, credential, or other academic award.

(i) In rare circumstances and upon receipt of evidence satisfactory to the Commissioner that the educational needs in New York will be addressed by allowing an institution to offer more than one program or offer a program at more than one location in New York, the institution may apply to the Commissioner for a waiver of the limitation in this paragraph.

(ii) Institutions that were granted permission to operate more than one program and/or a program at multiple locations prior to March 29, 2017, shall be grandfathered in, and may continue to operate those programs; provided, however, that the institution shall apply for renewal of such permission to operate in accordance with the provisions of this section.

(2) If the program for which an out-of-state institution is seeking permission to operate also includes a distance education component and the institution is required to obtain approval by the Department to offer distance education in New York pursuant to Subpart 49-2 of this Title, and the only distance education the institution is seeking permission to operate in New York relates to the program for which the institution is seeking permission to operate, the institution may apply for both permission to operate and approval to offer distance education through a single application under this section, and shall only be subject to the fees required by this section. When submitting a combined application for permission to offer distance education in a program in which the institution seeks permission to operate in New York pursuant this paragraph, the institution shall meet the requirements of both this section and Subpart 49-2 of this Title.

(d) Review of Applications. Applications for initial approval and renewal of such approval shall be reviewed by the Department to determine whether the application meets the requirements set forth in subdivision (a) of this Part.

(1) For those applications that meet the requirements for permission to operate under this section, the Department shall make a recommendation for approval to the Board of Regents. At a regularly scheduled public meeting, the Board of Regents shall consider the Department's recommendation and make the final determination on permission to operate.

(2) Applications that do not meet the requirements set forth in subdivision (a) of this section will not be recommended for approval to the Board of Regents and the Department shall provide the applicant with the reasons for its decision in writing. The institution may appeal the Department's decision not to recommend an application for approval, to the Commissioner or her/his designee, in a timeframe and manner prescribed by the Commissioner, and may submit additional information in support of its position.

(e) If an institution holding permission to operate fails to pay the required fees set forth in this section, or has not maintained compliance with the requirements set forth in this section, the Department may revoke permission to operate and/or limit the institution from enrolling new students in New York State at any time. The institution shall have the right to appeal the determination of the Department to the Commissioner or his/her designee, in a timeframe and manner prescribed by the Commissioner, and may submit additional information in support of its position, prior to such revocation, or any limitation on enrollment.

(f) Fee Schedule.

(1) Initial Application Fee. Institutions seeking initial permission to operate under this section, on or after March 29, 2017 shall be subject to a non-refundable application fee of $10,000, to be submitted with its application for initial approval. If a waiver is granted by the Commissioner to allow an institution to seek permission to operate more than one program pursuant to subparagraph (i) of paragraph (1) of subdivision (c) of this section, an additional fee of $2,500 for each additional program for which permission to operate in New York is sought shall be submitted with the initial application.

(2) Renewal Fee. An institution seeking renewal of its permission to operate on or after March 29, 2017 shall be subject to a non-refundable application fee of $2,500, to be submitted with the renewal application. If a waiver is granted by the Commissioner to allow an institution to seek permission to operate more than one program pursuant to subparagraph (i) of paragraph (1) of subdivision (c) of this section, an additional fee of $2,500 for each additional program for which permission is sought shall be submitted with the renewal application.

(3) Annual Administrative Fee. In addition to the fees prescribed in paragraphs (1) and (2) of this subdivision, an institution granted permission to operate either through an initial approval or through renewal of existing approval on or after March 29, 2017, shall be subject to an annual non-refundable fee of $5,000 commencing in the year that the institution obtains initial approval or renewal of its existing approval on or after March 29, 2017 and for each subsequent year throughout the term of its approval to operate in New York State. The fee for each annual period shall be due no later than 60 days prior to the start of each annual period for such institution.

Text of proposed rule and any required statements and analyses may be obtained from: Kirti Goswami, New York State Education Department, 89 Washington Avenue, Room 138, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Data, views or arguments may be submitted to: Peg Rivers, Office of Higher Education, New York State Education Department, Room 979, Albany, NY 12234, (518) 408-1189, email: regcomments@nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law (Ed.L.) 101(not subdivided) charges the Department with the general management and supervision of the educational work of the State.

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

Ed. L. 210(not subdivided) authorizes the Regents to register domestic and foreign insitutions in terms of New York standards, and fix the value of degrees, diplomas and certificates issued by institutions of other states or countries.

Ed.L. 212(3) authorizes the Department to charge fees for licenses and permits.

State Finance Law 97-III, as added by Chapter 220 of the Laws of 2015, establishes the interstate reciprocity for post-secondary distance education account and authorizes and directs the State to receive for deposit to the credit of such account, any appropriation and/or fees established in regulations for expenses incurred by the department in conducting evaluations, processing complaints and/or other administrative functions related to postsecondary distance education conducted by the department for out-of-state institutions seeking to operate with a physical presence in New York State.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment of Section 3.56 of the Rules of the Board of Regents authorizes the Department to establish procedures and collect fees from out-of-state institutions that seek to operate with a physical presence in New York State.

3. NEEDS AND BENEFITS:

Section 3.56 of the Rules of the Board of Regents provides a process for out-of-state institutions of higher education to seek permission to establish a physical presence in New York in order to offer credit-bearing courses or programs of study.

When the Department receives an application from an out-of-state institution to establish a physical location in New York State, it must conduct an in-depth review of the scope and nature of the proposal, including a review of the need for the program in New York State, the quality of the program, and whether the applicant has the fiscal resources to meet its proposed program's goals. In addition, the Department evaluates the impact of the out-of-state institution's presence on existing New York State degree-granting institutions. This includes a canvass of New York based higher education institutions at which time they can raise objections regarding the approval of the proposed program. If objections are received, the applicant must work with those institutions to remove the objection before the Department will recommend approval of this permission to operate. Applicants that meet the expectations and standards of need, quality, and resources are advanced to the Board of Regents, which is the final grantor of permission to operate. All permission to operate recommendations are time limited – not to exceed five years.

Once an out-of-state institution is granted permission to operate and establishes a physical presence in New York State, the Department continues to provide administrative oversight of the operation, which may include collecting and reviewing annual data reported about the institution's operation in New York State.

Currently, the Department does not charge a fee for out-of-state institutions seeking permission to operate in New York. Over the past several years, there has been an increased interest from out-of-state institutions seeking to establish a physical presence in New York State, straining the Department's already limited resources to administer this process. The proposed amendment to Section 3.56 of the Rules of the Board of Regents establishes a fee structure for out-of-state institutions seeking to operate with a physical presence in New York State. The proposed amendment also makes explicit the procedures for application review and terms of approval and renewal.

The proposed fees will provide resources to support evaluation and administration of out-of-state institutions seeking to operate in New York State in a manner that does not diminish resources otherwise available to support New York State's degree-granting institutions. The proposed fee structure is as follows:

- Initial application fee to operate one program in NYS: $10,000
- Fee for application for additional programs (if a waiver is granted by the Commissioner): $2,500 per additional program
- Renewal application fee: $2,500
- Renewal fee for any additional programs: $2,500 per additional program
- Annual administrative fee: $5,000 per year of operation in NYS pursuant to permission to operate

This fee structure is reasonable in relation to the type and nature of the work required of the Department to review these proposed programs and is comparable to fees currently charged by other states. Currently, 44 other states charge fees for out-of-state institutions seeking to establish a physical presence. The fee structures in other states vary greatly. Some states charge flat fees, others charge per program proposed, and several states require additional costs such as securing surety bonds, and other report review fees. The chart below provides select examples of fees other states charge to establish a physical presence:

Select Examples of State Approval Fees for IHEs to Establish a Physical Presence

Hawaii	Initial application fee is $10,000. Renewal applications are $10,000 every two years.
Kansas	Initial application fee is $4000 base fee plus $1500-$5,000 per program, for initial review. Additional costs include $20,000 surety bond for records retention upon closure. Renewal is 3% of gross tuition received or derived from Kansas students, but not less than $1,800 and not more than $10,000.
Maryland	Initial application fee is $7,500 for up to two academic programs and $850 for each additional program. There is also a $7,500 fee per site for each at which an institution is delivering face-to-face instruction.

Massachusetts	Initial application fee is $10,000 plus $2,000 for each degree requested at the same time if more than one. Annual fee each year for the first five years following for institutions new to Massachusetts: $4,000. Periodic inspection or review (if a separate review from Board's participation in New England Association of Schools and Colleges review is required): $4,000.
Ohio	Initial application fee is $5,000 per program, plus $1,000 per additional program submitted at the time of application. Progress report fee is $1,000 and renewal costs may range from $1000-$7500 based on a changing scope.
Oregon	Initial application fee is $7,000, due biennially, plus a surety bond in Oregon.
Tennessee	Initial application fee is $3,000, plus $500 for each proposed program. Institutions wishing to offer degrees must pay between $1,000 and $4,000 for the highest degree program level being offered (associates to doctorate). The annual reauthorization fee of.75% of the annual gross tuition collected for Tennessee students (Minimum $500, Maximum $25,000).
Virginia	Initial application fee is $6,000. New institutions must provide a surety instrument or letter of credit with their application. The amount of the surety is determined based on funds that would be needed to refund unearned tuition for non-title IV students in the event of closure. The annual re-certification fee is based on gross tuition and ranges from $250 to $5,000 per branch operating in Virginia.

Source: State Higher Education Executive Officers Association (SHEEO), State Authorization Surveys. Accessed on November 30, 2016, at http://sheeo.org/sheeo_surveys\

4. COSTS:

(a) Costs to State government: Chapter 220 of the Laws of 2015 authorizes the Department to charge any necessary fees for services and expenses incurred by the Department in conducting evaluations, processing complaints or performing other administrative functions related to out-of-state institutions seeking to operate with a physical presence in New York State. Because the law authorizes the Department to establish fees consistent with the cost of implementing the proposed amendments, it is anticipated that there will be no additional costs imposed by the State as a result of the proposed amendment.

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

(c) Costs to private regulated parties: Out-of-state institutions that voluntarily seek permission to operate in New York State will be subject to the following costs:

- Initial application fee to operate one program in NYS: $10,000
- Fee for application for additional programs (if a waiver is granted by the Commissioner): $2,500 per additional program
- Renewal application fee: $2,500
- Renewal fee for any additional programs: $2,500 per additional program
- Annual administrative fee: $5,000 per year of operation in NYS pursuant to permission to operate

(d) Costs to regulating agency for implementation and continued administration: See 4(a) above.

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed amendment involves an application process for out-of-state higher education institutions that seek permission to operate in New York State.

7. DUPLICATION:

The rule does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

No alternatives were considered.

9. FEDERAL STANDARDS:

There are no federal standards governing State authorization of out-of-state institutions seeking a physical presence in a State.

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be presented for adoption at the March 2017 Regents meeting, after publication of a Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act. If adopted at the March 2017 meeting, the proposed amendment will take effect on March 29, 2017.

Regulatory Flexibility Analysis

The purpose of the proposed amendment is establish procedures for out-of-state institutions that seek permission to operate in New York and a process for collecting fees for such institutions. The amendment does not impose any new recordkeeping or other compliance requirements, and will not have an adverse economic impact, on local governments or small businesses in New York. Because it is evident from the nature of the rule that it does not affect local governments or small businesses, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMNATED NUMBER OF RURAL AREAS:

The proposed amendment establishes procedures and fees for out-of-state institutions that seek permission to operate in New York State. While it has no direct effect on rural areas of New York, it may have an impact on potential students who seek to attend such programs and/or other New York State higher education institutions that operate in rural areas of this State, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

Section 3.56 of the Rules of the Board of Regents provides a process for out-of-state institutions of higher education to seek permission to establish a physical presence in New York in order to offer credit-bearing courses or programs of study.

When the Department receives an application from an out-of-state institution to establish a physical location in New York State, it must conduct an in-depth review of the scope and nature of the proposal, including a review of the need for the program in New York State, the quality of the program, and whether the applicant has the fiscal resources to meet its proposed program's goals. In addition, the Department evaluates the impact of the out-of-state institution's presence on existing New York State degree-granting institutions. This includes a canvass of New York based higher education institutions at which time they can raise objections regarding the approval of the proposed program. If objections are received, the applicant must work with those institutions to remove the objection before the Department will recommend approval of this permission to operate. Applicants that meet the expectations and standards of need, quality, and resources are advanced to the Board of Regents, which is the final grantor of permission to operate. All permission to operate recommendations are time limited – not to exceed five years.

Once an out-of-state institution is granted permission to operate and establishes a physical presence in New York State, the Department continues to provide administrative oversight of the operation, which may include collecting and reviewing annual data reported about the institution's operation in New York State.

Currently, the Department does not charge a fee for out-of-state institutions seeking permission to operate in New York. Over the past several years, there has been an increased interest from out-of-state institutions seeking to establish a physical presence in New York State, straining the Department's already limited resources to administer this process. The proposed amendment to Section 3.56 of the Rules of the Board of Regents establishes a fee structure for out-of-state institutions seeking to operate with a physical presence in New York State. The proposed amendment also makes explicit the procedures for application review and terms of approval and renewal.

The proposed fees will provide resources to support evaluation and administration of out-of-state institutions seeking to operate in New York State in a manner that does not diminish resources otherwise available to support New York State's degree-granting institutions. The proposed fee structure is as follows:

- Initial application fee to operate one program in NYS: $10,000
- Fee for application for additional programs (if a waiver is granted by the Commissioner): $2,500 per additional program
- Renewal application fee: $2,500
- Renewal fee for any additional programs: $2,500 per additional program
- Annual administrative fee: $5,000 per year of operation in NYS pursuant to permission to operate

This fee structure is reasonable in relation to the type and nature of the work required of the Department to review these proposed programs and

is comparable to fees currently charged by other states. Currently, 44 other states charge fees for out-of-state institutions seeking to establish a physical presence. The fee structures in other states vary greatly. Some states charge flat fees, others charge per program proposed, and several states require additional costs such as securing surety bonds, and other report review fees. The chart below provides select examples of fees other states charge to establish a physical presence:

Select Examples of State Approval Fees for IHEs to Establish a Physical Presence

Hawaii	Initial application fee is $10,000. Renewal applications are $10,000 every two years.
Kansas	Initial application fee is $4000 base fee plus $1500-$5,000 per program, for initial review. Additional costs include $20,000 surety bond for records retention upon closure. Renewal is 3% of gross tuition received or derived from Kansas students, but not less than $1,800 and not more than $10,000.
Maryland	Initial application fee is $7,500 for up to two academic programs and $850 for each additional program. There is also a $7,500 fee per site for each at which an institution is delivering face-to-face instruction.
Massachusetts	Initial application fee is $10,000 plus $2,000 for each degree requested at the same time if more than one. Annual fee each year for the first five years following for institutions new to Massachusetts: $4,000. Periodic inspection or review (if a separate review from Board's participation in New England Association of Schools and Colleges review is required): $4,000.
Ohio	Initial application fee is $5,000 per program, plus $1,000 per additional program submitted at the time of application. Progress report fee is $1,000 and renewal costs may range from $1000-$7500 based on a changing scope.
Oregon	Initial application fee is $7,000, due biennially, plus a surety bond in Oregon.
Tennessee	Initial application fee is $3,000, plus $500 for each proposed program. Institutions wishing to offer degrees must pay between $1,000 and $4,000 for the highest degree program level being offered (associates to doctorate). The annual reauthorization fee of.75% of the annual gross tuition collected for Tennessee students (Minimum $500, Maximum $25,000).
Virginia	Initial application fee is $6,000. New institutions must provide a surety instrument or letter of credit with their application. The amount of the surety is determined based on funds that would be needed to refund unearned tuition for non-title IV students in the event of closure. The annual re-certification fee is based on gross tuition and ranges from $250 to $5,000 per branch operating in Virginia.

Source: State Higher Education Executive Officers Association (SHEEO), State Authorization Surveys. Accessed on November 30, 2016, at http://sheeo.org/sheeo_surveys

3. COSTS:

The proposed amendment does not impose any direct costs on the State, local governments, private regulated parties or the State Education Department. Instead, the proposed amendment sets for the following fees for out-of-state institutions that voluntarily seek permission to operate in this State:

- Initial application fee to operate one program in NYS: $10,000
- Fee for application for additional programs (if a waiver is granted by the Commissioner): $2,500 per additional program
- Renewal application fee: $2,500
- Renewal fee for any additional programs: $2,500 per additional program
- Annual administrative fee: $5,000 per year of operation in NYS pursuant to permission to operate.

4. MINIMIZING ADVERSE IMPACT:

The State Education Department does not believe any changes for rural areas is warranted because the proposed amendment does not directly affect New York State institutions and uniform standards are necessary for out-of-state institutions seeking permission to operate in all areas of this State, including rural areas.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

Section 3.56 of the Rules of the Board of Regents provides a process for out-of-state institutions of higher education to seek permission to establish a physical presence in New York in order to offer credit-bearing courses or programs of study. Because the proposed amendment does not impact jobs in New York State, a detailed job analysis is not necessary. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Financial Services

EMERGENCY RULE MAKING

Establishment and Operation of Market Stabilization Mechanisms for Certain Health Insurance Markets

I.D. No. DFS-52-16-00001-E

Filing No. 1114

Filing Date: 2016-12-07

Effective Date: 2016-12-07

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

Action taken: Amendment of Part 361; and addition of section 361.9 to Title 11 NYCRR.

Statutory authority: Financial Law, sections 202 and 302; Insurance Law, sections 301, 1109 and 3233

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

Specific reasons underlying the finding of necessity: Insurance Law § 3233 requires the Superintendent of Financial Services ("Superintendent") to promulgate regulations to ensure an orderly implementation and ongoing operation of the open enrollment and community rating requirements in Insurance Law §§ 3231 and 4317, applicable to small groups and individual health insurance policies and contracts, including member contracts under Article 44 health maintenance organizations ("HMOs") and Medicare Supplemental policies and contracts. The regulations may include mechanisms designed to share risks or prevent undue variations in issuer claims costs. Pursuant to this mandate, the Superintendent promulgated 11 NYCRR 361 (Insurance Regulation 146), under which the Department established risk adjustment for community rated small group and individual health insurance and Medicare Supplemental policies and contracts. Subsequently, the federal Affordable Care Act ("ACA") required the Center for Medicare and Medicaid Services to administer a risk adjustment program for the individual and small group health insurance markets, but not for Medicare Supplemental policies and contracts. A state may establish its own risk adjustment program pursuant to 45 C.F.R. § 153.310(a)(1). In addition, a U.S. Health and Human Services interim final rule, dated May 11, 2016, invites states to examine local approaches under state legal authority to help ease the transition to new health insurance markets. See 81 Fed. Reg. at 29152. Starting with plan year 2014, the Superintendent suspended New York's risk adjustment program for individual and small group health insurance markets because of the ACA, and New York's individual and small group health insurance markets since have been subject only to the federal program.

This rule establishes a market stabilization pool for the small group health insurance market for the 2017 plan year to ameliorate a possible disproportionate impact that federal risk adjustment may have on insurers and HMOs (collectively, "carriers"), address the needs of the small group health insurance market in New York, and prevent unnecessary instability in the health insurance market.

Carriers soon will begin binding coverage for policies written outside of the health exchange. In addition, New York State of Health, the official health insurance marketplace, has set September 9, 2016 as the date by which carriers must commit to selling certain policies or contracts on the health exchange. In order to implement the rule for the 2017 plan year and

to minimize market issues, it is imperative that this rule be promulgated on an emergency basis for the general welfare.

Subject: Establishment and Operation of Market Stabilization Mechanisms for Certain Health Insurance Markets.

Purpose: To allow for the implementation of a market stabilization pool for the small group health insurance market.

Text of emergency rule: The title of Part 361 is amended to read as follows:

ESTABLISHMENT AND OPERATION OF MARKET STABILIZATION MECHANISMS FOR [INDIVIDUAL AND SMALL GROUP] *CERTAIN* HEALTH INSURANCE [AND MEDICARE SUPPLEMENT INSURANCE] *MARKETS*

The title of Section 361.6 is amended to read as follows:

Section 361.6 Pooling of variations of costs attributable to high cost claims beginning in 2006 *through 2013* for individual and small group policies, other than Medicare supplement and Healthy New York policies.

Section 361.9 is added to read as follows:

Section 361.9 Market stabilization pools for the small group health insurance market for the 2017 plan year.

(a)(1) The superintendent has been assessing the federal risk adjustment program developed under the federal Affordable Care Act and its impact on the health insurance market in this State. In its simplest terms, the federal risk adjustment program requires that carriers whose insureds or members have relatively better loss experience pay into the risk adjustment pool and those with relatively worse experience receive payment from that pool. The broad purpose of the risk adjustment program is to balance out the experience of all carriers.

(2) In certain respects, however, the calculations for the federal risk adjustment program do not take into account certain factors, resulting in unintended consequences. The department has been working cooperatively with the Department of Health and Human Services and the Centers for Medicare and Medicaid Services (CMS) on risk adjustment. Recently, CMS has announced certain changes to the methodology. CMS has also stated that it will continue to review the methodology in the future.

(3) The federal risk adjustment program has led to a situation in which some carriers in this State are receiving large payments out of the risk adjustment program that are paid by other carriers. For many of these other carriers, the millions to be paid represent a significant portion of their revenue. The money transfers among carriers in this State under the federal risk adjustment program have been among the largest in the nation.

(4) CMS's changes and planned reviews are much appreciated and anticipated. The superintendent will continue to work with CMS and hopes that over time the federal risk adjustment program will be improved so that it fully meets its intended purposes. The federal risk adjustment methodology as applied in this State does not yet adequately address the impact of administrative costs and profit of the carriers and how this State counts children in certain calculations. These two factors are identifiable, quantifiable and remediable for the 2017 plan year in the small group market.

(5) This section applies only to risk adjustment experience in the small group health insurance market for the 2017 plan year to be applied to payments and receipts in 2018. The department will continue its review of the federal risk adjustment program and its impact on the individual and small group health insurance markets in this State. Among other issues, the department will continue to examine whether federal risk adjustment adequately accounts for demographic regional diversity in this State, as well as whether federal risk adjustment dissuades carriers from using networks and plan designs that seek to integrate care and deliver value. The superintendent will take all necessary and appropriate action to address the impact on both markets in the future.

(b)(1) The superintendent anticipates that the federal risk adjustment program will adversely impact the small group health insurance market in this State in 2017 to such a degree as to require a remedy. Several factors are expected to cause the adverse impact, including:

(i) the federal risk adjustment program results in inflated risk scores and payment transfers in this State because the calculation is based in part upon a medical loss ratio computation that includes administrative expenses, profits and claims rather than only using claims; and

(ii) the federal risk adjustment program results in inflated risk scores and payment transfers in this State because the program does not appropriately address this State's rating tier structure. For this State, the federal risk adjustment program alters the definition of billable member months to include a maximum of one child per contract in the billable member month count. This understatement of billable member month counts: (a) lowers the denominator of the calculation used to determine the statewide average premium and plan liability risk scores; (b) results in the artificial inflation of both the statewide average premium and plan liability risk scores; and (c) further results in inflated payments transfers through the federal risk adjustment program.

(2) Accordingly, if, for the 2017 plan year, the superintendent determines that the federal risk adjustment program has adversely impacted the small group health insurance market in the State and that amelioration is necessary, the superintendent shall implement a market stabilization pool for carriers participating in the small group health insurance market, other than for Medicare supplement insurance, pursuant to subdivision (e) of this section to ameliorate the disproportionate impact that the federal risk adjustment program may have on carriers, to address the unique aspects of the small group health insurance market in this State, and to prevent unnecessary instability for carriers participating in the small group health insurance market in this State, other than for Medicare supplement insurance.

(c) As used in this section, small group health insurance market means all policies and contracts providing hospital, medical or surgical expense insurance, other than Medicare supplement insurance, covering one to 100 employees.

(d) Following the annual release of the federal risk adjustment results for the 2017 plan year, the superintendent shall review the impact of the federal risk adjustment program established pursuant to 42 U.S.C. section 18063 on the small group health insurance market in this State for that plan year.

(e) If, after reviewing the impact of the federal risk adjustment program on the small group health insurance market in this State for the 2017 plan year, including payment transfers, the statewide average premiums, and the ratio of claims to premiums, the superintendent determines that a market stabilization mechanism is a necessary amelioration, the superintendent shall implement a market stabilization pool in such market as follows:

(1) every carrier in the small group health insurance market that is designated as a receiver of a payment transfer from the federal risk adjustment program shall remit to the superintendent an amount equal to a uniform percentage of that payment transfer for the market stabilization pool. The uniform percentage shall be calculated as the percentage necessary to correct any one or more of the adverse market impact factors specified in subdivision (b)(1) of this section. The uniform percentage shall be determined by the superintendent based on reasonable actuarial assumptions and shall not exceed 30 percent of the amount to be received from the federal risk adjustment program;

(i) the superintendent shall send a billing invoice to each carrier required to make a payment into the market stabilization pool after the federal risk adjustment results are released pursuant to 45 CFR section 153.310(e);

(ii) each carrier shall remit its payment to the superintendent within ten business days of the later of its receipt of the invoice from the superintendent or receipt of its risk adjustment payment from the Secretary of the United States Department of Health and Human Services pursuant to 42 U.S.C. section 18063; and

(iii) payments remitted by a carrier after the due date shall include the amount due plus compound interest at the rate of one percent per month, or portion thereof, beyond the date the payment was due; and

(2) for the 2017 plan year:

(i) every carrier in the small group health insurance market that is designated as a payor of a payment transfer into the federal risk adjustment program shall receive from the superintendent an amount equal to the uniform percentage of that payment transfer, referenced in paragraph (1) of this subdivision, from the market stabilization pool;

(ii) the superintendent shall send notification to each carrier of the amount the carrier will receive as a distribution from the market stabilization pool after the federal risk adjustment results are released; and

(iii) the superintendent shall make a distribution to each carrier after receiving all payments from payors. However, nothing in this section shall preclude the superintendent from making a distribution prior to receiving all payments from payors.

(f) The superintendent may modify the amounts determined in subdivision (e) of this section to reflect any adjustments resulting from audits required under 45 CFR section 153.630.

(g) In the event the payments received by the superintendent pursuant to subdivision (e)(1) of this section are less than the amounts payable pursuant to subdivision (e)(2) of this section, the amount payable to each carrier pursuant to this section shall be reduced proportionally to match the funds available in the pool.

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 March 6, 2017.

Text of rule and any required statements and analyses may be obtained from: Laura Evangelista, NYS Department of Financial Services, One State Street, New York, NY 10004, (212) 480-4738, email: Laura.Evangelista@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: Financial Services Law § § 202 and 302 and Insurance Law § § 301, 1109, and 3233.

Financial Services Law § 202 establishes the office of the Superintendent of Financial Services ("Superintendent"). Financial Services Law § 302 and Insurance Law § 301, in material part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the Financial Services Law, Insurance Law, or any other law, and to prescribe regulations interpreting the Insurance Law.

Insurance Law § 1109 subjects health maintenance organizations ("HMOs") complying with Public Health Law Article 44 to certain sections of the Insurance Law and authorizes the Superintendent to promulgate regulations effecting the purpose and provisions of the Insurance Law and Public Health Law Article 44.

Insurance Law § 3233 requires the Superintendent to promulgate regulations to assure an orderly implementation and ongoing operation of the open enrollment and community rating requirements in Insurance Law § § 3231 and 4317, which may include mechanisms designed to share risks or prevent undue variations in insurer claims costs.

2. Legislative objectives: Insurance Law § 3233 requires the Superintendent to promulgate regulations to assure an orderly implementation and ongoing operation of the open enrollment and community rating requirements in Insurance Law § § 3231 and 4317, applicable to small group and individual health insurance policies and contracts, including member contracts under Article 44 HMOs and Medicare Supplement policies and contracts. The regulations may include mechanisms designed to share risks or prevent undue variations in claims costs. A risk adjustment program is intended, in part, to reduce or eliminate premium differences between insurers and HMOs (collectively, "carriers") based solely on expectations of favorable or unfavorable risk selection.

Pursuant to this mandate, the Superintendent promulgated 11 NYCRR 361 (Insurance Regulation 146), under which the Department established risk adjustment for community rated small group and individual health insurance and Medicare Supplement policies and contracts. Subsequently, the federal Affordable Care Act ("ACA") required the Center for Medicare and Medicaid Services ("CMS") to administer a risk adjustment program for the individual and small group health insurance markets, but not for Medicare Supplement policies and contracts. A state may establish its own risk adjustment program pursuant to 45 C.F.R. § 153.310(a)(1). In addition, a U.S. Health and Human Services ("HHS") interim final rule, dated May 11, 2016, invites states to examine local approaches under state legal authority to help ease the transition to new health insurance markets. See 81 Fed. Reg. at 29152. Starting with policy year 2014, the Superintendent suspended New York's risk adjustment program for individual and small group health insurance markets because of the ACA, and New York's individual and small group health insurance markets since have been subject only to the federal program.

This rule accords with the public policy objectives that the Legislature sought to advance in Insurance Law § 3233 by establishing market stabilization pools for the small group health insurance market for the 2017 plan year to ameliorate a possible disproportionate impact that federal risk adjustment may have on carriers, address the unique aspects of the small group health insurance market in New York, and prevent unnecessary instability in the health insurance market.

3. Needs and benefits: In the early 1990s, the New York Legislature enacted Insurance Law § 3233 because it recognized the need for a mechanism to stabilize the health insurance markets and premium rates in New York so that premiums do not unduly fluctuate and carriers are reasonably protected against unexpected significant shifts in the number of insureds. More recently, the federal government recognized in the ACA that a federal risk adjustment mechanism would help provide affordable health insurance, reduce incentives for carriers to avoid enrolling less healthy people, and stabilize premiums in the individual and small group health insurance markets.

Prior to implementation of the ACA in 2014, the New York Department of Financial Services ("Department"), after consultation with carriers, concluded New York should use the federal risk adjustment program and the Superintendent suspended New York's risk adjustment program for the individual and small group health insurance markets. CMS conducted risk adjustment in 2014 and announced preliminary risk adjustment results for plan year 2015 in April 2016. These results have had a disproportionate impact on certain carriers in the New York market as a whole.

CMS has proposed changes to its programs and may make additional changes. The Superintendent will continue to work with CMS and hopes that by the 2018 plan year the federal risk adjustment program will be improved to better accomplish its intended purposes. However, the federal risk adjustment methodology does not yet adequately address the impact of administrative costs or profit of the carriers, or the manner in which New York counts children in certain calculations. These factors are identifiable, quantifiable and remediable for the 2017 plan year. The Superintendent anticipates that the federal risk adjustment program will adversely impact the small group health insurance market in this State in 2017 to such a degree as to require a remedy. Many factors are expected to cause the adverse impact, including:

(1) the federal risk adjustment program results in inflated risk scores and payment transfers in this State because the calculation is based in part upon a medical loss ratio computation that includes administrative expenses, profits and claims rather than only using claims; and

(2) the federal risk adjustment program results in inflated risk scores and payment transfers in this State because the program does not appropriately address this State's rating tier structure. For New York, the federal risk adjustment program alters the definition of billable member months to include a maximum of one child per contract in the billable member month count. This understatement of billable member month counts: (a) lowers the denominator of the calculation used to determine the statewide average premium and plan liability risk scores; (b) results in the artificial inflation of both the statewide average premium and plan liability risk scores; and (c) further results in inflated payments transfers through the federal risk adjustment program.

This rule authorizes the Superintendent to implement a market stabilization pool for the New York small group health insurance market if, after reviewing the impact of the federal risk adjustment program on this market for the 2017 plan year, the Superintendent determines that a market stabilization mechanism is a necessary amelioration.

The rule requires a carrier designated as a receiver of a payment transfer from the federal risk adjustment program to remit to the Superintendent an amount equal to a uniform percentage of that payment transfer for the market stabilization pool. The Superintendent will determine the uniform percentage based on reasonable actuarial assumptions, which may not exceed 30% of the amount to be received from the federal risk adjustment program. Department actuaries considered the fact that (1) the federal risk adjustment program calculates risk scores and payment transfers based in part upon a medical loss ratio computation that includes administrative expenses, profits, and claims, and (2) it does not appear to fully address New York's rating tier structure. The actuaries determined that up to 30% of the amount to be received from the federal risk adjustment program is the maximum amount that would be necessary for a payment transfer under this rule.

The market stabilization mechanism under the rule is distinct from the federal risk adjustment and will provide a more accurate representation of the state's market. The state mechanism would merely fine-tune the federal mechanism to address the needs of the New York market, not serve to undo the federal mechanism. It would not hinder or impede the ACA's implementation because the federal risk adjustment still would be performed. A carrier is able to comply with both the federal risk adjustment program and this state's market stabilization mechanism because the state risk adjustment would be implemented after the federal risk adjustment.

4. Costs: This rule imposes compliance costs on carriers that elect to issue policies or contracts subject to the rule. The costs are difficult to estimate and will vary from carrier to carrier depending on the impact of the federal risk adjustment program on the market, including federal payment transfers, statewide average premiums, and the ratio of claims to premiums.

The Department will incur costs for the implementation and continuation of this rule. Department staff are needed to review the impact that the federal risk adjustment program will have on the market. Furthermore, if the Superintendent implements a market stabilization pool, the Department must then send a billing invoice to each carrier required to make a payment into the pool, collect the payments, notify each carrier of the amount the carrier will receive from the market stabilization pool, and distribute the payments from the pool. However, the Department should be able to absorb these costs in its ordinary budget. Under § 361.7 of the existing rule, the Superintendent also could hire a firm to administer the pool. The cost necessary to hire such a firm would have to be determined.

This rule does not impose compliance costs on state or local governments.

5. Local government mandates: This rule does not impose any program, service, duty, or responsibility upon a county, city, town, village, school district, fire district, or other special district.

6. Paperwork: This rule requires carriers designated as receivers of a payment transfer from the federal risk adjustment program to remit a uniform percentage of that payment transfer to the Superintendent as determined by the Superintendent. The rule also requires the Superintendent to send a billing invoice to each carrier required to make a payment, collect the payments, notify each carrier of the amount the carrier will receive from the market stabilization pool, and make distributions from the pool to the carriers.

7. Duplication: This rule does not duplicate or conflict with any existing state or federal rules or other legal requirements. The rule supplements the federal risk adjustment mechanism under the ACA and merely serves to fine-tune that risk adjustment to meet the needs of the New York market.

8. Alternatives: The Department considered not establishing a market stabilization pool for the small group health insurance market for the 2017

plan year. However, the Department is concerned about the disproportionate impact that federal risk adjustment may have on carriers in the New York market and possible unnecessary instability in the health insurance market that would adversely impact insureds. As a result, the Department determined that it is necessary to establish a market stabilization pool for the small group health insurance market.

The Department also considered a cap of other than 30% of the amount to be received from the federal risk program, with regard to the uniform percentage of the payment transfer for the market stabilization pool under this rule. However, Department actuaries considered the fact that (1) the federal risk adjustment program calculates risk scores and payments transfers based in part upon a medical loss ratio computation that includes administrative expenses, profits, and claims, and (2) it does not appear to fully address New York's rating tier structure. The actuaries determined that up to 30% of the amount to be received from the federal risk adjustment program is the maximum amount that would be necessary for a payment transfer under this rule.

9. Federal standards: The rule does not exceed any minimum standards of the federal government for the same or similar subject areas. Rather, the amendment to the rule complements the federal risk adjustment program.

10. Compliance schedule: The Department is promulgating this rule on an emergency basis so that the Superintendent may establish a New York risk adjustment pool for plan year 2017 if the Superintendent determines that it will be necessary following CMS's annual release of the federal risk adjustment results for the 2017 plan year. If the Superintendent does establish the pool, carriers will have to comply in 2018.

Regulatory Flexibility Analysis

Small businesses: The Department of Financial Services finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at insurers and health maintenance organizations ("HMOs") that elect to issue policies or contracts subject to the rule. Such insurers and HMOs do not fall within the definition of "small business" as defined by State Administrative Procedure Act § 102(8), because in general they are not independently owned and do not have fewer than 100 employees.

Local governments: The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at insurers and HMOs that elect to issue policies or contracts subject to the rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurers and health maintenance organizations ("HMOs") (collectively, "carriers") affected by this rule operate in every county in this state, including rural areas as defined by State Administrative Procedure Act § 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule imposes additional reporting, recordkeeping, and other compliance requirements by requiring carriers, including carriers located in rural areas, designated as receivers of a payment transfer from the federal risk adjustment program, to remit a uniform percentage of that payment transfer to the Superintendent of Financial Services ("Superintendent") as determined by the Superintendent. However, no carrier, including carriers in rural areas, should need to retain professional services to comply with this rule.

3. Costs: This rule imposes compliance costs on carriers that elect to issue policies or contracts subject to the rule, including carriers in rural areas. The costs are difficult to estimate and will vary from carrier to carrier depending on the impact of the federal risk adjustment program on the market, including federal payment transfers, statewide average premiums, and the ratio of claims to premiums. However, any additional costs to carriers in rural areas should be the same as for carriers in non-rural areas.

4. Minimizing adverse impact: This rule uniformly affects carriers that are located in both rural and non-rural areas of New York State. The rule should not have an adverse impact on rural areas.

5. Rural area participation: The Department of Financial Services ("Department") is promulgating this rule on an emergency basis because carriers soon will begin binding coverage for policies written outside of the health exchange. In addition, the New York State of Health, the official health insurance marketplace, has set September 9, 2016 as the date by which carriers must commit to selling certain policies or contracts on the health exchange. In order to implement the rule for the 2017 plan year and to minimize market issues, it is imperative that this rule be promulgated on an emergency basis. Carriers in rural areas will have an opportunity to participate in the rule making process when the proposed rule is published in the State Register and posted on the Department's website.

Job Impact Statement

This rule should not adversely impact jobs or employment opportunities in New York State. This rule authorizes the Superintendent of Financial Services ("Superintendent") to implement a market stabilization pool for the small group health insurance market if, after reviewing the impact of the federal risk adjustment program on this market, the Superintendent determines that a market stabilization mechanism is a necessary amelioration. This rule prudently ameliorates a possible disproportionate impact that federal risk adjustment may have on insurers and health maintenance organizations, addresses the needs of the small group health insurance market in New York, and prevents unnecessary instability in the health insurance market.

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Cybersecurity Requirements for Financial Services Companies

I.D. No. DFS-39-16-00008-RP

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

Proposed Action: Addition of Part 500 to Title 23 NYCRR.

Statutory authority: Financial Services Law, sections 102, 201, 202, 301, 302 and 408

Subject: Cybersecurity requirements for financial services companies.

Purpose: To require effective cybersecurity to protect consumers and ensure the safe and sound operation of Department-regulated entities.

Substance of revised rule: The following is a summary of the proposed rule:

Section 500.00, "Introduction," introduces the proposed rule.

Section 500.01, "Definitions," defines terms used throughout the proposed rule.

Section 500.02, "Cybersecurity Program," requires that each Covered Entity maintain a cybersecurity program reasonably designed to protect the confidentiality, integrity and availability of its Information Systems.

Section 500.03, "Cybersecurity Policy," requires each Covered Entity to implement and maintain a written cybersecurity policy addressing specified areas and also sets forth the requirements for approval of that policy.

Section 500.04, "Chief Information Security Officer," requires that each Covered Entity designate a qualified individual responsible for overseeing and implementing the Covered Entity's cybersecurity program (the "CISO"), and that the CISO shall develop a written report, at least annually, which shall be reviewed internally and which shall address specified cybersecurity issues.

Section 500.05, "Penetration Testing and Vulnerability Assessments," requires each Covered Entity's cybersecurity program to include monitoring and testing, developed in accordance with the Covered Entity's Risk Assessment, designed to assess the effectiveness of the Covered Entity's cybersecurity program. The monitoring and testing shall include continuous monitoring or periodic penetration testing and vulnerability assessments, and shall be done periodically. Absent effective continuous monitoring, or other systems to detect, on an ongoing basis, changes in Information Systems that may create or indicate vulnerabilities, Covered Entities shall conduct annual penetration testing and a bi-annual vulnerability assessments of the Covered Entity's Information Systems, based on the Covered Entity's Risk Assessment.

Section 500.06, "Audit Trail," requires each Covered Entity to securely maintain systems that, based on its Risk Assessment, reconstruct material financial transactions and include audit trails designed to detect and respond to Cybersecurity Events that have a reasonable likelihood of materially harming any material part of the normal operations of the Covered Entity.

Section 500.07, "Access Privileges," requires that each Covered Entity shall, based on the Covered Entity's Risk Assessment, limit user access privileges to Information Systems that provide access to Nonpublic Information and that the Covered Entity shall periodically review such privileges.

Section 500.08, "Application Security," requires that each Covered Entity's cybersecurity program include written procedures, guidelines and standards designed to ensure the use of secure development practices for in-house developed applications, and procedures for evaluating, assessing or testing the security of externally developed applications utilized by the Covered Entity within the context of the Covered Entity's technology environment, and also requires that such procedures and standards be periodically reviewed, assessed and updated.

Section 500.09, "Risk Assessment," requires each Covered Entity to conduct a periodic Risk Assessment of the Covered Entity's Information Systems, updated as reasonably necessary to address changes to the Covered Entity's Information Systems, Nonpublic Information or business operations. The Risk Assessment shall allow for revision of controls

to respond to technological developments and evolving threats and shall consider the particular risks of the Covered Entity's business operations related to cybersecurity, Nonpublic Information collected or stored, Information Systems utilized and the availability and effectiveness of controls to protect Nonpublic Information and Information Systems. The Risk Assessment shall be documented and shall be carried out in accordance with written policies and procedures which shall include criteria for the evaluation and categorization of identified cybersecurity risks or threats facing the Covered Entity, criteria for assessing the confidentiality, integrity, security and availability of the Covered Entity's Information Systems and Nonpublic Information, and requirements describing how identified risks will be mitigated or accepted, and how the cybersecurity program will address the risks.

Section 500.10, "Cybersecurity Personnel and Intelligence," requires each Covered Entity to utilize qualified cybersecurity personnel of the Covered Entity, an Affiliate, or a Third Party Service Provider; provide such personnel with cybersecurity updates and training; and verify that key cybersecurity personnel take steps to maintain current knowledge of changing cybersecurity threats and countermeasures.

Section 500.11, "Third Party Service Provider Security Policy," requires each Covered Entity to develop policies and procedures designed to ensure the security of Information Systems and Nonpublic Information accessible to, or held by, Third Party Service Providers. Such policies shall be based on the Covered Entity's Risk Assessment and shall include relevant guidelines for due diligence and/or contractual protections relating to Third Party Service Providers.

Section 500.12, "Multi-Factor Authentication," requires each Covered Entity to use effective controls to protect against unauthorized access to Nonpublic Information or Information Systems. Covered Entities are required to utilize Multi-Factor Authentication for any individual accessing the Covered Entity's internal networks from an external network, unless the Covered Entity's CISO has approved in writing the use of reasonably equivalent or more secure access controls.

Section 500.13, "Limitations on Data Retention," requires each Covered Entity to have policies and procedures for the secure periodic disposal of specified categories of Nonpublic Information.

Section 500.14, "Training and Monitoring," requires each Covered Entity to implement risk-based policies to monitor the activity of Authorized Users and detect unauthorized access or use of Nonpublic Information, and to provide for regular cybersecurity awareness training for all personnel.

Section 500.15, "Encryption of Nonpublic Information," requires each Covered Entity to implement controls, including encryption, based on the Covered Entity's Risk Assessment, to protect Nonpublic Information held or transmitted by the Covered Entity both in transit over external networks and at rest. This section allows for the use of effective compensating controls to secure Nonpublic Information in transit over external networks and at rest if encryption of such is infeasible. Such compensating controls must be reviewed and approved by the Covered Entity's CISO. To the extent that a Covered Entity is utilizing compensating controls, the feasibility of encryption and effectiveness of the compensating controls shall be reviewed by the CISO at least annually.

Section 500.16, "Incident Response Plan," requires each Covered Entity to establish a written incident response plan designed to promptly respond to, and recover from, any Cybersecurity Event materially affecting the confidentiality, integrity or availability of the Covered Entity's Information Systems or the continuing functionality of any aspect of the Covered Entity's business or operations.

Section 500.17, "Notices to Superintendent," requires each Covered Entity to annually submit to the Superintendent a written statement by February 15, certifying that the Covered Entity is in compliance with the requirements set forth in the proposed rule; to maintain for examination by the Department all records, schedules and data supporting the certificate for a period of five years; to notify the superintendent within 72 hours from the determination of the occurrence of a Cybersecurity Event of which notice is required to be provided to any government body, self-regulatory agency or any other supervisory body, or that has a reasonable likelihood of materially harming any material part of the normal operation(s) of the Covered Entity; and to document the identification of areas that require material improvement, updating or redesign, as well as planned remedial efforts.

Section 500.18, "Confidentiality," states that information provided by a Covered Entity pursuant to this Part is subject to exemptions from disclosure under the Banking Law, Insurance Law, Financial Services Law, Public Officers Law, or any other applicable state or federal law.

Section 500.19, "Exemptions," provides that Covered Entities that have less than the specified number of employees, gross annual revenue, or year-end total assets shall be exempt from the requirements of the enumerated sections; an exemption for an employee, agent, representative or designee of a Covered Entity, who is itself a Covered Entity; an exemption from enumerated sections for a Covered Entity that does not directly or indirectly operate, maintain, utilize or control any Information Systems, and that does not, and is not required to, directly or indirectly control, own, access, generate, receive or possess Nonpublic Information; a requirement that Covered Entities that qualify for an exemption file a Notice of Exemption; and that a Covered Entity that ceases to qualify for an exemption must comply with all applicable requirements of the proposed rule.

Section 500.20, "Enforcement," provides that the proposed rule will be enforced by the superintendent pursuant to, and is not intended to limit, the superintendent's authority under any applicable laws.

Section 500.21, "Effective Date," provides that the proposed rule will be effective March 1, 2017, and that Covered Entities will be required to annually prepare and submit a certification of compliance pursuant to Section 500.17 commencing February 15, 2018.

Section 500.22, "Transitional Periods," provides that Covered Entities shall have 180 days from the effective date of the proposed rule to comply with its requirements, except as otherwise specified, and also includes additional transitional periods.

Section 500.23, "Severability," states that in the event a specific provision of the proposed rule is adjudged invalid, such judgment shall not impair the validity of the remainder of the proposed rule.

Revised rule compared with proposed rule: Substantial revisions were made in sections 500.11, 500.15, 500.21 and 500.22.

Text of revised proposed rule and any required statements and analyses may be obtained from Cassandra Lentchner, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1675, email: CyberRegComments@dfs.ny.gov

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

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

Revised Regulatory Impact Statement

1. Statutory Authority: In Section 102 of the New York Financial Services Law (the "Financial Services Law" or "FSL"), the legislature declares that the purpose of the FSL is "to ensure the continued safety and soundness of New York's banking, insurance and financial services industries, as well as the prudent conduct of the providers of financial products and services, through responsible regulation and supervision." Pursuant to FSL Section 201, the Department of Financial Services (the "Department") has broad authority to take such actions as are necessary to ensure the continued solvency, safety, soundness and prudent conduct of the providers of financial products and services; to protect users of financial products and services from financially impaired or insolvent providers of such services; and to eliminate financial fraud, other criminal abuse and unethical conduct in the industry. Further, FSL Section 301 gives the Department broad power "to protect users of financial products and services." In addition, FSL Section 302 provides the Department with equally broad authority to adopt regulations relating to "financial products and services," which are broadly defined in the Financial Services Law to mean essentially any product or service offered by a Department-regulated entity. Accordingly, the Department has ample authority to adopt the proposed rule.

Other statutory authority includes: FSL Sections 202 and 408.

2. Legislative Objectives: The Financial Services Law is intended to ensure the safe and sound operation of the financial system. Cybercriminals present an ever-growing threat to that system. They can cause significant financial losses for Department-regulated entities and for New York consumers who use the products and services of those entities. In addition, the private information of such consumers may be revealed and/or stolen by cybercriminals for illicit purposes. The proposed rule is intended to ensure that all financial services providers regulated by the Department have and maintain cybersecurity programs that meet certain minimum cybersecurity standards in order to protect consumers and continue operating in a safe and sound manner.

3. Needs and Benefits: The proposed rule is necessary to ensure that Department-regulated entities are effectively addressing ever-growing cybersecurity risks in order to protect consumers and continue operating in a safe and sound manner.

4. Costs: All Department-regulated entities will be responsible for ensuring that they are in compliance with the proposed rule, which will impose some costs on their operations. The proposed rule provides for a limited exemption for certain smaller entities, based on each entity's number of employees, gross annual revenue, or year-end total assets. Entities that qualify for this limited exemption will be required to comply with only a limited number of sections in the proposed rule; thus, the costs of compliance for such entities is likely to be lower.

It is also anticipated that the costs of compliance will be offset to varying degrees when, as a result of complying with the proposed rule, entities avoid or mitigate cyber attacks that might otherwise have caused financial and other losses.

There should be no costs to any local governments as a result of the proposed rule.

5. Local Government Mandates: The proposed amendments do not impose any new programs, services, duties or responsibilities on local government.

6. Paperwork: The proposed rule requires entities to maintain a written cybersecurity policy and other written cybersecurity procedures and plans; to develop cybersecurity reports for presentation to the entity's board or a senior officer; to submit to the superintendent an annual certification of compliance with the proposed rule; and to keep books and records documenting compliance.

Entities that qualify for the limited exemption have fewer written policy and record-keeping requirements.

7. Duplication: Part 421 of Title 11 of the New York Codes, Rules and Regulations, promulgated in conformance with the federal Gramm-Leach-Bliley Act, requires insurance entities to implement a comprehensive written information security program. To a very limited extent, the proposed rule overlaps with Part 421, but the proposed rule includes requirements that are far more specific than Part 421 in order to achieve more robust cybersecurity coverage and to ensure that the Department's regulated entities have and maintain cybersecurity programs that meet certain minimum cybersecurity standards in order to protect consumers and continue operating in a safe and sound manner. Notably, Section 6807(b) of the Gramm-Leach-Bliley Act allows states to implement a statute, regulation, order, or interpretation affording protections that are greater than those listed in the Gramm-Leach-Bliley Act.

8. Alternatives: None.

9. Federal Standards: As noted earlier, see "Duplication," above, the proposed rule will, in some respects, exceed minimum standards established by the federal Gramm-Leach-Bliley Act. The Department believes that the proposed rule is not inconsistent with the federal Gramm-Leach-Bliley Act. Indeed, the proposed rule includes requirements that are more specific than those in the federal Gramm-Leach-Bliley Act in order to achieve more robust cybersecurity coverage and to ensure that the Department's regulated entities protect consumers and continue operating in a safe and sound manner. Section 6807(b) of the Gramm-Leach-Bliley Act allows states to implement a statute, regulation, order, or interpretation affording protections that are greater than those listed in the Gramm-Leach-Bliley Act.

10. Compliance Schedule: Regulated entities will have 180 days from the effective date of the proposed rule to comply with its requirements, except as otherwise specified. The proposed rule will be effective March 1, 2017. Covered Entities will be required to annually prepare and submit to the Superintendent a certification of compliance under Section 500.17 commencing February 15, 2018.

Revised Regulatory Flexibility Analysis

1. Effect of the Rule: The proposed rule applies to all Department-regulated entities, but certain small businesses may qualify for a limited exemption provided for in Section 500.19 of the proposed rule. Those entities that qualify for the limited exemption – those that fall below the minimum specified number of employees, gross annual revenue, or year-end total assets – shall be exempt from the requirements of the proposed rule other than the requirements enumerated in Section 500.19.

The proposed rule does not apply to local governments and will not impose any adverse economic impact or any reporting, recordkeeping or other compliance requirements on local governments.

2. Compliance Requirements: Small businesses that do not qualify for the limited exemption found in Section 500.19 will be subject to all of the requirements of the proposed rule. If a small business does qualify for the limited exemption, such small business will be exempt from Sections 500.04, 500.05, 500.06, 500.08, 500.10, 500.12, 500.14, 500.15, and 500.16 of the proposed rule.

3. Professional Services: A small business will not necessarily need any professional services to comply with the proposed rule. However, under the proposed rule, a Department-regulated entity that is a small business (or any other Department-regulated entity) that does not qualify for the limited exemption under Section 500.19 may use a third party service provider as its Chief Information Security Officer.

The proposed rule does not apply to local governments.

4. Compliance Costs: Like all businesses subject to the proposed rule, small businesses will be responsible for ensuring that they are in compliance with the proposed rule, which will impose some costs on their operations. The Department believes that the need for compliance outweighs such costs.

5. Economic and Technological Feasibility: The Department believes it will be economically and technologically feasible for small businesses to comply with the requirements of the proposed rule.

6. Minimizing Adverse Impacts: To minimize any adverse economic impact of the proposed rule on small businesses, the Department has included the limited exemption for smaller entities (Section 500.19 of the proposed rule). If a small businesses qualifies for the limited exemption, it will be subject to fewer compliance requirements.

7. Small Business and Local Government Participation: The proposed rule will be published publicly, including on the Department's website, for notice and comment, which will provide small businesses with the opportunity to participate in the rule making process.

The proposed rule does not impact local governments.

Revised Rural Area Flexibility Analysis

A revised Rural Area Flexibility Analysis (RAFA) is not required because the revisions to the proposed regulation do not change the conclusions set forth in the previously published RAFA.

Revised Job Impact Statement

A revised Job Impact Statement is not required because the revisions to the proposed regulation do not change the statement regarding the need for a Job Impact Statement that was previously published.

Assessment of Public Comment

The New York State Department of Financial Services (the "Department" or "DFS") received over 150 comments on proposed rule 23 NYCRR 500 from individuals and entities, including a variety of regulated entities and trade associations, as well as from third party service providers, including cybersecurity service providers, and others. These comments are summarized as follows.

Many commentators commended the Department for its efforts in addressing cybersecurity. Some commentators suggested that DFS expand or heighten the proposed regulation's requirements by, for example, setting a time limit within which Covered Entities would be required to have identified a breach; requiring Covered Entities to perform more testing of their systems and to retain outside consultants for testing; and mandating additional cybersecurity measures. DFS believes that the proposed regulation effectively addresses the required elements of a cybersecurity program at this time, along with DFS's overall supervisory authority.

A number of commentators supported the proposal's goal to set minimum standards for cybersecurity practices, so that cybersecurity programs match the relevant risks and keep pace with technological advances. Commentators asserted that provisions in the regulation should be made more flexible and risk-based. DFS has clarified in the revised regulation that certain requirements are linked to the results of the Covered Entity's Risk Assessment, consistently with the proposal's original stated intent. To be clear, the Department believes that each Covered Entity should model its cybersecurity program on the Covered Entity's cybersecurity risks, but the Risk Assessment is not intended to permit a cost-benefit analysis of acceptable losses where an institution is faced with cybersecurity risks.

Commentators requested clarification, tailoring and/or narrowing of certain definitions, including the following:

Cybersecurity Event: Some commentators stated that this definition, and particularly its use of words like "unsuccessful" and "attempt," was overbroad and resulted in overbroad requirements. DFS has not revised this definition because it is important for a comprehensive cybersecurity program to address attempts even where unsuccessful. However, the Department has revised several of the provisions of specific concern by requiring that certain provisions be based on the Risk Assessment and by including materiality qualifiers, such as in the Notices to Superintendent section.

Information System: Some commentators stated that this definition is overbroad and resulted in overbroad requirements. The Department has not revised this definition because the Department believes its scope is appropriate in the context of the revised proposed regulation.

Nonpublic Information: Commentators variously asserted that this definition is overbroad or unclear, or argued that it should more closely track the language of other standards in order to, for example, reduce the need for entities to classify data in multiple ways when attempting to meet the requirements of different regulations or laws. The Department has made several revisions to this definition in response to these comments.

Publicly Available Information: Some commentators asserted that this definition is too narrow and should encompass more information, or should otherwise be revised. The Department has not revised this definition because the Department believes it is appropriate in the context of the revised proposed regulation.

Some commentators questioned the use of the term Chief Information Security Officer ("CISO") – specifically, that the regulation might require hiring or appointing an individual whose exclusive job would be to serve as a CISO under that specific title. In response, DFS has revised section 500.04 to clarify that each Covered Entity shall designate a qualified individual to perform the functions of a CISO, but that DFS is not requiring a specific title, or an individual exclusively dedicated to CISO activity.

Commentators asserted that a variety of other specific provisions were overly prescriptive and/or insufficiently tied to the results of the Risk Assessment. In many cases, commentators suggested specific alternative language to address such issues. The Department has revised the Risk As-

sessment section (500.09) and other sections to clarify and/or make more explicit the Department's original intent to have risk-based requirements tied to the Covered Entity's Risk Assessment as provided in the overall regulation and the Department's supervisory authority. Risk Assessment is now a defined term. In addition, revisions have been made to the following sections: Cybersecurity Program (500.02), Cybersecurity Policy (500.03), Penetration Testing and Vulnerability Assessments (500.05), Access Privileges (500.07), Multi-Factor Authentication (500.12), and Encryption of Nonpublic Information (500.15).

Some commentators stated that requirements in the Cybersecurity Personnel and Intelligence section (500.10) and the Training and Monitoring section (500.14) should be more risk-based. In response, the Department revised these sections to, among other things, more specifically tailor certain requirements.

Some commentators asserted that the requirements of the Audit Trail section (500.06) were overly broad, leading to the capture and retention of too much information. In addition, some commentators claimed that the six-year retention period was too long. In response, the Department has made certain revisions to section 500.06, including amending section 500.06(a) to be explicitly based on the Risk Assessment and decreasing the retention period in section 500.06(b) to five years.

A number of commentators expressed concerns that the Limitations on Data Retention section (500.13) does not sufficiently take into account certain legitimate business reasons for which data might be retained. The Department has revised section 500.13 to explicitly take into account circumstances where targeted disposal is not reasonably feasible due to the manner in which the information is maintained.

Commentators also stated that the requirements in section 500.11 regarding third parties doing business with a Covered Entity were too prescriptive, especially the preferred contract provisions. Commentators also expressed concerns that many Covered Entities would have difficulty complying because they would not have sufficient leverage over third parties to effect some of the proposal's requirements. In addition, commentators expressed concern that the required annual assessment for all third party service providers would be burdensome, given the large number of third party service providers used by some Covered Entities. The Department has amended this section so that its requirements are more explicitly based on the Covered Entity's Risk Assessment. In addition, DFS has eliminated a provision in section 500.11(b) that may have unintentionally suggested that Covered Entities are required to audit the systems of all third party service providers. Also, in response to comments seeking greater clarity in regard to the requirements of this section, the Department has added a defined term, "Third Party Service Provider(s)."

Commentators claimed that the proposal includes overly broad reporting requirements that would result in many reports that are of little cybersecurity value. Additionally, commentators claimed that a 72-hour reporting timeframe is too short. Some commentators noted, for example, that in the first few days of a Cybersecurity Event, the entity is still gathering information on what happened. Also, commentators expressed concern about the confidentiality of notices provided to the Department. Based on its experience, the Department believes that the 72-hour reporting timeframe is essential to protect the markets while the Department does not intend for the reporting to include unnecessary information. Accordingly, the Department has revised section 500.17 to state that notice is required within 72 hours of a determination that a Cybersecurity Event as follows has occurred: (1) Cybersecurity Events of which notice is required to be provided to any government body, self-regulatory agency or any other supervisory body, and (2) Cybersecurity Events that have a reasonable likelihood of materially harming any material part of the normal operation(s) of the Covered Entity. In addition, DFS has added a confidentiality section to the proposed regulation.

Some commentators asserted that the annual certification requirement of section 500.17(b) should be eliminated. They argued, for example, that the annual certification requirement is unnecessary, or that compliance with the requirement would be costly and divert resources from other uses. Other commentators sought revisions in the annual certification requirement and/or certification form. The Department has determined that the annual certification is an important part of the regulation and the Department's oversight of the financial market. The Department does not believe that the requirement creates unnecessary burdens; to the contrary, the Department believes the process is essential to good corporate governance. Accordingly, the Department has retained the annual certification requirement and the certification form included as Appendix A. In addition, the Department has determined that the content of the certification form and certification requirement are appropriate in the context of the revised proposed regulation.

Certain entities requested exemptions, but the Department determined not to alter the definition of Covered Entities, which in the Department's view provides adequate guidance as to which entities are covered. Some businesses, including small businesses, expressed concerns regarding cost and burden. The Department has included in the revised proposal several exemptions based on the risk that particular entities or circumstances present:

- The Department has included a limited exemption for a Covered Entity that does not directly or indirectly operate, maintain, utilize or control any Information Systems, and that does not control, generate, receive or possess Nonpublic Information.
- The Department has included an exemption for an employee, agent, representative, designee or Affiliate of a Covered Entity, who is itself a Covered Entity, to the extent that the employee, agent, representative, designee or Affiliate is covered by the cybersecurity program of the Covered Entity.
- The Department has amended the limited exemption in section 500.19(a) by adding Covered Entities with fewer than 10 employees including independent contractors, deleting Covered Entities with fewer than 1000 customers in each of the last three calendar years, and changing "and" to "or" in two locations.

The Department has also added a notice of exemption filing requirement for entities claiming an exemption.

Multiple commentators expressed concern about the implementation timeframes. The Department has added to the Transitional Periods section of the revised proposal (500.22) a number of additional transitional periods. These additional transitional periods are designed to provide outside deadlines for compliance with specific requirements, while urging Covered Entities to comply as soon as possible in order to protect customer data.

Some commentators asserted that the proposed regulation should harmonize more closely with other standards, including state, federal and international standards, both existing and proposed. The Department has been continually mindful of other standards and approaches and believes that the revised regulation is appropriately consistent with the goal of setting minimum standards.

Several commentators stated that all minimum standards should be eliminated and the Department should either (1) release guidance rather than promulgate a regulation or (2) wait for the federal government to promulgate regulations. The Department has not accepted any such suggestions, as the Department continues to believe that it should promptly promulgate a cybersecurity regulation as time is of the essence regarding cybersecurity protections. For similar reasons, no revisions have been made by the Department in response to comments that Covered Entities should be allowed to develop their own risk based controls, or otherwise follow other standards, in lieu of meeting the regulation's requirements.

New York State Gaming Commission

NOTICE OF ADOPTION

Require Thoroughbred Horse Trainers to Complete Four Hours of Continuing Education Each Year

I.D. No. SGC-37-16-00007-A
Filing No. 1150
Filing Date: 2016-12-13
Effective Date: 2016-12-28

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

Action taken: Amendment of section 4002.8 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19)

Subject: Require thoroughbred horse trainers to complete four hours of continuing education each year.

Purpose: To preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

Text or summary was published in the September 14, 2016 issue of the Register, I.D. No. SGC-37-16-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

Initial Review of Rule
As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment
The Gaming Commission received public comments from the Association of Racing Commissioners International (ARCI), The Jockey Club (TJC) and the New York Thoroughbred Horsemen's Association (NYTHA)

ARCI and TJC support the amendment and offer program assistance. ARCI is preparing a national certification of trainer's continuing education ("TCE") programs throughout the United States that will be available for New York licensees. The Commission can approve these programs, including ones offered in New York, and benefit from ARCI tracking in its database the completion of certified TCE programs. TJC currently offers TCE modules that are sufficient to complete the TCE requirement, are available online, and are free. TJC tracks participation and provides notice to jurisdictions specified by the trainer when one of its modules is completed.

Although NYTHA supports trainer continuing education to benefit trainers, believes licensed horse owners, jockeys, and Standardbred trainers and drivers would benefit from a similar requirement, and offers to assist in identifying topics and courses, NYTHA is concerned whether TCE courses will be available in 2017. The Commission has determined that this need will be met. The Commission expects to approve for TCE credit, in addition to the resources available from ARCI and TJC, the online training videos offered by the Thoroughbred Health Network, live programs offered by Cornell University at the Ruffian Clinic near Belmont Park, and the Commission's own TCE programs which have been provided without charge for many years at every race meet. The TJC and the Commission each provide sufficient credit hours to meet the TCE requirement, and the ARCI certification program and other offerings will provide many more opportunities for trainers to complete the required four hours of annual TCE.

NOTICE OF ADOPTION

Definition of the "Wire" at the Finish of a Harness Race

I.D. No. SGC-38-16-00004-A
Filing No. 1149
Filing Date: 2016-12-13
Effective Date: 2016-12-28

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

Action taken: Amendment of section 4100.1(a)(48) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 301(1)

Subject: Definition of the ''wire'' at the finish of a harness race.

Purpose: To preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

Text or summary was published in the September 21, 2016 issue of the Register, I.D. No. SGC-38-16-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

Initial Review of Rule
As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment
The Gaming Commission received a public comment from The Empire State Harness Horsemen's Alliance in support of the proposal.

NOTICE OF ADOPTION

Casino Alcoholic Beverage Licenses

I.D. No. SGC-42-16-00002-A
Filing No. 1147
Filing Date: 2016-12-13
Effective Date: 2016-12-28

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

Action taken: Addition of Part 5328 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), 1340(1), (5), (8) and (11)

Subject: Casino alcoholic beverage licenses.

Purpose: To regulate the presence and sale of alcoholic beverages on the premises of gaming facilities.

Text or summary was published in the October 19, 2016 issue of the Register, I.D. No. SGC-42-16-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.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 Gaming Commission received one comment from Bolton St. Johns on behalf of Capital Region Gaming, LLC in regard to this proposed rulemaking. The Commission has considered the comment received and decided that no changes were appropriate at this time. In particular, the commentator proposed adding a paragraph to proposed Rule 5328.7 to allow the service of alcoholic beverages between the hours of 4:00 a.m. and 8:00 a.m. Monday through Saturday and 4:00 a.m. and 10:00 a.m. on Sunday. The commentator stated the gaming facilities would be bound by the limitations in the Alcoholic Beverage Control Law absent the additional language. The Commission believes the commentator is mistaken because Racing, Pari-Mutuel Wagering and Breeding Law section 1340 grants the Commission the appropriate power in statute and proposed Rule, as drafted, to allow for the extended alcohol serving hours. The Commission declines to accept this comment.

NOTICE OF ADOPTION

Prescribing Methods of Notice to Applicants, Registrants, and Licensees and Restrictions on Employee Wagering

I.D. No. SGC-42-16-00003-A
Filing No. 1145
Filing Date: 2016-12-13
Effective Date: 2016-12-28

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

Action taken: Amendment of Part 5300 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2)(d) and 1336(2)

Subject: Prescribing methods of notice to applicants, registrants, and licensees and restrictions on employee wagering.

Purpose: To set forth the methods of notice and restrict employee wagering.

Text of final rule:

Part 5300
General

§ 5300.1. Definitions.

Unless the context indicates otherwise, the following definitions and the definitions set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1301 are applicable throughout this Subchapter:

(a) Ancillary casino vendor means a vendor providing goods or services to a gaming facility applicant or licensee that are ancillary to gaming activity.

(b) Casino vendor means a vendor providing goods or services to a gaming facility applicant or licensee that directly relate to gaming activity.

(c) Career or professional offender means any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, using such methods as are deemed criminal violations of the public policy of this State.

(d) Career offender cartel means any group of persons who operate together as career offenders.

(e) Commission means the commissioners, staff and designees of the New York State Gaming Commission.

(f) Credit slip means a form used to record either the return of chips

from a gaming table to the cage or the transfer of markers or negotiable checks from a table game to a cage or bankroll.

(g) Dealer means a person assigned to operate games.

(h) Drop box means the box attached to a table game that is used to collect the following items:

(1) currency;

(2) coin;

(3) cash equivalents;

(4) damaged chips; and

(5) all other forms used by the gaming facility and deposited in the drop box as part of the audit trail.

(i) Excluded person means a person who is excluded from a gaming facility pursuant to Part 5326 of this Subchapter.

(j) Fill means a transaction whereby a supply of chips or coins is transferred from a bankroll to a table.

(k) Gaming cheat means a person who is engaging in or attempting to engage in, or who is suspected of cheating, theft, embezzlement, a violation of this Subchapter or other illegal activities, or activities that are deemed a violation under Penal Law article 225 or equivalent violations in other jurisdictions, including a person who is required to be excluded or ejected from the licensed facility under Racing, Pari-Mutuel Wagering and Breeding Law section 1342 or Part 5327 of this Subchapter.

(l) Gaming facility means the premises approved under a gaming license, which includes a gaming area and any other nongaming structure related to the gaming area and may include, without limitation, hotels, restaurants and other amenities.

(m) Hand means either one game in a series, one deal in a card game or the cards held by a player in a card game, as the context requires.

(n) Match-play coupon means a coupon with a fixed, stated value that is issued and redeemed and the stated value of which, when presented by a patron with chips that are equal to or greater in value to the stated value of the coupon, is included in the amount of the patron's wager in determining the payout on any winning bet at an authorized game.

(o) Material change means modification to physical or financial aspects in a manner that creates an inconsistency with the application submitted by a licensee or applicant for license. Physical aspects impact the proposed gaming facility or project site through addition, removal or alteration of the quality and nature of gaming and non-gaming amenities. Financial aspects impact the capital and financing structure through addition, removal or alteration of financing source or sources, schedule of financing source or sources and arrangement or agreements of financing plan.

(p) Non-gaming employee means any natural person, not otherwise included in the definition of casino key employee or gaming employee, who is employed by a gaming facility licensee or an affiliate, intermediary, subsidiary or holding company of a gaming facility licensee.

(q) Passive investor means an investor owning, holding or controlling up to 25 percent of the publicly traded securities issued by a gaming facility licensee or applicant or holding, intermediate or parent company of a licensee in the ordinary course of business for investment purposes only and who does not, nor intends to, exercise influence or control over the affairs of the issuer of such securities, nor over any licensed subsidiary of the issuer of such securities.

(r) Pit means the area enclosed or encircled by the arrangement of table games in which gaming facility personnel administer and supervise the live games played at the tables by patrons located outside the perimeter of such area.

(s) Promotional gaming chip and promotional coupon mean noncashable instruments that may be used for game play.

(t) Qualified institutional investor means an institutional investor holding up to 15 percent of the publicly traded securities of a gaming facility applicant or licensee, or holding, intermediary or subsidiary company thereof, for investment purposes only and does not, nor intends, to exercise influence or control over the affairs of the issuer of such securities, nor over any licensed subsidiary of the issuer of such securities. To qualify as an institutional investor, an investor, other than a State or Federal pension plan, must meet the requirements of a qualified institutional buyer as defined in regulations of the United States Securities and Exchange Commission. A qualified institutional investor includes, without limitation, any of the following:

(1) a bank as defined under Federal securities laws;

(2) an insurance company as defined under Federal investment company laws;

(3) an investment company registered under Federal investment company laws;

(4) an investment advisor registered under Federal investment company laws;

(5) collective trust funds as defined under Federal investment company laws;

(6) an employee benefit plan or pension fund subject to the Employee Retirement Income Security Act, subject to certain exclusions;

(7) a State or Federal government pension plan; and

(8) such other persons as the commission many determine for reasons consistent with policies of the commission.

(u) Qualifier means a related party in interest to an applicant, including, without limitation, a close associate or financial resource of such applicant. Qualifiers may include, without limitation:

(1) if the gaming facility applicant is a corporation:

(i) each officer;

(ii) each director;

(iii) each shareholder holding five percent or more of the common stock of such company; and

(iv) each lender;

(2) if the gaming facility applicant is a limited liability corporation:

(i) each member;

(ii) each transferee of a member's interest;

(iii) each director;

(iv) each manager; and

(v) each lender;

(3) if the gaming facility applicant is a limited partnership:

(i) each general partner;

(ii) each limited partner; and

(iii) each lender;

(4) if the gaming facility applicant is a partnership:

(i) each partner; and

(ii) each lender;

(5) any gaming facility licensee manager or operator;

(6) any direct and indirect parent entity of a gaming facility applicant or licensee, including any holding company;

(7) any entity having a beneficial or proprietary interest of five percent or more in a gaming facility applicant or licensee;

(8) any other person or entity that has a business association of any kind with the gaming facility applicant or licensee; and

(9) any other person or entity that the commission may designate as a qualifier.

(v) Shift means the normal daily work period of a group of employees administering and supervising the operations of live gaming devices.

(w) Supervisor means a person employed in the operation of the authorized games in a gaming facility in a supervisory capacity or empowered to make discretionary decisions that regulate gaming facility operations, including without limitation, pit managers, floorpersons, gaming facility shift managers, the assistant gaming facility manager and the gaming facility manager.

(x) Temporary service provider means a vendor, a vendor's agents, servants and employees engaged by a gaming facility licensee to perform temporary services at a gaming facility for no more than 30 days in any 12-month period.

(y) Vendor registrant means any vendor that offers goods and services to a gaming facility applicant or licensee that is not a casino vendor or an ancillary casino vendor.

§ 5300.2. Method of notice.

Pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1307(2)(d), the Commission shall post on its website as notice to all applicants, registrants, or licensees, the specifications of the confidentiality of all information provided to the Commission by any applicant, registrant, or licensee, and the release thereof.

§ 5300.3. Restrictions on employee wagering.

In addition to the requirements set forth in section 1336 of the Racing, Pari-Mutuel Wagering and Breeding Law, all employees of a gaming facility licensee holding a gaming employee registration issued by the commission are prohibited from wagering in any facility in which the employee is employed or any facility owned or operated by that gaming facility or an affiliate of that gaming facility.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 5300.2.

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

The Commission made only non-substantive change. These changes do not necessitate a revision to the previously published RIS statement. RFA,

RAFA and JIS statements were not required. In the table of contents, "Method of Notice" was changed to "Method of notice." In 5300.2 header, "Method of Notice" was changed to "Method of notice." In 5300.2 header, added period at the end.

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 agency received no public comment.

NOTICE OF ADOPTION

To Set Forth the Standards for Electronic Table Game Systems

I.D. No. SGC-42-16-00004-A

Filing No. 1146

Filing Date: 2016-12-13

Effective Date: 2016-12-28

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

Action taken: Addition of sections 5317.41 and 5319.60 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1) and 1335(8)

Subject: To set forth the standards for electronic table game systems.

Purpose: To prescribe the technical standards for the testing and certification of electronic table game systems.

Text or summary was published in the October 19, 2016 issue of the Register, I.D. No. SGC-42-16-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Department of Labor

NOTICE OF ADOPTION

Minimum Wage

I.D. No. LAB-42-16-00015-A

Filing No. 1153

Filing Date: 2016-12-14

Effective Date: 2016-12-31

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

Action taken: Amendment of Parts 141, 142, 143 and 146 of Title 12 NYCRR.

Statutory authority: Labor Law, sections 21 and 652

Subject: Minimum Wage.

Purpose: To comply with chapter 54 of the Laws of 2016 that increased the minimum wage.

Text or summary was published in the October 19, 2016 issue of the Register, I.D. No. LAB-42-16-00015-P.

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

Text of rule and any required statements and analyses may be obtained from: Michael Paglialonga, New York State Department of Labor, Building 12, Room 509, State Campus, Albany, NY 12240, (518) 457-4380, email: regulations@labor.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 Department received comments on the proposed rule published in the October 19, 2016 edition of the NY Register. The following represents a summary and an analysis of such comments, and the reasons why any significant alternatives were not incorporated into the rule.

Comment 1:

Multiple comments concerned the necessity for, and impact of, increases in various amounts, including the salary threshold for exempt executive and administrative employees and the cash wage requirements for tipped employees.

Response 1:

The increased rates are all mandated by state law, and the scope of this rule is limited to those mandated by the Legislature. The minimum wage law requires that all of these rates be increased in proportion to statutory increases in the minimum wage, at Labor Law § 652(2). When the minimum wage was increased as part of the budget in April 2016, those increases triggered the statutory requirement to promulgate this rulemaking to increase other amounts proportionately.

Comment 2:

Multiple comments concerned the relationship between this rulemaking and federal rulemaking under the Fair Labor Standards Act, with respect to salary thresholds for executive and administrative employees and whether the state rulemaking should be delayed or reconsidered based on the status of the federal rulemaking.

Response 2:

This rulemaking is not based on, or related to, the federal rulemaking concerning salary thresholds. As stated above, this rulemaking is required by law and non-discretionary. Its purpose and effect is to maintain the longstanding historical relationship between minimum wage and salary threshold amounts, where the weekly salary threshold is always equal to 75 times the hourly minimum wage rate. For example, when the minimum wage increases to $10 per hour, this rulemaking increases the weekly salary threshold to $750.

Comment 3:

Multiple comments concerned the fact that the proposed rulemaking does not rescind the phase-in schedules and minimum wage rates for fast food employees, and does not eliminate distinctions between fast food employees and other employees in the hospitality industry.

Response 3:

The scope and intent of this rulemaking is to implement the mandatory rate adjustments mandated by law, as set forth above. Since the legislature did not rescind the fast food wage order, which drew distinctions between fast food and other hospitality employees, with corresponding differences in rates, phase-in schedules, and provisions for tipped employees, this rulemaking retains those distinctions. While the Department recognizes that the Commissioner has discretionary authority to address such issues, this rulemaking does not exercise that authority.

Comment 4:

Multiple comments sought clarification about how the Department interprets and intends to implement distinctions established in the statute establishing different phase-in schedules for different regions, and for large and small employers within New York City, as well as the impact of those rates on various other requirements within the Wage Orders.

Response 4:

The Department will address such issues through Frequently Asked Questions and other educational and outreach materials prior to the effective date of the rule.

Comment 5:

The overtime examples in Part 146 should be updated to reflect the new Minimum Wage rates.

Response 5:

These examples were updated to identify the relevant historical rates underlying each example. The examples were not updated to reflect further rates because of the fact that there are so many different rates for each region and year during the phase in period.

Comment 6:

The rule should include a funding offset for any increased costs to State or government supported contracts as a result of the rule.

Response 6:

The Department disagrees. Such funding levels are outside of the authority granted to the Commissioner of Labor in the Labor Law.

NOTICE OF ADOPTION

Farm Worker Minimum Wage

I.D. No. LAB-42-16-00016-A
Filing No. 1154
Filing Date: 2016-12-14
Effective Date: 2016-12-31

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

Action taken: Amendment of Part 190 of Title 12 NYCRR.

Statutory authority: Labor Law, sections 21, 652, 673 and 674

Subject: Farm Worker Minimum Wage.

Purpose: To comply with chapter 54 of the Laws of 2016 that increased the minimum wage.

Text or summary was published in the October 19, 2016 issue of the Register, I.D. No. LAB-42-16-00016-P.

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

Text of rule and any required statements and analyses may be obtained from: Michael Paglialonga, New York State Department of Labor, Building 12, Room 509, State Campus, Albany, NY 12240, (518) 457-4380, email: regulations@labor.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 Department received comments on the proposed rule published in the October 19, 2016 edition of the NY Register. The following represents a summary and an analysis of such comments, and the reasons why any significant alternatives were not incorporated into the rule.

Comment 1:

Multiple comments concerned the necessity for, and impact of, increases in various amounts, including the salary threshold for exempt executive and administrative employees and the cash wage requirements for tipped employees.

Response 1:

The increased rates are all mandated by state law, and the scope of this rule is limited to those mandated by the Legislature. The minimum wage law requires that all of these rates be increased in proportion to statutory increases in the minimum wage, at Labor Law § 652(2). When the minimum wage was increased as part of the budget in April 2016, those increases triggered the statutory requirement to promulgate this rulemaking to increase other amounts proportionately.

Comment 2:

Multiple comments concerned the relationship between this rulemaking and federal rulemaking under the Fair Labor Standards Act, with respect to salary thresholds for executive and administrative employees and whether the state rulemaking should be delayed or reconsidered based on the status of the federal rulemaking.

Response 2:

This rulemaking is not based on, or related to, the federal rulemaking concerning salary thresholds. As stated above, this rulemaking is required by law and non-discretionary. Its purpose and effect is to maintain the longstanding historical relationship between minimum wage and salary threshold amounts, where the weekly salary threshold is always equal to 75 times the hourly minimum wage rate. For example, when the minimum wage increases to $10 per hour, this rulemaking increases the weekly salary threshold to $750.

Comment 3:

Multiple comments concerned the fact that the proposed rulemaking does not rescind the phase-in schedules and minimum wage rates for fast food employees, and does not eliminate distinctions between fast food employees and other employees in the hospitality industry.

Response 3:

The scope and intent of this rulemaking is to implement the mandatory rate adjustments mandated by law, as set forth above. Since the legislature did not rescind the fast food wage order, which drew distinctions between fast food and other hospitality employees, with corresponding differences in rates, phase-in schedules, and provisions for tipped employees, this rulemaking retains those distinctions. While the Department recognizes that the Commissioner has discretionary authority to address such issues, this rulemaking does not exercise that authority.

Comment 4:

Multiple comments sought clarification about how the Department interprets and intends to implement distinctions established in the statute establishing different phase-in schedules for different regions, and for large and small employers within New York City, as well as the impact of those rates on various other requirements within the Wage Orders.

Response 4:

The Department will address such issues through Frequently Asked Questions and other educational and outreach materials prior to the effective date of the rule.

Comment 5:

The overtime examples in Part 146 should be updated to reflect the new Minimum Wage rates.

Response 5:

These examples were updated to identify the relevant historical rates underlying each example. The examples were not updated to reflect further rates because of the fact that there are so many different rates for each region and year during the phase in period.

Comment 6:

The rule should include a funding offset for any increased costs to State or government supported contracts as a result of the rule.

Response 6:

The Department disagrees. Such funding levels are outside of the authority granted to the Commissioner of Labor in the Labor Law.

Lake George Park Commission

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Increases in User Fees for Boats, Dock and Wharf Fees As Authorized by Amendments to ECL Section 43-0125

I.D. No. LGP-52-16-00002-P

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

Proposed Action: Amendment of sections 645-7.2, 645-7.6 and 645-7.7 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 43-0107(8) and 43-0125 as amended by L. 2016, ch. 272

Subject: Increases in user fees for boats, dock and wharf fees as authorized by amendments to Environmental Conservation Law section 43-0125.

Purpose: To incorporate new boat, dock and wharf fees established by amendments to Environmental Conservation Law section 43-0125.

Public hearing(s) will be held at: 4:00 p.m., Feb. 13, 2017 at Bolton Town Hall, Bolton, NY.

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

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

Text of proposed rule: Amendment of sections 645-7.2, 645-7.6 and 645-7.7 of Title 6 NYCRR – Regulatory Fees

Section 645-7.2 Persons Required to Pay. Regulatory fees must be paid by each person not specifically exempted herein who:

(a) owns or constructs a dock, mooring or wharf within the Park, exclusive of Trout Lake; and

(b) uses on the waters of Lake George any mechanically propelled boat or vessel with a motor of ten horsepower or more [or any non-mechanically propelled boat or vessel eighteen feet or more in length].

Section 645-7.6 Dock, Mooring and Wharf Fees.

(a) No person shall use or construct a dock, wharf or mooring on the waters of the Park without paying the fee required by this Section.

(b) The owner of a dock, wharf or mooring used for residential purposes shall pay an annual fee of [$37.50] *$50.00* for each such dock, wharf or mooring.

(c) The owner of an association dock, wharf or mooring shall pay an annual fee in the amount of [$37.50] *$50.00* times the total number of units with deeded or contractual access to the association docks, wharfs or moorings, or the actual number of vessels capable of being docked or moored at the association docks, wharfs or moorings, whichever is less.

(d) The owner of a dock or wharf used for commercial purposes shall

pay an annual fee of [three dollars and seventy-five cents ($3.75)] *five dollars ($5.00)* per useable linear foot for each such dock or wharf. Useable linear footage shall be measured as the distance along the longest side of any structure used as a dock or wharf, together with the length of the longest side of all lateral structures which extend from the dock or wharf and which are capable of sustaining foot traffic for access to and from vessels and/or for berthing vessels. No linear distance shall be counted twice for the purpose of determining the fee required pursuant to this paragraph. Docks or wharfs which connect to shore shall be measured from the point where the decking or walkway intersects the shore, but in no event beyond the mean high- water mark. For the convenience of the regulated community, examples of typical dock configurations and the applicable fees are provided in this Subdivision.

(e) The owner of a mooring used for commercial purposes shall pay an annual fee of [$75.00] *$100* for each such mooring.

(f) The owner of a dock or wharf constructed on or after January 1, 1988 used for commercial purposes shall pay a first time fee of [$7.50] *$10.00* per useable linear foot for each such dock or wharf. Useable linear footage shall be calculated in accordance with paragraph (d) of this Section. Such fee shall be payable prior to the issuance of a permit to construct the dock or wharf and shall be in lieu of the fee assessable pursuant to paragraph (d) of this Section for the calendar year in which such a permit is issued. Each successive year thereafter, the owner shall pay the fee required by paragraph (d) of this Section. This provision shall not apply to the replacement in kind of an existing dock or wharf, but shall apply to any modification, extension, or expansion of an existing dock or wharf.

(g) The owner of each quick launch facility shall, in addition to the fees assessable pursuant to other paragraphs of this Section, pay an annual fee of [$3.75] *$5.00* per usable linear foot for the total useable linear footage of dry storage capacity at the quick launch subject to the following:

(1) Where the quick launch facility uses wet storage capacity exclusively for vessels which are quick launched, the total useable linear footage of such capacity shall be subtracted from the total useable linear footage of dry storage capacity to prevent the double assessment of storage capacity which is used by the same vessels; and

(2) Where a quick launch facility does not use a rack storage or other system where the useable linear footage of storage capacity is measurable, the owner shall pay an annual fee based upon the total estimated linear footage of the vessels to be stored during a calendar year. Such owners shall, prior to April 1st of each year, estimate the total linear footage of vessels to be stored during that calendar year and shall pay the fee required by this subparagraph based upon that estimate. The estimate required herein shall not be less than the total linear footage of vessels stored during the previous calendar year, unless the owner demonstrates why the amount should be less. The commission shall not be bound by such an estimate if its staff determines it to be unreasonable, in which event the staff may calculate the estimated fee. Any person who is required to pay a regulatory fee based upon an estimate shall, on or before October 1st of the year in which such an estimate is given, report to the commission on such forms as the commission may prescribe the actual linear footage vessels stored during that calendar year. Such reports shall be verified by the owner or operator. Any amount which is disclosed to be due and payable to the commission shall be due and payable on October 1st of such year and shall be subject to a penalty in accordance with the provisions of Section 645-7.4 of this Subpart if not paid within 30 days of such date. Any excess amount shall be credited against the regulatory fee due and payable for the next succeeding fiscal year. Any dispute over the computation of such a recalculated fee shall be resolved under the procedures of Section 645-7.5 of this Subpart.

(h) Upon the registration of a dock, wharf or mooring, the owner shall affix the registration placard provided by the commission to the structure in a manner that makes it visible from the lake, if possible.

Section 645-7.7 Boat Fees.

(a) No person shall use a vessel subject to a fee pursuant to this Section on the waters of Lake George without registering the vessel with the commission and paying the fee imposed by this Section. The registration and fees required by this Section shall be in addition to the registration fees otherwise provided by law.

(b) Any mechanically propelled boat or vessel with a motor of ten horsepower or more [and any non-mechanically propelled boat or vessel eighteen feet or more in length] used on [the waters of] Lake George shall be registered with the commission and the owner or operator shall pay an annual registration fee as follows:

(1) for boats less than twenty-one feet in length - [$30.00] *$40.00*;

(2) for boats twenty-one to twenty-five feet in length – [$37.50] *$50.00*;

(3) for boats over twenty-five feet in length – [$37.50 and] *$50.00 plus* $7.50 for each foot or part thereof by which the length exceeds twenty-five feet; and

(4) for boats over twenty-five feet in length which are outfitted for overnight use – [$37.50 and] *$50.00 plus* $30.00 for each foot or part thereof by which the overall length exceeds twenty-five feet.

(c) Boat length shall be the length overall of the boat measured as the distance from the transom to the bow.

(d) The owner or operator of any vessel which is berthed, used or operated on Lake George for less than 21 consecutive days and which is subject to annual registration and a fee pursuant to this Section may, in lieu of annual registration register the vessel with the commission for a single day and pay a fee of [$7.50] *$12.00* for each day. Alternatively, any such person may, in lieu of annual registration register the vessel with the commission for seven consecutive days and pay a fee of [$11.25] *$20.00*. Any person may convert a day registration into a weekly registration and may convert either a day registration or a weekly registration into an annual registration. Upon any such conversion and proof of payment, the person shall be given credit for any fee paid for that vessel during the same calendar year.

(e) No person shall operate a vessel on the waters of Lake George which is subject to a fee pursuant to this Section without affixing the sticker provided by the commission as proof of payment of such fee on the vessel in such a place as the commission may prescribe.

(f) The application for boat registration shall be on such forms as the commission may prescribe and contain a statement setting forth the location where the boat will be docked or stored for the boating season and the name of the owner of said location.

Text of proposed rule and any required statements and analyses may be obtained from: Dave Wick, Executive Director, Lake George Park Commission, 75 Fort George Road, P.O. Box 749, Lake George, NY 12845, (518) 668-9347, email: dave@lgpc.state.ny.us

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

Public comment will be received until: Five days after the last scheduled public hearing.

Regulatory Impact Statement

1. Statutory Authority:

Section 43-0125 of the Environmental Conservation Law (ECL)(McKinney's) as amended by Chapter 272 of the Laws of 2016.

The legislature finds that comprehensive environmental regulatory management and conservation within the Lake George Park are essential to protect an important part of the environmental resources of the state and the public health and welfare. It further declares that regulated entities and users of the unique resources of Lake George should bear a significant portion of the costs of regulation, management and conservation activities which assure the protection and continued beneficial use of the resources of the park.

Chapter 272 of the Laws of 2016 increases regulatory user fees for boats, wharfs, docks and moorings on Lake George. Subdivision 2 of ECL Section 43-0125 contains the following fee increases. The annual fee for non-commercial residential docks and moorings increases from thirty seven dollars and fifty cents ($37.50) to fifty dollars ($50.00). Annual commercial dock fees increase from three dollars and seventy-five cents ($3.75) per linear foot to five dollars ($5.00) per linear foot. The annual fees for moorings used for commercial purposes increases from seventy five dollars ($75.00) to one hundred dollars ($100.00). The one-time fee for commercial docks increases from seven dollars and fifty cents ($7.50) per linear foot to ten dollars ($10.00) per linear foot, plus five dollars ($5.00) from three dollars and seventy-five cents ($3.75) per linear foot annually thereafter. In preparation of these changes contained in Chapter 272 of the Laws of 2016, the Commission is proposing a rule that will implement the fee increases effective March 1, 2017.

The boat fees continue to apply to any mechanically propelled boat or vessel with ten horsepower or more. Chapter 272, however, eliminates the fee for any non-mechanically propelled boat or vessel eighteen feet or more in length. With this legislation, only mechanically propelled vessels with ten horsepower or more are subject to boat fees. The annual registration fee for boats 20' or less in length overall increases from thirty dollars ($30.00) to forty dollars ($40.00); for boats 21' to 25' in length overall, the fee increases from thirty seven dollars and fifty cents ($37.50) plus seven dollars and fifty cents ($7.50) for each foot by which the length overall exceeds 25' to fifty dollars ($50.00) plus seven dollars and fifty cents ($7.50) for each foot by which the length exceeds 25'. For boats over 25' in length and equipped for overnight use, the fee increases from thirty seven dollars and fifty cents ($37.50) and thirty dollars ($30.00) for each foot that exceeds 25' to fifty dollars ($50.00) plus thirty dollars ($30.00) for each foot that excessds 25'. A fee for a one week permit is increased from eleven dollars and twenty five cents ($11.25) to twenty dollars ($20.00). The fee for a one day use permit increases from seven dollars and fifty cents ($7.50) to twelve dollars ($12.00).

2. Legislative Objectives:

The Legislative objective or purpose of the amendments to ECL Section 43-0125 is to increase the annual fees for docks, wharfs, moorings and boats paid to the Lake George Park Commission. The user fees sup-

port the regulatory programs of the Lake George Park Commission which are needed to preserve and protect the natural resources of the Lake George Park. The regulations implementing the statutory authority of ECL Section 43-0125 are contained in part, in 6 NYCRR 645-7. The amendments to 6 NYCRR 645-7 implement the changes authorized by Chapter 272 of the Laws of 2016.

3. Needs and Benefits:

The registration fees established by the Legislature pursuant to Article 43-0125 are for the annual registration of wharfs, docks and moorings and for the annual or short-term registration of mechanically propelled boats greater than ten (10) horsepower on Lake George. The regulations implementing these fees (6 NYCRR 645-7) incorporate the fee amounts, set dates due for payments of annual fees, and establish simple procedures for registration. In order to reflect the increase in fees enacted by the Legislature in 2016 and to provide an accurate and complete reference for the public, regulations are being revised.

Pursuant to Article 43-0125 and 97-h of the State Finance Law, user fees are deposited in the Lake George Park Trust Fund and support the regular programs of the Lake George Park Commission. These programs are generally to preserve and protect the natural resources of Lake George and the surrounding countryside including the lake's superior water quality and to promote the safe and enjoyable recreational use of the lake by reducing congestion, overcrowding and safety hazards.

4. Costs:

i. Regulated parties include people and businesses who operate a boat on Lake George and who maintain a wharf, dock or mooring. The small increase in fees being implemented is appropriate. The owner of a boat mechanically propelled by greater than ten (10) horsepower would pay an annual fee of forty dollars ($40.00), an increase of ten dollars ($10.00) from the previous amount. The owner of a boat greater than 21' in length overall and less than 25' would pay an annual registration fee of fifty dollars, an increase of twelve dollars and fifty cents ($12.50). Boats greater than 25' in length which are not equipped for overnight use would be subject to an annual registration of fifty dollars ($50.00) plus seven dollars and fifty cents ($7.50) for each foot the boat exceeds 25' in length overall. This is an increase of twelve dollars and fifty cents for the annual fee, but does not increase the fee amount for each foot the boat exceeds 25' in length overall. Boats equipped for overnight accommodations would be subject to a fee of fifty dollars ($50.00) plus thirty dollars ($30.00) per foot for each foot the length overall exceeds 25'. This is an increase of twelve dollars and fifty cents for the annual fee, but the additional cost per foot for each foot the length exceeds 25' remains at thirty dollars ($30.00).

Short-term registrations would increase from seven dollars and fifty cents ($7.50) per day to twelve dollars ($12.00) per day and from eleven dollars and twenty-five cents ($11.25) to twenty dollars ($20.00) for a seven (7) day registration.

Registration fees for residential wharfs, docks and moorings will increase from thirty-seven dollars and fifty cents ($37.50) to fifty dollars ($50.00), an increase of twelve dollars and fifty cents ($12.50). Association dock fees will increase from thirty-seven dollars and fifty cents ($37.50) per dock to fifty dollars ($50.00) per dock slip. Commercial dock fees will increase from three dollars and seventy-five cents ($3.75) per foot of usable dock or wharf to five dollars ($5.00) per foot of usable dock or wharf, an increase of one dollar and twenty-five cents ($1.25). Quick launch facility fees will increase from three dollars and seventy-five cents ($3.75) per usable linear foot to five dollars ($5.00) for the total useable linear footage of dry storage capacity at the quick launch. As an example, the owner of a residence with a single dock and one boat that is 21' to 25' in length overall will see a total annual increase in fees from $75.00 to $100.00 or a $25.00 total increase.

Chapter 272 also eliminates the fee for non-mechanically propelled boat or vessel of eighteen feet or more. These vessels will no longer be subject to an annual fee.

ii. The Lake George boat, dock and mooring registration program is an established program operated by the Lake George Park Commission. The fee increases will not result in any increase in program administrative costs.

iii. Cost analysis is based upon the administrative records of the Lake George Park Commission.

5. Paperwork:

Annual registrants receive a pre-completed application form each spring by direct mail. Registrants must update the information, if required, sign and return the form with a check or money order. These regulatory fees are due and payable by April 1st of each calendar year. Short-term boat registrants complete a simple application form. Boats may be registered in advance or at any one of the 40± registration agents at launches, stores, and municipal offices around the lake. There will be no change in the paperwork required as a result of this rulemaking.

6. Local Government Mandates:

This rulemaking and the regulations being amended impact no program, service requirement, duty or responsibility upon any county, city, town, village, school district, fire district or special district.

7. Duplication:

The rulemaking implements fee increases established by Chapter 272 of the Laws of 2016 and will not duplicate, overlap or conflict with other State or Federal requirements.

8. Alternatives:

The proposed revisions are intended to implement legislated fee increases and no significant alternatives were considered.

9. Federal Standards:

The proposed revisions do not exceed any minimum standards of the Federal government.

10. Compliance Schedule:

Adoption of Chapter 272 has been the subject of a number of media stories and has been discussed in various municipal and chamber of commerce meetings. Regulated parties will have direct notice a minimum of thirty (30) days in advance of April 1, 2017, the registration due date. Completion of the registration form and submission of payment will result in full compliance.

Regulatory Flexibility Analysis

1. Effect of Rule:

There are approximately 200 small businesses which register wharfs, docks and moorings annually under the regulations. These include marinas, restaurants, and resorts. In addition, there are an estimated 40 separate businesses which registered one or more vessels including fishing and sailing charters, rentals and public vessels. The number and type of businesses affected will be the same following the revisions as currently established by the regulations.

2. Compliance Requirements:

Record-keeping and compliance requirements would continue as under the current program. The submission of a simple registration form, pre-completed for annual registrants, is all that is required.

3. Professional Services:

No professional services are required for compliance.

4. Compliance Costs:

No capital costs will result from the revisions. Annual costs of complying with the revisions is comprised entirely of the statutory increase in registration fees. For example, fees for an average marina that provides annual services for 150 boats, seasonal berthing for 30 boats, and which has 300' of usable commercial dock would pay an additional three hundred seventy-five dollars ($375.00) in increased fees or a total of one thousand five hundred dollars ($1,500.00). This equals to fifty dollars ($50.00) per seasonal slip. A resort-restaurant with 120 feet of usable commercial dock (12 slips) would see a fee increase from four hundred and fifty dollars ($450.00) to six hundred dollars ($600) or one hundred fifty dollars ($150.00) per year. Total fees are approximately fifty dollars ($50.00) per slip.

A fishing charter service vessel with a 25' non-equipped boat would be subject to an increase of twelve dollars and fifty cents ($12.50) - a total annual fee of fifty dollars ($50.00).

5. Economic and Technological Feasibility:

The Commission estimates that complying with these new fees is both economically and technologically feasible.

6. Minimizing Adverse Impact:

Implementation of the statutory fee increases without any additional increase in fees or paperwork requirements is intended to minimize any adverse economic impact on small business.

7. Small Business and Local Government Participation:

The nature of the rulemaking is simply to implement statutory fee increases with no additional requirements. Several media stories have covered the fee increase and the Lake George Park Commission has held several public meetings explaining the new fees and the reasons for them.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The Lake George Park, comprised of Lake George and the surrounding land drainage basin, is a rural area subject to significant changes in seasonal population. Generally, the hamlets along the lake: Lake George Village, Bolton Landing, Hague, Ticonderoga, Huletts, Gull Bay and Glenburnie are rural areas consisting of lakefront residential or mix commercial/residential uses.

2. Compliance requirements:

Compliance requirements consist of completing a simplified registration form and making a payment.

3. Professional services:

No professional services will be needed.

4. Compliance costs:

There are no initial capital costs which result from the rulemaking. Annual cost for the registration of a typical boat will increase from thirty dollars ($30.00) to forty dollars ($40.00) as a result of the fee increase. An-

nual costs of commercial docks will increase as well. As an example, a 24' length of commercial dock will be subject to a fee increase of thirty dollars ($30.00). The fee of ninety dollars ($90.00) will increase to one hundred and twenty dollars ($120.00) per year. Typically, commercial docks provide berthing for boats on two sides. Accordingly, in the above example if the owner/operator passes the fee increase through to customers, it would result in an increased expense to the customer of fifteen dollars ($15.00) per year or from the current forty-five dollars ($45.00) to sixty dollars ($60.00) for an average boat slip.

5. Minimizing adverse impact:

The rule implements a statutory fee increase with no additional costs or requirements.

6. Participation of public and private interests in the area:

The nature of the rulemaking is simply to implement statutory fee increases with no additional requirements. Several media stories have covered the fee increase and the Lake George Park Commission has held several public meetings explaining the new fees and the reasons for them.

Job Impact Statement

The purpose of the rule making is to incorporate new boat, dock and mooring user fees established by the Legislature into the Commission's regulations at 6 NYCRR Section 645-7.6 and 645-7.7. The Commission has determined that this rule will not have a substantial adverse impact on jobs and employment opportunities and does not require a job impact statement.

Public Service Commission

NOTICE OF ADOPTION

Amendments to Gas Safety Regulations Pertaining to Pipeline Facilities

I.D. No. PSC-19-16-00010-A

Filing No. 1155

Filing Date: 2016-12-13

Effective Date: 2016-12-28

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

Action taken: On 8/1/16, the PSC approved a Memorandum and Resolution adopting amendments to gas safety regulations pertaining to pipeline facilities in 16 NYCRR Parts 10, 255, 258, 259 and 262.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Amendments to gas safety regulations pertaining to pipeline facilities.

Purpose: Align state rules with federal rules to enhance public safety.

Text of final rule: The Public Service Commission (PSC), as a federally certified state pipeline safety program, is required, pursuant to 49 USC § 60105(b)(2), to adopt federal pipeline safety standards. The PSC has two years from the date of adoption by the Pipeline and Hazardous Materials Administration (PHMSA) to adopt any new rules. This rulemaking is being adopted to bring sections of Title 16 NYCRR related to pipeline safety into conformance with the minimum Federal regulations related to pipeline safety. The adopted changes to Title 16 NYCRR Part 10, Referenced Material bring incorporated-by-reference materials up-to-date with editions of industry consensus standards incorporated by reference in the Federal Regulations contained in Title 49, Code of Federal Regulations, Parts 192, Transportation of Natural Gas (49 CFR Part 192), 193, Liquefied Natural Gas (49 CFR Part 193), and 195, Transportation of Hazardous Liquids by Pipeline (49CFR Part 195). The changes to Title 16 NYCRR Parts 255, Transmission and Distribution of Gas (Part 255), 258, Transportation of Liquid Petroleum (Part 258), and 259, Liquefied Natural Gas (Part 259), bring those parts into conformance with recent amendments to 49 CFR Part 192, 49 CFR Part 195, and 49 CFR Part 193, respectively. The Department of Public Service Pipeline Safety Section also performed a comprehensive comparison of Parts 255 and 258 against the Federal regulations and found that some sections are less stringent than the minimum Federal safety standard. Some of the changes in this rulemaking correct this in order to bring Title 16 NYCRR regulations into conformance with Federal regulations. Two minor clarifications have been made involving the alphabetical reorganization of the definition sections (§ 255.3 and § 258.3) and relocating the conversion of service rule from § 255.559 to § 255.14 to better align Part 255 with the number scheme of 49 CFR Part 192. Updating and streamlining filings to "Department" are being added within Parts 258 and 259 in recognition of the current Department of Public Service Staff organization and to be consistent with a similar change to Part 255. Clarification was needed to specify that while a three-year retention period is the standard, when inspection or other compliance cycles are longer than three years, the retention period for all relevant documents must coincide with those cycles. Finally, technical corrections are made to Parts 258 and 262 to correct a regulatory link to sections that have been relocated.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 10.3(b)(1)(6), (c), (d) and 255.63(a)(2).

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Revised Job Impact Statement

The Department of Public Service (DPS) projects that there will be no adverse impact on jobs or employment opportunities in the State of New York (State) as a result of this rule change. This rule change will bring Part 10 incorporated by reference materials up to date with standards incorporated by reference in the Federal Regulations contained in Title 49, Code of Federal Regulations, Parts 192, Transportation of Natural Gas (49 CFR Part 192), 193, Liquefied Natural Gas (49 CFR Part 193), and 195, Transportation of Hazardous Liquids by Pipeline (49 CFR Part 195). The proposed changes to Title 16 NYCRR Parts 255, Transmission and Distribution of Gas (Part 255), 258, Transportation of Liquid Petroleum (Part 258), and 259, Liquefied Natural Gas (Part 259), bring those parts into conformance with recent amendments to 49 CFR Part 192, 49 CFR Part 195, and 49 CFR Part 193, respectively. Additionally, minor clarification and technical edits to Parts 255, 258, 259 and 262 were needed. Nothing in this rule change will create any adverse impacts on jobs or employment opportunities in the State because all local distribution companies were required to comply with the federal rules adopted in 2014 and upon which these state changes are based. Therefore, no further steps were needed to ascertain these facts and none were taken. For these reasons, a JIS has not been prepared.

Assessment of Public Comment

No comments opposing the rulemaking were submitted. The Northeast Gas Association (NGA) requested clarification of how the Department of Public Service interprets 16 NYCRR § 255.285(d). The other two commenters, Orange and Rockland Utilities, Inc. (O&R) and National Grid Companies (Niagara Mohawk Power Corporation d/b/a National Grid, the Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid) (National Grid) reiterated NGA's request, which is outside the scope of this consensus rulemaking. The clarification request asked whether a person whose incorrectly completed weld or fusion has been inspected but not submitted as final will be deemed to have completed a failed fusion for operator qualification purposes. No other comments were received.

(15-G-0573SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Transfer of Controlling Interest and Associated Financial Transactions

I.D. No. PSC-52-16-00003-P

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

Proposed Action: The Commission is considering the petition of Margaretville Telephone Co. (MTC) and its affiliate(s) for authority to transfer a controlling interest to MTC's Employee Stock Ownership Plan (ESOP) and accomplish the associated transactions.

Statutory authority: Public Service Law, sections 106 and 108

Subject: Transfer of controlling interest and associated financial transactions.

Purpose: To consider the transfer of controlling interest and associated financial transactions.

Substance of proposed rule: The Public Service Commission is considering a joint petition by Margaretville Telephone Company Inc. (MTC) and Margaretville Telephone Company Inc. Employee Stock Ownership Plan (MTC ESOP) to transfer controlling interest from a multiple of MTC shareholders to MTC ESOP and accomplish the associated transactions.

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.

(16-C-0696SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Waiver of Certain Rules and Requirements Pertaining to Cable Television Franchise

I.D. No. PSC-52-16-00004-P

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

Proposed Action: The Commission is considering a petition for certain waivers filed by Frontier Communications of New York, Inc. in connection with a cable television franchise for the Village of Montgomery.

Statutory authority: Public Service Law, sections 215, 216 and 221

Subject: Waiver of certain rules and requirements pertaining to cable television franchise.

Purpose: To determine whether to waive any regulations.

Substance of proposed rule: The Commission is considering a petition filed by Frontier Communications of New York, Inc., for certain waivers in connection with its proposed cable television franchise agreement with the Village of Montgomery. Frontier requests full or partial waivers of 16 NYCRR §§ 890, 895 with respect to build out requirements, installation intervals, system description, and public, educational and governmental access availability. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may 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.

(16-V-0683SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Lease of Real Property

I.D. No. PSC-52-16-00005-P

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

Proposed Action: The Commission is considering the petition by New York State Electric & Gas Corporation (NYSEG) to lease space within various facilities located throughout New York State.

Statutory authority: Public Service Law, section 70

Subject: Lease of real property.

Purpose: To consider NYSEG's request to lease a portion of certain real properties located throughout New York State.

Substance of proposed rule: The Public Service Commission (Commission) is considering the petition by New York State Electric & Gas Corporation (NYSEG), for authority to lease space within various facilities located throughout New York State. The leased facilities are: JetAway Travel, Inc. located at 907 East Main St., Endicott, NY; South Putnam Animal Hospital located at 230 Baldwin Place Rd., Mahopac, NY; NYSARC, Inc., Putnam County Chapter located at 31 International Blvd., Brewster, NY; James Nunciato located at 26 Court Street, Cortland, NY; Hemisphere Communications Inc. located at 5655 South Park Avenue, Hamburg, NY; Greene County Soil and Water located at 10 Mitchell Hallow Road, Windham, NY; Cooperstown Optical, LLC located at NYS Route 28, Cooperstown, NY; DSTR, Inc. located at 234 Delaware Street, Walton, NY; Delaware County Social Services located at 34440 Rt. 10, Hamden, NY; and American Cancer Society located at 5 Oak Avenue, Sidney, NY. 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.

(16-M-0692SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

New York State Reliability Council's Establishment of an Installed Reserve Margin of 18.0%

I.D. No. PSC-52-16-00006-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 an Installed Reserve Margin of 18.0% established by the New York State Reliability Council for the Capability Year beginning May 1, 2017, and ending April 30, 2018.

Statutory authority: Public Service Law, sections 4(1), 5(2), 65(1), 66(1), (2), (4) and (5)

Subject: New York State Reliability Council's establishment of an Installed Reserve Margin of 18.0%.

Purpose: To consider an Installed Reserve Margin for the Capability Year beginning May 1, 2017, and ending April 30, 2018.

Substance of proposed rule: The Public Service Commission (Commission) is considering an Installed Reserve Margin (IRM) of 18.0% established by the New York State Reliability Council's (NYSRC) Executive Committee on December 9, 2016, for the Capability Year beginning May 1, 2017, and ending April 30, 2018. The IRM is based on the NYSRC's Technical Study Report, which is dated December 2, 2016, and is entitled "New York Control Area Installed Capacity Requirement for the Period May 2017 to April 2018" (Report). The Report and appendices, as well as the NYSRC's resolution adopting the IRM, were filed with the Commission on December 12, 2016. The Commission may adopt, reject, or modify, in whole or in part, the proposed IRM and may resolve other related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: 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.

(07-E-0088SP11)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Waiver of Certain Rules and Requirements Pertaining to Cable Television Franchise

I.D. No. PSC-52-16-00007-P

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

Proposed Action: The Commission is considering a petition for certain waivers filed by Frontier Communications of New York, Inc. in connection with a cable television franchise for the Village of Chester.

Statutory authority: Public Service Law, sections 215, 216 and 221

Subject: Waiver of certain rules and requirements pertaining to cable television franchise.

Purpose: To determine whether to waive any regulations.

Substance of proposed rule: The Commission is considering a petition filed by Frontier Communications of New York, Inc., for certain waivers in connection with its proposed cable television franchise agreement with the Village of Chester. Frontier requests full or partial waivers of 16 NYCRR §§ 890, 895 with respect to build out requirements, installation intervals, system description, and public, educational and governmental access availability. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may 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.

(16-V-0698SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-52-16-00008-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 the Notice of Intent, filed by Lynn's Place Housing Development Fund Company, Inc., to submeter electricity at 1060 Rev. James A. Polite Avenue, Bronx, NY and the request for waiver of 16 NYCRR section 96.5(k)(3).

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent to submeter electricity at 1060 Rev. James A. Polite Avenue, Bronx, New York.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by Lynn's Place Housing Development Fund Company, Inc. (Owner) on October 21, 2016, to submeter electricity at 1060 Rev. James A. Polite Avenue, Bronx, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission is also considering the Owner's request for a waiver of 16 NYCRR § 96.5(k)(3), which requires proof that an energy audit has been conducted when 20 percent or more of the residents receive income-based housing assistance. 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.

(16-E-0611SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Tariff Revisions to Implement the Clean Energy Standard (CES)

I.D. No. PSC-52-16-00009-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 proposals by jurisdictional and municipal utilities to revise the Companies' electric tariffs to implement the Clean Energy Standard as approved in the Commission's August 1, 2016 Order in Case 15-E-0302.

Statutory authority: Public Service Law, sections 4(1), 5(1)(2) and 66(2); Energy Law, section 6-104(5)(b)

Subject: Tariff revisions to implement the Clean Energy Standard (CES).

Purpose: To consider the implementation of the CES to promote and maintain renewable and zero-emission electric energy resources.

Substance of proposed rule: The Public Service Commission is considering proposals filed by jurisdictional and municipal utilities to revise the Companies' electric tariffs to allow recovery of costs to implement the Clean Energy Standard (CES) which the Commission adopted on August 1, 2016 in Case 15-E-0302. Specifically, the proposed amendments would provide for recovery of the cost of Tier 1 compliance Renewable Energy Credits (REC), Zero Emission Credits, and Alternative Compliance Payments incurred in compliance with the CES, through a volumetric supply charge collected from retail customers. The proposed amendments have an effective date of March 1 2017. 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.

(16-E-0693SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Utility Obligation to Provide Three Phase Service Within Residential Subdivisions Free of Charge for First 100 Feet

I.D. No. PSC-52-16-00010-P

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

Proposed Action: The Commission is considering a petition by Megnin Farms at Poolsbrooke, LLC regarding Niagara Mohawk Power Corporation and other electric utilities' obligation to provide 100 ft. of free three-phase service within residential subdivisions.

Statutory authority: Public Service Law, sections 31(4), 65 and 66

Subject: Utility obligation to provide three phase service within residential subdivisions free of charge for first 100 feet.

Purpose: To consider electric utilities' obligations to provide 100 feet of free three-phase service pursuant to PSL section 31(4).

Substance of proposed rule: The Commission is considering a petition filed by Megnin Farms at Poolsbrooke, LLC regarding Niagara Mohawk Power Corporation d/b/a National Grid's (Niagara Mohawk or the Company) ability to charge applicants within residential subdivisions for three phase service, within the 100 feet free footage allowance provided for under Public Service Law § 31(4) as well as 16 NYCRR § 98.2. The Commission will also consider the obligations of the state's other investor owned electric utilities to provide such service. 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.

(16-E-0637SP2)

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Supplemental Nutrition Assistance Program (SNAP)

I.D. No. TDA-36-16-00006-A
Filing No. 1116
Filing Date: 2016-12-08
Effective Date: 2016-12-28

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 of Title 18 NYCRR.

Statutory authority: 7 United States Code chapter 51 and sections 2011, 2013 and 2024; 7 Code of Federal Regulations sections 271.2 and 273.16; Social Services Law, sections 17(a)-(b), (j), 20(3)(d) and 95; L. 2012, ch. 41

Subject: Supplemental Nutrition Assistance Program (SNAP).

Purpose: Update State regulations to reflect federal requirements regarding the trafficking of SNAP benefits.

Text or summary was published in the September 7, 2016 issue of the Register, I.D. No. TDA-36-16-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Matthew L. 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

Public Assistance (PA) Use of Resources – General Policy

I.D. No. TDA-37-16-00004-A
Filing No. 1115
Filing Date: 2016-12-07
Effective Date: 2016-12-28

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

Action taken: Amendment of section 352.23(b)(2) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 17(a)-(b), (j), 20(3)(d), 34(3)(f), 131(1) and 131-n; L. 2016, ch. 54, part X, section 1

Subject: Public Assistance (PA) Use of Resources – General Policy.

Purpose: To update current PA resource exemptions related to automobiles.

Text or summary was published in the September 14, 2016 issue of the Register, I.D. No. TDA-37-16-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Matthew L. 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 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 agency received no public comment.