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

NOTICE OF ADOPTION

General Program Standards; Qualified Health Professionals (QHPs)

I.D. No. ASA-20-16-00002-A
Filing No. 650
Filing Date: 2016-07-07
Effective Date: 2016-07-27

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

Action taken: Amendment of Part 800 of Title 14 NYCRR.

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

Subject: General Program Standards; qualified health professionals (QHPs).

Purpose: Include all mental health practitioners as qualified health professionals (QHP).

Text or summary was published in the May 18, 2016 issue of the Register, I.D. No. ASA-20-16-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Sara E. Osborne, Associate Attorney, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 598-2312, email: Sara.Osborne@oasas.ny.gov

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

General Facility Requirements

I.D. No. ASA-20-16-00003-A
Filing No. 651
Filing Date: 2016-07-07
Effective Date: 2016-07-27

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

Action taken: Amendment of Part 814 of Title 14 NYCRR.

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

Subject: General Facility Requirements.

Purpose: Update regulations relating to program facilities.

Text or summary was published in the May 18, 2016 issue of the Register, I.D. No. ASA-20-16-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Sara E. Osborne, Associate Attorney, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 598-2312, email: Sara.Osborne@oasas.ny.gov

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Incident Reporting in Oasas Certified, Licensed, Funded, or Operated Services

I.D. No. ASA-20-16-00004-A
Filing No. 649
Filing Date: 2016-07-07
Effective Date: 2016-07-27

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

Action taken: Amendment of Part 836 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.09(b), 19.20, 19.20-a, 19.40, 32.02; Executive Law, section 296(15) and (16); Corrections Law, art. 23-A; Civil Service Law, section 50; Protection of People with Special Needs Act, L. 2012, ch. 501

Subject: Incident Reporting in Oasas Certified, Licensed, Funded, or Operated Services.

Purpose: To clarify requirements for reporting patient deaths.

Text of final rule: Section 1. Subdivisions (a) and (b) of section 836.4 of Part 836, as adopted December 9, 2015, are amended to read as follows:

(a) (1) "Incident" means an event or happening, accident or injury during the conduct of any program activity which involves a client, a custodian, or damage to the facility in which the program operates and which has, or may have, an adverse or endangering effect on the life, health or welfare of clients or custodians and is required to be reported, investigated and recorded to designated parties according to Article eleven of the social services law and procedures approved by the Office, reviewed by an Incident Review Committee, and acted upon in an appropriate manner to safeguard the well-being of clients and custodians and to bring the matter to closure.

(2) Incidents are either "reportable" to the Justice Center or "non-

reportable." [Reportable incidents include incidents of "abuse and neglect" and "significant incidents" as such terms are defined in this section.]

(3) "Non-reportable" incidents need not be reported to the Justice Center, or if they are reported may be determined as not within the jurisdiction of the Justice Center; nevertheless, these incidents may require documentation in a patient's clinical record or as an incident related to the program or facility which must be maintained by the service provider for review by the provider's Incident Review Committee, or by the Office or the Justice Center, upon request.

(b) ''Reportable incident'' means an incident of "abuse or neglect" or a "significant incident" as defined in subdivision (c) or (d) of this section*; some patient deaths are also a reportable incident*.

§ 2 Paragraph 3 of subdivision (d) of section 836.4 of Part 836, as adopted December 9, 2015, is amended by adding a new subparagraph (vii) to read as follows:

(3) Other significant incidents, including but not limited to:

(i) An event that is, or appears to be, a crime under New York state or federal law involving custodians, clients, or others, including children of service recipients in a residential program, as victims or perpetrators;

(ii) Body cavity search; must be with client consent;

(iii) Any violation of a client's rights to confidentiality pursuant to 42 CFR Part 2 or the Health Insurance Portability and Accountability Act (HIPAA).

(iv) Missing client as defined in subdivision (u) of this section;

(v) Suicide attempt whether or not preceded by statements of intent; statement of intent alone is not a suicide attempt; statements of intent should be recorded in a patient's clinical record;

(vi) Death of a custodian or mandated reporter during the course of his/her job duties related to the provider facility; shall also be reported to any other appropriate entity[.]*;*

(vii) Death of an outpatient client if death occurs on program premises or during the course of program activities.

§ 3 Subdivision (c) of section 836.8 of Part 836, as adopted December 9, 2015, is amended to read as follows:

(c) In the [case of a client's death] *event of a client's death in an inpatient or residential program* under any circumstances or within 30 days of *such client's* discharge, immediate notification must be made to the VPCR (subject to the provisions of 42 CFR Part 2), the local coroner or medical examiner, or any other state or local agency identified under state laws requiring the collection of health or other vital statistics.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 836.4(b).

Text of rule and any required statements and analyses may be obtained from: Sara E. Osborne, Associate Attorney, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 598-2312, email: Sara.Osborne@oasas.ny.gov

Revised Regulatory Impact Statement

OASAS is not submitting a revised Regulatory Impact Statement (RIS) for the adoption of this rulemaking because the non-substantive change to the text from the proposed rulemaking does not change the substance of the previously submitted Impact Statement.

Revised 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 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 will minimize reporting requirements, requires no new staff, cost or regulatory requirements.

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in diverse geographic locations. The Office has prepared guidance documents for provider use and for training of agency administration.

Revised Rural Area Flexibility Analysis

OASAS is not submitting a revised Statement in Lieu of Rural Area Flexibility Analysis for these amendments because the non-substantive change to the text from the proposed rulemaking does not change the substance of the previously submitted Statement in Lieu of Rural Area Flexibility Analysis.

Revised Job Impact Statement

OASAS is not submitting a revised No Job Impact Statement for these amendments because the non-substantive change to the text from the proposed rulemaking does not change the substance of the previously submitted No Impact Statement.

Assessment of Public Comment

The agency received no public comment.

New York State Athletic Commission

ERRATUM

A Notice of Proposed Rule Making, I.D. No. ATH-28-16-00018-P, pertaining to Conduct and Regulation of Authorized Combative Sports, published in the July 13, 2016 issue of the State Register contained an incorrect zip code in the contact information. Following is the correct contact information:

Text of proposed rule and any required statements and analyses may be obtained from: James Leary, Esq., Department of State, One Commerce Plaza, 99 Washington Ave., 11th Fl., Albany, NY 12231-0001, (518) 474-6740, email: James.Leary@dos.ny.gov

Office of Children and Family Services

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Child Day Care Safety Enforcement and Administrative Hearing Regulations

I.D. No. CFS-30-16-00001-EP

Filing No. 648

Filing Date: 2016-07-06

Effective Date: 2016-07-06

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

Proposed Action: Amendment of sections 413.3 and 413.5 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 390(2)(d) and (2-a)

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

Specific reasons underlying the finding of necessity: The Office of Children and Family Services (Office) has determined that immediate adoption of these regulations on an emergency basis are necessary to better protect the health, safety and welfare of children in licensed and registered child day care programs throughout New York State and to better protect children from receiving care in programs that do not have the required license or registration to operate. These emergency regulations strengthen the Office's ability to take enforcement action against child day care programs that violate applicable health and safety requirements.

Presently, the grounds for which the Office may suspend or limit a licensed or registered child day care program are extremely narrow. As a result, children may continue to receive care in licensed or registered child care settings even after the Office has found egregious health and safety violations. These emergency regulations will clarify the legal standard to suspend or limit a child day care program so that the Office can act in appropriate circumstances to protect the safety and well-being of children receiving child care services in licensed or registered programs. Adoption of these regulations on an emergency basis is needed to prevent children from to continuing to receive child care services in unsafe environments where egregious health and safety violations have been found.

These regulations will also require programs to post notices to inform parents or caregivers when a program has been suspended or limited. Adoption of these regulations on an expedited basis is needed so that parents can make informed and timely choices regarding the safety of their children. Parents and caregivers deserve to know that child day care providers authorized to provide care by the Office in fact provide the safest, most secure environment for children.

These regulations will modify, within the existing statutory cap, the maximum allowable daily fine the Office can charge a provider for violating specified regulatory requirements and allow for a graduated increase

in the maximum fine that can be charged for repeat offenses. These changes are necessary on an expedited basis to provide a greater deterrent for violation of existing regulatory requirements, and to provide appropriate remedies for repeat violations.

Finally, these regulations will help to better protect children in child day care programs by requiring the Office to notify law enforcement when a child care program is found to be operating without the required license or registration and by requiring unlicensed and unregistered programs to inform parents that the program has been shut down. Adoption of these regulations on an emergency basis is needed as unlicensed operation of child care programs has resulted in serious risk to the safety of children and additional deterrents are necessary.

In the absence of these regulations, inspections have shown that there are unsafe programs that continue to operate, parents are unaware of potentially unsafe conditions, and unsafe providers are often not dissuaded from continuing to provide inadequate and unsafe care.

Subject: Child Day Care Safety Enforcement and Administrative Hearing Regulations.

Purpose: Amends child day care safety regulations and administrative hearing regulations pertaining to child day care safety enforcement.

Text of emergency/proposed rule: Paragraph one of subdivision (a) of 18 NYCRR section 413.3 is amended to read as follows:

(1) issuance of written inspection reports which include corrective action plans*, requests to submit a corrective action plan to the Office,* and notices of intention to initiate enforcement through the imposition of a fine or the limitation, suspension, termination, revocation, or denial of a license or registration;

Paragraphs nine and ten of subdivision (a) of 18 NYCRR section 413.3 are amended and new paragraphs eleven and twelve are added to read as follows:

(9) requests to the Attorney General to take such action as is necessary to collect civil penalties, seek criminal prosecution, or to bring about compliance with any outstanding hearing decision or order; [or]

(10) publication in local newspapers of the names and addresses of child day care licensees or registrants whose licenses, registrations or applications for licensure or registration have been rejected, denied, limited, suspended, terminated or revoked, or against whom a fine has been assessed after an administrative hearing[.]*;*

(11) referrals to law enforcement, including but not limited to District Attorneys, of any child day care provider that has been directed to cease and desist operations by the Office pursuant to existing law that has not ceased operations; or

(12) requests to the District Attorney to take such action as is necessary to seek criminal prosecution.

Subdivision (d) of 18 NYCRR section 413.3 is amended to add a new paragraph six to read as follows:

(6) When an enforcement action for suspension, limitation or revocation is commenced against a child care provider that owns multiple programs, the Office is authorized to assess the health and safety of the children in the other program(s) owned and/or operated by such provider and take appropriate action to protect the health and safety of children when warranted.

Subparagraphs (ii) and (iii) of paragraph three of subdivision (f) of 18 NYCRR section 413.3 are amended to read as follows:

(ii) Class II violations are subject to a maximum fine of $ [250] *450* a day *for first time offense and up to $500 a day for subsequent offenses*. A Class II violation is defined as any violation of a regulatory requirement which places a child at risk of physical, mental or emotional harm, including but not limited to:

(a) the use of corporal punishment or of frightening or humiliating methods of control or discipline;

(b) inadequate or incompetent supervision;

(c) inadequate light, ventilation, sanitation, food, water or heating; or

(d) providing care for more than the maximum number of children permitted by the facility's license or registration.

(iii) Class III violations are subject to a maximum fine of $ [100] *400* a day *for a first time offense and no more than $500 a day for a subsequent offense*. A Class III violation is defined as any violation of a regulatory requirement other than those included under Class I or II violations.

Paragraph three of subdivision (g) of 18 NYCRR section 413.3 is amended and a new paragraph four is added to read as follows:

(3) *(i)* The Office [may] *shall* require the child day care program to *immediately* post *upon receipt* in a prominent place at the program *that is visible to parents* a copy of [any written] *the most recent* inspection [reports] *report* issued to the program by the Office.

(ii) In the event that a child day care program is suspended or limited, the Office shall require the child day care program to immediately post the notice of suspension or limitation immediately upon receipt. Such notice shall be posted in a prominent place at the program that is visible to parents. A notice of suspension or limitation required by the office to be posted by a child day care program must remain posted for a period of at least thirty days or at least until such time as the condition requiring suspension or limitation has been deemed corrected, or in the event that the condition is not deemed corrected, until the program's license, registration or permit has been revoked.

(iii) Any notice required to be posted pursuant to subparagraphs (i) or (ii) of this paragraph must also be posted on the child day care program's website, if possible.

(4)(i) Where investigation or inspection reveals that a program that must be licensed or registered as a child day care program is not duly licensed or registered, the Office shall provide notice in writing to the program indicating that the program is in violation of the licensing or registration requirements and the Office shall take such further action as is necessary to cause the program to comply with the law, including directing an unlicensed or unregistered program to cease operation immediately.

(ii) The notice to the program required by subparagraph (i) of this paragraph shall advise parents that the program is closed for failure to comply with the applicable licensing or registration requirements, as applicable, and shall advise the program that the notice is required to be immediately posted in a prominent place at the program that is visible to parents and on the provider's website, if possible.

Subdivision (a) of 18 NYCRR section 413.5 is amended to read as follows:

(a) Before any child care license or registration is suspended or revoked, or when an application for such license or registration is denied, or before civil penalties can be imposed the applicant, licensee or registrant for such registration or license is entitled to a hearing before the Office, pursuant to Social Services Law section twenty-two and these regulations. However, a license or registration shall be temporarily suspended or limited without a hearing upon written notice to the licensee or registrant following a finding that the public health, or an individual's safety or welfare, are in imminent danger[.] *based on a finding, in accordance with the regulations of the Office, that:*

(1) serious physical injury or death of a child has occurred;

(2) a condition occurred or exists that places a child at risk of serious physical, mental or emotional harm, or risk of death, serious or protracted disfigurement or protracted impairment of physical or emotional health which may include, but not be limited to:

(i) inadequate supervision;

(ii) overcapacity;

(iii) inappropriate staff-to-child ratios;

(iv) corporal punishment of a child;

(v) failure to obtain appropriate medical treatment for a child, which may include the failure to call 911;

(vi) blocked exits or means of egress; or

(v) failure to maintain adequate sanitation, heating, cooling or ventilation conditions within the program; or

(3) the program has prevented the Office from effectively assessing whether the public health, or an individual's safety or welfare, are in imminent danger as a result of a condition that occurred or exists in the program, by taking actions, which may include, but not be limited to:

(i) refusal to provide inspection staff with access to the child day care program, premise or children, as is otherwise required or authorized by law during the program's hours of operation; or

(ii) use of force or verbal or written threats of force made against inspection staff or staff of the Office.

Paragraph three of subdivision (d) of 18 NYCRR section 413.5 is amended to read as follows:

(3) If the person does not cease operations, the Office may impose a civil penalty pursuant to subdivision eleven of Section 390 of the Social Services Law, seek an injunction pursuant to Section 391 of the Social Services Law, *refer the person to law enforcement, including District Attorneys, pursuant to 413.3(a)(11) and Penal Law Section 260.31,* or [both] *all three*.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire October 3, 2016.

Text of rule and any required statements and analyses may be obtained from: Public Information Office, New York State Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 473-7793, email: info@ocfs.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:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Com-

missioner of the Office of Children and Family Services (Office) to establish rules, regulations and policies to carry out the Office's powers and duties under the SSL.

Section 390(2)(d) of the SSL authorizes the Office to establish regulations for the licensure and registration of child day care providers.

Section 390(2-a) of the SSL requires the Office to establish regulations that provide for the minimum quality program requirements for licensed and registered child care programs.

2. Legislative objectives:

The Office's objective in proposing changes to current child care enforcement and hearing regulations is to better protect the health, safety and welfare of children in licensed and registered child day care programs throughout New York State and to better protect children from receiving care in programs that do not have the required license or registration to operate.

3. Needs and benefits:

The proposed changes to the enforcement and hearing regulations are needed to better protect the health, safety and welfare of children in licensed and registered child day care programs throughout New York State and to better protect children from receiving care in programs that do not have the required license or registration to operate.

These regulations will clarify the legal standard to suspend or limit a child day care program so that the Office can act in appropriate circumstance to protect the safety and well-being of children when egregious violations of the applicable legal standards for health and safety occurs in a licensed or registered program. Such changes are required to prevent children from receiving child care services in unsafe environments.

These regulations will also require programs to post notices to inform parents or caregivers when a program has been suspended or limited. Parents and caregivers deserve to know that child day care providers authorized to provide care by the Office, in fact provide the safest, most secure environment for children.

These regulations will modify, within the existing statutory cap, the maximum allowable daily fine the Office can charge a provider for violating specified regulatory requirements and allow for a graduated increase in the maximum fine that can be charged for repeat offenses. Such changes are necessary to provide a greater deterrent for violation of existing regulatory requirements, and to provide appropriate remedies for repeat violations.

Finally, these regulations will help to better protect children in child day care programs by requiring the Office to notify law enforcement when a child care program is found to be operating without the required license or registration. These regulations will also provide that if the Office requires that such programs close that such programs post a notice to inform parents and caregivers that the program has been closed for not having the required license or registration.

4. Costs:

The implementation of these regulations may have minimal costs associated for some programs that violate existing legal standards by increasing, within the statutory cap, the maximum daily fine allowed for certain violations and to provide for increased penalties for repeat violations. Additionally, the implementation of these regulations may result in additional costs to programs that may be suspended or limited under the new proposed standard. However, this standard has been narrowly tailored to address egregious safety violations and is needed to protect the health and safety of children in licensed and registered programs.

5. Local government mandates:

No new mandates are imposed on local governments by these proposed regulations.

6. Paperwork:

There will be no impact on required paperwork.

7. Duplication:

The new requirements do not duplicate State or federal requirements.

8. Alternatives:

The agency anticipates providing notification to parents, the public and child day care programs by posting this proposal on the agency website and continued training and other presentations. The alternative to the proposed regulations is to continue operation under the current regulations.

9. Federal standards:

The regulations are consistent with applicable federal requirements.

10. Compliance schedule:

These regulations will become effective immediately.

Regulatory Flexibility Analysis

1. Types and estimated number of small businesses and local governments:

There are approximately 19,000 statewide regulated child day care providers in New York State that will be affected by the rules. Local governments will not be affected by the rules.

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

Child day care programs will be required to post notices of enforcement actions.

3. Costs:

The implementation of these regulations may have minimal costs associated for some programs that violate existing legal standards by increasing, within the statutory cap, the maximum daily fine allowed for certain violations and to provide for increased penalties for repeat violations. Additionally, the implementation of these regulations may result in additional costs to programs that may be suspended or limited under the new proposed standard. However, this standard has been narrowly tailored to address egregious safety violations and is needed to protect the health and safety of children in licensed and registered programs.

4. Economic and technological feasibility:

The proposed regulatory changes would not require any additional technology. There is a possible modest increase in fines assessed against child day care programs for noncompliance.

5. Minimizing adverse impact:

The proposed changes to the regulations are necessary to provide immediate protections for children in day care programs. Any adverse economic impact the regulations may have on day care programs through the possible imposition of fines is minimized within the agency's regulations by the ability of day care programs to take ameliorative action. The approaches for minimizing adverse economic impact suggested in SAPA § 202-b(1) or other similar approaches were considered.

6. Small business and local government participation:

The agency anticipates providing notification to parents, the public and child day care programs by posting this proposal on the agency website and continued training and other presentations.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

The regulations will affect the child care providers located in the 44 rural social services districts throughout the state.

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

Child day care programs will be required to post notices of enforcement actions.

3. Costs:

The implementation of these regulations may have minimal costs associated for some programs that violate existing legal standards by increasing, within the statutory cap, the maximum daily fine allowed for certain violations and to provide for increased penalties for repeat violations. Additionally, the implementation of these regulations may result in additional costs to programs that may be suspended or limited under the new proposed standard. However, this standard has been narrowly tailored to address egregious safety violations and is needed to protect the health and safety of children in licensed and registered programs.

4. Minimizing adverse impact:

The proposed changes to the regulations are necessary to provide immediate protections for children in day care programs. Any adverse economic impact the regulations may have on day care programs through the possible imposition of fines is minimized within the agency's regulations by the ability of day care programs to take ameliorative action. The approaches for minimizing adverse economic impact suggested in SAPA § 202-bb(2) or other similar approaches were considered.

5. Rural area participation:

The agency anticipates providing notification to parents, the public and child day care programs by posting this proposal on the agency website and continued training and other presentations.

Job Impact Statement

Section 201-a of the State Administrative Procedures Act requires a job impact statement to be filed if proposed regulations will have an adverse impact on jobs and employment opportunities in the State.

It is not anticipated that the regulations will have a significantly detrimental impact on jobs and employment opportunities for child day care providers. The regulations are designed to provide for a more immediate response and correction to conditions that jeopardize the health and safety of children in care.

Education Department

EMERGENCY RULE MAKING

Examinations for Teacher Certification

I.D. No. EDU-18-16-00010-E
Filing No. 688
Filing Date: 2016-07-11
Effective Date: 2016-07-18

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

Action taken: Amendment of sections 52.21 and 80-1.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 215(not subdivided), 305(1), (2), 3001(2), 3004(1) and 3009(1)

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

Specific reasons underlying the finding of necessity: Despite the high pass rates on the new and redeveloped certification examinations by candidates who have completed preparation programs and have been recommended for certification, the field has expressed concern about the pass rates for candidates who have not completed a preparation program and have not yet been recommended for certification. In response to concerns from the field regarding the expiration of the current safety nets on June 30, 2016, the Department has presented emergency regulations to extend the existing safety nets for an additional year to ensure that candidates have notice of the safety net options for these exams while the Department reexamines the current certification examinations.

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 202(1) and (5), is the July 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the July Regents meeting, is July 27, 2016, the date a Notice of Adoption would be published in the State Register. However, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare in order to ensure that teacher candidates who will be applying for certification from now until June 30, 2017 have timely and sufficient notice that, if they fail one or more of the following new and redeveloped certification examinations (the ALST, the EAS, the edTPA and/or the required CST), and if they meet one or more of the safety net options, they may receive an initial certificate; and to ensure that the emergency rule adopted by the Board of Regents at its April meeting remains continuously in effect until it can be adopted as a permanent rule.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the July 2016 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act for proposed rulemakings.

Subject: Examinations for Teacher Certification.

Purpose: Extension of the safety net for the multi-subject content specialty teacher certification examination.

Text of emergency rule: 1. Subdivision (c) of section 80-1.5 of the Regulations of the Commissioner of Education shall be amended, effective July 18, 2016, to read as follows:

(c) Notwithstanding any applicable provisions of Subparts 80-1, 80-3, 80-4 and 80-5 of this Part or any other provision of rule or regulation to the contrary, a candidate who applies for and meets all the requirements for a certificate on or before [June 30, 2017] *June 30, 2018*, except that such candidate does not achieve a satisfactory level of performance on one or more of the new certification examinations (the academic literacy skills test and/or the teacher performance assessment) or the revised content specialty examination(s), as prescribed by the Commissioner, that is/are required for the certificate title sought, and such examination(s) was/were taken and failed on or after September 1, 2013 through [June 30, 2016] *June 30, 2017*, may instead use one or more of the following safety net options, in lieu of retaking one or more of such new and/or revised certification examinations:

(1) Teacher performance assessment. A candidate who takes and fails to achieve a satisfactory level of performance on the teacher performance assessment (after completing and submitting for scoring the teacher performance assessment), may, in lieu of retaking the teacher performance assessment:

(i) receive a satisfactory score on the written assessment of teaching skills after receipt of his/her score on the teacher performance assessment and prior to [June 30, 2016] *June 30, 2017*; or

(ii) pass the written assessment of teaching skills on or before April 30, 2014 (before the new certification examination requirements became effective), provided the candidate has taken and failed the teacher performance assessment prior to [June 30, 2016] *June 30, 2017*.

(2) Academic Literacy Skills Test. A candidate who takes and fails to achieve a satisfactory level of performance on the academic literacy skills test may, in lieu of retaking the academic literacy skills test, submit an attestation on or before [June 30, 2016] *June 30, 2017*, on a form prescribed by the commissioner, [and signed by a dean or chief academic officer of a higher education institution or the substantial equivalent,] attesting that the candidate has:

(i) demonstrated comparable skills to what is required by the academic literacy skills test through course completion by completing a minimum of three semester hours in coursework satisfactory to the commissioner; and

(ii) received a cumulative grade of a 3.0 or higher, or the substantial equivalent, in such coursework.

(3) Content Specialty Examination. A candidate who takes and fails to achieve a satisfactory level of performance on any required revised content specialty examination in the candidate's certification area, may, in lieu of retaking such revised content specialty test:

(i) receive a satisfactory score on the predecessor content specialty examination after receipt of his/her failing score on the revised content specialty tests and prior to [June 30, 2016] *June 30, 2017*; or

(ii) pass the predecessor content specialty examination on or before the new certification examination requirements became operational, provided the candidate has taken and failed the revised content specialty test prior to [June 30, 2016] *June 30, 2017*.

2. Subclause (1) of clause (b) of subparagraph (iv) of paragraph (2) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education, shall be amended, effective July 18, 2016, to read as follows:

(1) For the [2015-2016] *2016-2017* academic year, in the event that fewer than 80 percent of students, who have satisfactorily completed an institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination they have completed, such program shall submit to the department a professional development plan that describes how the program plans to improve the readiness of faculty and the pass rate for candidates on the examinations required for a teaching certificate. Further, for the 2015-2016 academic year, the department shall conduct a registration review in the event that fewer than 70 percent of students, who have satisfactorily completed the institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination that they have completed. For the [2016-2017] *2017-2018* academic year *and thereafter*, the department shall conduct a registration review in the event that fewer than 80 percent of students, who have satisfactorily completed the institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination that they have completed. For purposes of this clause, students who have satisfactorily completed the institution's program shall mean students who have met each educational requirement of the program, excluding any institutional requirement that the student pass each required examination of the New York State teacher certification examinations for a teaching certificate in order to complete the program. Students satisfactorily meeting each educational requirement may include students who earn a degree or students who complete each educational requirement without earning a degree. For determining this percentage, the department shall consider the performance on each certification examination of those students completing an examination not more than five years before the end of the academic year in which the program is completed or not later than the September 30th following the end of such academic year, academic year defined as July 1st through June 30th, and shall consider only the highest score of individuals taking a test more than once.

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-18-16-00010-EP, Issue of May 4, 2016. The emergency rule will expire September 8, 2016.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 207 grants general rule-making authority to the Regents to carry into effect State educational laws and policies.

Education Law 215 authorizes the Commissioner to require reports from schools under State educational supervision.

Education Law section 305(1) and (2) empowers the Commissioner of Education to be the chief executive officer of the state system of education and authorizes the Commissioner to execute educational policies determined by the Regents.

Education Law section 3001(2) establishes certification by the State Education Department as a qualification to teach in the State's public schools.

Education Law 3004(1) requires the Commissioner to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in the all public schools of the state.

Education Law section 3006(1)(b) provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

Education Law section 3009(1) provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or part thereof, be collected by a district tax except as provided in the Education Law.

2. LEGISLATIVE OBJECTIVES:

The amendment carries out the legislative objectives of the above-referenced statutes by extending the current safety net provisions for an additional year for the teacher certification examinations that are required for certain teachers who are seeking to be certified in New York State.

3. NEEDS AND BENEFITS:

At the November and December 2009 Board of Regents meetings, the Board approved a number of initiatives for the purpose of transforming teaching and learning in New York State. One of those initiatives was to strengthen the certification examinations for teachers and school leaders. In May 2010, the Board reaffirmed this direction for the new teacher certification examinations, which included the development of the Academic Literacy Skills Test (ALST), Educating All Students examination (EAS), redevelopment of the Content Specialty Tests (CSTs) and the implementation of a teacher performance assessment (edTPA).

In April 2012, Governor Cuomo established an Education Reform Commission that was charged with reviewing a broad range of education policy issues. The Commission made several recommendations, one of which was the creation of a "bar"-like exam, indicating the importance of ensuring that only qualified individuals are given the state's approval to educate our children.

In an effort to implement this requirement, new and revised certification exams were developed. The development of each certification examination follows a design and development process that is consistent with the standards of (i) the American Psychological Association; (ii) the National Council on Measurement in Education; and (iii) the American Educational Research Association. Separately, each certification examination has also gone through the process of content validation, job analysis and construct validity. The new examinations were specifically developed to be more rigorous and raise the entry bar to the teaching profession. In addition, each examination was developed to assess specific areas of knowledge, skills and abilities that teachers need to be effective in the classroom. Studies have repeatedly shown that students taught by better prepared teachers achieve better results.

Description of the New and Revised Examinations

The edTPA, a performance examination, is a multiple-measure examination system comprised of three tasks: (i) planning instruction and examination; (ii) instructing and engaging students in learning; and (iii) assessing student learning.

The ALST measures skills and competencies in reading and writing aligned to college and career readiness standards, including: (i) analyzing text structure; (ii) writing to sources; and (iii) using valid reasoning and relevant evidence to support claims.

The EAS measures skills and competencies that address: (i) diverse student populations; (ii) English language learners; (iii) students with disabilities and other special learning needs; (iv) teacher responsibilities; and (v) school-home relationships.

The CSTs measure content knowledge in a particular subject area, and are aligned with the New York State learning standards.

Throughout the development of the new and revised certification examinations, the Department worked closely with the field. Over 2,000 New York State educators and New York State teacher preparation program faculty have directly participated in various stages of the development process, including the establishment of the examination frameworks, validation and review of the frameworks, development and review of examination items, content review and bias review panels, and the establishment of performance standards for the examinations. As part of this process, the new and redeveloped assessments have been extensively field tested by over 10,000 New York State teacher candidates.

Supports, Accommodations and Professional Development for the New Examinations

The Department also established support systems for the field to ensure each college and university has the information necessary to adequately prepare its teacher candidates for success on the new and revised certification examinations.

However, many programs continued to share concerns that they have not had enough time to make changes to their programs and curricula. Therefore, the Board requested that the Department propose safety net options for the ALST, EAS and the CSTs. In response to the Board's request, the Department proposed multiple options for safety nets applicable to each of the following certification examinations: ALST, EAS and the CSTs and an extension of the edTPA safety net to exist conterminously with any other safety nets covering the remainder of the teacher certification examinations. At the April meeting, the Board instructed the Department to present an emergency amendment to the Commissioner's Regulations at its May 2015 meeting necessary to create and implement the following safety nets:

Academic Literacy Test ("ALST"):

Currently, the safety net for the ALST allows a candidate who takes and fails the ALST on or before June 30, 2016 to submit an attestation on or before June 30, 2016, on a form prescribed by the commissioner and signed by a dean or chief academic officer of a higher education institution or the substantial equivalent, attesting that the candidate has demonstrated comparable skills to what is required by the ALST through course completion and the candidate received a cumulative grade of a 3.0 or higher, or the substantial equivalent, in such coursework. The proposed amendment extends this safety net to June 30, 2017. However, the attestation no longer must be signed by the dean or chief academic officer of a higher education instruction.

Educating All Students Test ("EAS"):

The current safety net for the EAS revises the passing standard to establish a "safety net cut score" which would be operative through June 30, 2016. The proposed amendment extends the "safety net cut score" for the EAS to June 30, 2017.

Redeveloped Content Specialty Tests ("CSTs")

The CSTs measure content knowledge in a particular subject area, and are aligned with the New York State learning standards. Currently, there are 41 CSTs, of which 20 have been redeveloped. Currently, the safety net for the CSTs allows candidates who have taken and failed a redeveloped CST to take and pass the predecessor of the redeveloped CST currently required through June 30, 2016. The proposed amendment extends this safety net until June 30, 2017.

Extension of the Existing edTPA Safety Net

At its April 2014 meeting, the Board of Regents created a safety net allowing candidates who take and fail the edTPA to either (i) take and pass the ATS-W; or (ii) submit evidence of having achieved a satisfactory passing score on the ATS-W on or before April 30, 2014, in lieu of retaking and achieving a passing score on edTPA through June 30, 2015. As initially implemented, the safety net required that candidates complete all other requirements for certification on or before June 30, 2015 to take advantage of the edTPA safety net.

At its January 2015 Board of Regents meeting, the Board proposed an amendment to the safety net regulation to allow candidates an additional year, until June 30, 2016, to complete all other certification requirements so long as they (i) took and failed the edTPA and (ii) either took and passed the ATS-W; or submitted evidence of having achieved a satisfactory passing score on the ATS-W on or before April 30, 2014. At its April 2015 meeting, the Board of Regents extended the safety net for the edTPA until June 30, 2016 to be coterminous with the other safety nets. The proposed amendment extends the safety net for the edTPA for an additional year until June 30, 2017.

Professional Development and Corrective Action Plans

Section 52.21(b)(2)(iv)(b)(1) of the Commissioner's Regulations requires the Department to conduct a registration review of a program in the event that fewer than 80% of students, who have completed the program and have also completed one or more of the required certification examinations, pass each such examination that they have completed. At the April 2014 meeting, the Board approved waiving the 80% passage requirement for corrective action for students who take the edTPA during the 2013-2014 and 2014-2015 academic years, and instead requires programs where fewer than 80% of students pass the edTPA to submit a professional development plan to the Department that describes how the program will work to improve student outcomes. This was extended to the 2015-2016 academic year.

The Department recommends extending this safety net policy to all teacher certification examinations for the 2016-2017 academic year by requiring a professional development plan to be submitted to the Depart-

ment in the event that fewer than 80 percent of students who have satisfactorily completed the institution's program pass one or more of the required certification examinations, and requiring a corrective action plan be submitted to the Department in the event that fewer than 70% of such students pass these required examinations.

4. COSTS:

Cost to the State: None.

Costs to local government: None.

Cost to private regulated parties: Candidates who take and fail the ALST, EAS edTPA and/or CST, will need to pay a fee for the alternative safety net examination, if they choose to use the safety net option. The proposed amendment will provide additional flexibility for candidates who take and fail the certification exams on their first attempt.

Cost to regulating agency for implementation and continued administration of this rule: The State Education Department will use existing resources to implement the safety net.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES.

6. PAPERWORK:

There are no additional paperwork requirements beyond those currently imposed; except that for candidates who take and fail the ALST on or before June 30, 2017, the candidate may submit an attestation on or before June 30, 2017, on a form prescribed by the Commissioner, attesting that the candidate has demonstrated comparable skills to what is required by the ALST.

7. DUPLICATION:

The amendment does not duplicate any existing State or Federal requirements.

8. ALTERNATIVES:

There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that establish requirements for the certification of teachers for service in the State's public schools.

10. COMPLIANCE SCHEDULE:

The proposed amendment does not impose any additional compliance requirements or costs and instead provides additional flexibility for candidates who take and fail the certification exams on their first attempt. It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

We are nearing the expiration of all available Safety Nets for the certification exams. In order to address continuing the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty development around the certification exams, the Board is requesting that the department extend the safety net options for the teacher certification exams for an additional year, until June 30, 2017. The proposed amendments provide an extension for the alternative methods of meeting certification requirements for those candidates that take and fail the certification exams.

Currently, the safety net for the ALST allows a candidate who takes and fails the ALST on or before June 30, 2016 to submit an attestation on or before June 30, 2016, on a form prescribed by the commissioner, attesting that the candidate has demonstrated comparable skills to what is required by the ALST through course completion and the candidate received a cumulative grade of a 3.0 or higher, or the substantial equivalent, in such coursework. The proposed amendment extends this safety net to June 30, 2017.

The current safety net for the EAS revises the passing standard to establish a "safety net cut score" which would be operative through June 30, 2016. The proposed amendment extends the "safety net cut score" for the EAS to June 30, 2017.

The CSTs measure content knowledge in a particular subject area, and are aligned with the New York State learning standards. Currently, there are 41 CSTs, of which 20 have been redeveloped. Currently, the safety net for the CSTs allows candidates who have taken and failed a redeveloped CST to take and pass the predecessor of the redeveloped CST currently required through June 30, 2016. The proposed amendment extends this safety net until June 30, 2017.

At its April 2014 meeting, the Board of Regents created a safety net allowing candidates who take and fail the edTPA to either (i) take and pass the ATS-W; or (ii) submit evidence of having achieved a satisfactory passing score on the ATS-W on or before April 30, 2014, in lieu of retaking and achieving a passing score on edTPA through June 30, 2015. As initially implemented, the safety net required that candidates complete all other requirements for certification on or before June 30, 2015 to take advantage of the edTPA safety net.

At its January 2015 Board of Regents meeting, the Board proposed an amendment to the safety net regulation to allow candidates an additional year, until June 30, 2016, to complete all other certification requirements so long as they (i) took and failed the edTPA and (ii) either took and passed the ATS-W; or submitted evidence of having achieved a satisfactory passing score on the ATS-W on or before April 30, 2014. At its April 2015 meeting, the Board of Regents extended the safety net for the edTPA until June 30, 2016 to be coterminous with the other safety nets. The proposed amendment extends the safety net for the edTPA for an additional year until June 30, 2017.

Section 52.21(b)(2)(iv)(b)(1) of the Commissioner's Regulations requires the Department to conduct a registration review of a program in the event that fewer than 80% of students, who have completed the program and have also completed one or more of the required certification examinations, pass each such examination that they have completed. At the April 2014 meeting, the Board approved waiving the 80% passage requirement for corrective action for students who take the edTPA during the 2013-2014 and 2014-2015 academic years, and instead requires programs where fewer than 80% of students pass the edTPA to submit a professional development plan to the Department that describes how the program will work to improve student outcomes. For the 2015-2016 school year, the Board approved waiving the 80% requirement for corrective action, but requiring a professional development plan, and requiring corrective action in the event fewer than 70% of such students pass each of the required examinations.

The Department recommends extending this safety net policy to all teacher certification examinations for the 2016-2017 academic year by requiring a professional development plan to be submitted to the Department in the event that fewer than 80 percent of students who have satisfactorily completed the institution's program pass one or more of the required certification examinations, and requiring a corrective action plan be submitted to the Department in the event that fewer than 70% of such students pass these required examinations.

The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the amendment that it does not affect small businesses or local governments, 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 ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect teacher candidates who are applying for an initial certificate and who have taken and failed the new certification exams prior to June 1, 2017, including those candidates 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:

We are nearing the expiration of all available Safety Nets for the certification exams. In order to address continuing the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty development around the certification exams, the Board is requesting that the department extend the safety net options for the teacher certification exams for an additional year, until June 30, 2017. The proposed amendments provide an extension for the alternative methods of meeting certification requirements for those candidates that take and fail the certification exams.

Currently, the safety net for the ALST allows a candidate who takes and fails the ALST on or before June 30, 2016 to submit an attestation on or before June 30, 2016, on a form prescribed by the commissioner and signed by a dean or chief academic officer of a higher education institution or the substantial equivalent, attesting that the candidate has demonstrated comparable skills to what is required by the ALST through course completion and the candidate received a cumulative grade of a 3.0 or higher, or the substantial equivalent, in such coursework. The proposed amendment extends this safety net to June 30, 2017. However, the attestation no longer must be signed by the dean or chief academic officer of a higher education instruction.

The current safety net for the EAS revises the passing standard to establish a "safety net cut score" which would be operative through June 30, 2016. The proposed amendment extends the "safety net cut score" for the EAS to June 30, 2017.

The CSTs measure content knowledge in a particular subject area, and are aligned with the New York State learning standards. Currently, there are 41 CSTs, of which 20 have been redeveloped. Currently, the safety net for the CSTs allows candidates who have taken and failed a redeveloped CST to take and pass the predecessor of the redeveloped CST currently required through June 30, 2016. The proposed amendment extends this safety net until June 30, 2017.

At its April 2014 meeting, the Board of Regents created a safety net al-

lowing candidates who take and fail the edTPA to either (i) take and pass the ATS-W; or (ii) submit evidence of having achieved a satisfactory passing score on the ATS-W on or before April 30, 2014, in lieu of retaking and achieving a passing score on edTPA through June 30, 2015. As initially implemented, the safety net required that candidates complete all other requirements for certification on or before June 30, 2015 to take advantage of the edTPA safety net.

At its January 2015 Board of Regents meeting, the Board proposed an amendment to the safety net regulation to allow candidates an additional year, until June 30, 2016, to complete all other certification requirements so long as they (i) took and failed the edTPA and (ii) either took and passed the ATS-W; or submitted evidence of having achieved a satisfactory passing score on the ATS-W on or before April 30, 2014. At its April 2015 meeting, the Board of Regents extended the safety net for the edTPA until June 30, 2016 to be coterminous with the other safety nets. The proposed amendment extends the safety net for the edTPA for an additional year until June 30, 2017.

Section 52.21(b)(2)(iv)(b)(1) of the Commissioner's Regulations requires the Department to conduct a registration review of a program in the event that fewer than 80% of students, who have completed the program and have also completed one or more of the required certification examinations, pass each such examination that they have completed. At the April 2014 meeting, the Board approved waiving the 80% passage requirement for corrective action for students who take the edTPA during the 2013-2014 and 2014-2015 academic years, and instead requires programs where fewer than 80% of students pass the edTPA to submit a professional development plan to the Department that describes how the program will work to improve student outcomes. For the 2015-2016 school year, the Board approved waiving the 80% requirement for corrective action, but requiring a professional development plan, and requiring corrective action in the event fewer than 70% of such students pass each of the required examinations.

The Department recommends extending this safety net policy to all teacher certification examinations for the 2016-2017 academic year by requiring a professional development plan to be submitted to the Department in the event that fewer than 80 percent of students who have satisfactorily completed the institution's program pass one or more of the required certification examinations, and requiring a corrective action plan be submitted to the Department in the event that fewer than 70% of such students pass these required examinations.

The proposed amendment does not require any professional services to comply.

3. COSTS:

The proposed amendment does not impose any costs on the State, local governments, private regulated parties or the State Education Department; except that candidates who take and fail the edTPA or the CST will have to pay another certification examination fee to take advantage of the safety net option.

4. MINIMIZING ADVERSE IMPACT:

The State Education Department does not believe any changes for candidates who live or work in rural areas is warranted because uniform standards for certification are necessary across the State.

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

We are nearing the expiration of all available Safety Nets for the certification exams. In order to address continuing the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty development around the certification exams, the Board is requesting that the department extend the safety net options for the teacher certification exams for an additional year, until June 30, 2017.

The Department also recommends extending the safety net policy for corrective action on higher institutions whose to all teacher certification examinations for the 2016-2017 academic year by requiring a professional development plan to be submitted to the Department in the event that fewer than 80 percent of students who have satisfactorily completed the institution's program pass one or more of the required certification examinations, and requiring a corrective action plan be submitted to the Department in the event that fewer than 70% of such students pass these required examinations.

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

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

NOTICE OF ADOPTION

Academic Intervention Services

I.D. No. EDU-18-16-00005-A
Filing No. 686
Filing Date: 2016-07-11
Effective Date: 2016-07-27

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(ee) of Title 8 NYCRR.

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

Subject: Academic intervention services.

Purpose: Revises methodology for students in grades 3-8 to receive academic intervention services.

Text or summary was published in the May 4, 2016 issue of the Register, I.D. No. EDU-18-16-00005-P.

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

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

Substitute Teachers

I.D. No. EDU-18-16-00006-A
Filing No. 684
Filing Date: 2016-07-11
Effective Date: 2016-07-27

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 address the issue of school districts having difficulties finding certified teachers to serve as substitute teachers.

Text or summary was published in the May 4, 2016 issue of the Register, I.D. No. EDU-18-16-00006-P.

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

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

Since publication of a Notice of Proposed Rule Making in the State Register on May 4, 2016, the State Education Department (SED) received the following comments:

1. COMMENT:

One commenter urges the Board of Regents to reject the amendment because allowing uncertified and unqualified individuals to substitute teach for a longer time is not the best approach to solving the current shortage of certified teachers and because it will have a negative impact on students. The commenter referenced a previous move by the Board to eliminate the use of unqualified teachers (when NYC had over 10,000 temporarily licensed teachers employed). They pointed to the low pay rate

for substitutes as a cause of the shortage and suggested that districts should look to their retirees as a solution to the shortage. They also suggest that districts return to the practice of attracting substitutes by ensuring them several days of employment per week.

DEPARTMENT RESPONSE:

The proposed amendment addresses the certified substitute teacher shortages that have been expressed by the field. Extending the length of a substitute teacher is only allowed by the amendment in limited circumstances where the district superintendent (for districts that are a component district of a board of cooperative educational services or a BOCES) or the superintendent (for districts that are not a component district of a board of cooperative education services) certifies that the district or BOCES, as applicable, has conducted a good faith recruitment search and there are no available certified teachers that can perform the duties of such position. In rare circumstances, a district or BOCES may hire a substitute teacher beyond the 90 days, if a district superintendent or superintendent attests that a good faith recruitment search has been conducted and that there are still no available certified teachers who can perform the duties of such positon and that a particular substitute teacher is needed to work with a specific class or group of students until the end of the school year.

It continues to remain up to the individual district or BOCES to decide whether to hire an uncertified substitute teacher, and then whether the district is experiencing a shortage to allow for the additional 50 days that a substitute teacher may be employed. Districts and BOCES are free to employ the suggestions raised by the comment—encouraging district/BOCES retirees to work as substitutes and/or ensuring substitute teachers several days of work per week as a means of attracting certified individuals (or those pursuing certification).

2. COMMENT:

One commenter, a district superintendent, strongly supports the amendment to 80-5.4. The commenter explains that the amendment is critical to small rural school district which are already challenged with hiring substitute teachers in general, and who often spend the second half of the school year working to cover absent teachers. They point out that they are often left unable to cover classes.

DEPARTMENT RESPONSE:

Since the comment is supportive, no response is necessary.

NOTICE OF ADOPTION

Licensing Examination Requirements for Certified Shorthand Reporters

I.D. No. EDU-18-16-00007-A

Filing No. 682

Filing Date: 2016-07-11

Effective Date: 2016-07-27

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

Action taken: Amendment of section 71.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 7501(not subdivided) and 7504(1)

Subject: Licensing Examination Requirements for Certified Shorthand Reporters.

Purpose: To permit the department to accept a passing score on an exam determined by the State Board to be acceptable for licensure.

Text or summary was published in the May 4, 2016 issue of the Register, I.D. No. EDU-18-16-00007-P.

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

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

Licensure of Professional Geologists and Continuing Education for Land Surveyors

I.D. No. EDU-18-16-00008-A

Filing No. 683

Filing Date: 2016-07-11

Effective Date: 2016-11-21

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

Action taken: Amendment of section 29.3, Parts 52 and 68 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6509(9), 7200(not subdivided), 7204-a(not subdivided), 7204-b(not subdivided), 7206-b, 7205(not subdivided), 7207, 7208-a, 7209(1), (2) and (4); L. 2014, chs. 61 and 475; L. 2015, ch. 9

Subject: Licensure of Professional Geologists and Continuing Education for Land Surveyors.

Purpose: To establish the new profession of geology including licensure requirements, and extend continuing education for land surveyors.

Text or summary was published in the May 4, 2016 issue of the Register, I.D. No. EDU-18-16-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: 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 Proposed Rule Making in the May 4, 2016 State Register, the State Education Department received the following comments:

1. COMMENT:

A NY professional geology association expressed its support for the proposed rule and appreciation for being included, in an advisory role, in development of the concepts that led to it.

DEPARTMENT RESPONSE:

The Department appreciates the supportive comments as it works to protect the public and provide greater access to professional geological services by New Yorkers.

2. COMMENT:

The chair of the Geology Department of one NYS HE institution expressed support on behalf of his department for the required 30 hours of education in geological sciences, with specific requirements for 24 of the 30 hours in prescribed geological science subject areas, as providing students with a solid foundation for passing licensure examinations and having the breadth and depth to perform in their field. The commenter also expressed pleasure at the math and science cognate requirements as they believe these will ground students in statistics and natural sciences, and offer a pathway to licensure for students in less traditional subspecialties such as ecohydrogeology and paleobiology.

DEPARTMENT RESPONSE:

The Department appreciates the supportive comments as it works to protect the public and provide greater access to professional geological services to New Yorkers.

3. COMMENT:

One CUNY faculty member suggested that NY require courses in seismology, exploration geophysics, well logging and petroleum geology for licensure as there could be an advantage to NYS licensed geologists because their licenses might be recognized by reciprocity in other states with more geological activity, such as Pennsylvania, West Virginia, Ohio, Colorado, California, Texas, Utah, Montana and Wyoming.

DEPARTMENT RESPONSE:

In developing the educational requirements for licensure, the Department and the State Board for Engineering, Land Surveying and Geology (State Board) researched educational requirements in every state in the

country. Balancing public protection against access to the profession, the Department and State Board selected educational criteria that are congruous with many states and the model offered by the National Association of State Boards of Geology (ASBOG), the professional association responsible for developing the examinations that are used for licensure purposes by member states. Of the nine states the commenter mentioned, three, Colorado, Montana, and Ohio, do not license geologists. In addition, six others do not specifically require the courses noted, for licensure in their states. It is reasonable to synthesize from this review that requiring these specific courses would not gain NY licensees an advantage in achieving licensure in the states listed as they are not currently required for those states' own licensees.

NY HE institutions may include these courses in their licensure qualifying geology education programs as the breadth of the requirements recommended by the Department and State Board allows for them, without prescriptively requiring them. Thus, no changes are necessary.

4. COMMENT:

A practicing geologist stated there should be no grandfathering period as it represents a disservice to public safety and to those professionals who have passed the ASBOG exams for licensure in other jurisdictions. The commenter further asserted that not all individuals seeking licensure share the same moral compass and ethics as those who have taken the ASBOG exam.

DEPARTMENT RESPONSE:

The grandfathering licensure pathway is required by statute. This pathway cannot be eliminated or changed absent a statutory change. This pathway allows individuals who have been providing geological services to the public to qualify for a license as a professional geologist, without a written examination, if they satisfy specified education and experience requirements and submit an application to the Department within one year of the November 21, 2016 effective date of this provision. Thus, no changes are necessary.

5. COMMENT:

The same practicing geologist states that the cognate math and science requirements should be phased in over several years. The commenter states that other states do not have the same math and science requirements. Further, the commenter notes that NYSED should require the SUNY system and private universities to adopt the licensure qualifying criteria into their geological science degree programs over the next decade. A second practicing geologist notes that his BA in Geological Sciences did not contain the math and science cognates, and they were completed in his graduate work.

DEPARTMENT RESPONSE:

In researching the educational requirements in other jurisdictions, the Department and State Board found many states that license geologists require that most of the prescribed professional course work be obtained at the upper level in a bachelor or higher degree program. This means that these states do, in fact, require cognate math and science as this knowledge is necessary to complete the advanced professional course work, whether as an undergraduate or graduate student. The Department and State Board believe this is essential as practice within the field of geology frequently requires further specialization with advanced understanding in math and science. This serves to promote greater understanding by licensees and additional safeguards for the public.

The Department's role is not to require any HE institution to create licensure qualifying programs. Rather, its role is to set the standard for a licensure qualifying program to be met by those HE institutions that seek to offer licensure qualifying programs. In this way, the public will be informed of the educational standards for licensure qualifying programs and can select the type of program that most closely assists them in meeting their educational and professional goals. Thus, no changes are necessary.

6. COMMENT:

A commenter states that language in the proposed rule should be revised to include only "bachelor's or higher degree", to be consistent with the statute.

DEPARTMENT RESPONSE:

In an effort to recognize that NY is a gateway state, in that some NY professional geologist licensure applicants are educated on an international basis, it is necessary to add language that allows for documentation from other countries that award degrees and offer course work in formats other than the 4 year bachelor's program. Often advanced science and math courses are taken while still in the international high school, yet are comparable to the math and science courses taken in the first and second years of college in the US system. To accommodate all eventualities, the language "or a substantially equivalent program" was added to the proposed rule so that the Department may evaluate internationally earned credits and make a determination regarding their equivalence to courses in licensure qualifying programs within NYS. The proposed rule's language is consistent with the statute and the discretion it provides to the Commissioner in developing regulations regarding the education requirements for licensure as a professional geologist. Thus, no changes are necessary.

7. COMMENT:

The same commenter states that there is a discrepancy between the language in the new section 52.46, which refers to "a program … which leads to a bachelor's or higher degree" and the new section 68.7 (b) and (c) that discusses requirements for education. The commenter believes the statements do not show an understanding that the educational requirements may have been fulfilled either while earning the bachelor's degree or higher degree or by some combination of both.

DEPARTMENT RESPONSE:

The commenter appears to have misunderstood the aforementioned section. The new section 68.7(b) delineates the various licensure pathways, via education and experience. Section 68.7 b (1) refers to pathway 1, where the applicant will graduate from a licensure qualifying program with a bachelor's degree in geological sciences or a substantially equivalent program, OR has graduated from a licensure qualifying geological science program with a bachelor's degree AND holds an advanced degree from a geological sciences program (pathway 2). Section 68.7 (b)(2) refers to an applicant who has graduated from a bachelor's degree program in science or engineering or a substantially equivalent program AND holds an advanced degree in geological sciences (pathway 3). Section 68.7 (b)(3) is pathway 4, an all-experience route to licensure requiring 12 years of work experience acceptable to the State Board. These pathways represent a consolidation of various routes available to applicants to become NY professional geologists. They maintain required educational content for a geologist to be competent, while acknowledging and crediting work experience that may sufficiently prepare the applicant to be successful on the ASBOG examination and in geology practice. Thus, no changes are necessary.

8. COMMENT:

The same commenter notes that some experience requirements set forth in the proposed rule go beyond the plain language of the statute. While acknowledging that rules routinely add detail to the statute, the commenter feels that the rule has overstepped that which the statute has authorized.

DEPARTMENT RESPONSE:

The commenter does not specify which requirements overstep the experience requirements in the statute. However, pursuant to Education Law § 7206-b(1)(c), applicants for licensure must have at least five years practical experience acceptable to the State Board in appropriate geological work; up to one year of experience may be granted for an advanced degree (masters, doctorate or equivalent) in accordance with the Commissioner's Regulations. This statute gives the Department and State Board a significant amount of discretion in establishing the experience requirements for licensure. The proposed rule's experience requirements are consistent with the statute and the Department and State Board believe these requirements are crucial to the development of professional judgement and ethical behavior in the practice of all types of geology. Therefore, no changes are necessary.

9. COMMENT:

The same commenter supports the appropriately detailed definition of the practice of professional geology without being unduly prescriptive.

DEPARTMENT RESPONSE:

The Department appreciates the supportive comments as it works to protect the public and provide greater access to professional geological services to New Yorkers.

10. COMMENT:

The same commenter asserts that by stating "only a person licensed or otherwise authorized under this article shall practice geology" that individuals who "generally" meet the requirements, but not the "overly prescriptive" education/experience rules, will be threatened with loss of livelihood or unauthorized practice of a profession or use of a professional title. The commenter asserts that there should be an appeals process in place, similar to the one in 8 NYCRR 24.4.

DEPARTMENT RESPONSE:

Section 24.4 of the Rules of the Board of Regents state that the Committee on the Professions may review and determine appeals for licensing determinations of the Department staff relating to education or experience requirements if the chairman of the committee determines that the appeal involves a substantial or novel question which should be reviewed by the committee. This rule applies to all professions under the Department's jurisdiction, thus no changes are necessary.

11. COMMENT:

The same commenter states that the proposed rule should be revised to remove the statement that indicates experience must be completed after successful completion of the educational requirements. The commenter feels that practical experience earned under a qualified geologist or engineer prior to or while attending a university program in geology, should be counted in the four to five years of experience acceptable to the Board.

DEPARTMENT RESPONSE:
Section 68.8 of the proposed rule allows education/experience credit to be awarded for the degree(s) earned at a rate of roughly two years for each year of education completed in a bachelor's degree program. This credit takes into account that there may be summer work or experiences in the field that add context to that portion of educational courses recently completed. The Department and State Board believe that work experience gained after the educational degree is awarded needs to be at a level that prepares the applicant for accepting full responsibility for the geological work done. This is not possible while the applicant is still a student and has not yet completed the foundational studies upon which to base sound professional judgment. Work experience acceptable to the State Board is work experience that brings into play all the knowledge from the completed education and skills from paid time in the field, and demonstrates the applicants' ability to accept responsible charge, and exert sound decision-making capacity. Thus, no changes are necessary.

NOTICE OF ADOPTION

Endorsement of Out-of-State Certificates for Teaching and Educational Leaders

I.D. No. EDU-18-16-00009-A
Filing No. 685
Filing Date: 2016-07-11
Effective Date: 2016-07-27

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

Action taken: Amendment of sections 80-5.8 and 80-5.20 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: Endorsement of out-of-state certificates for teaching and educational leaders.

Purpose: To provide an alternative pathway for endorsement of out-of-state certificates for service as a teacher or educational leader.

Text or summary was published in the May 4, 2016 issue of the Register, I.D. No. EDU-18-16-00009-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
Since publication of a Notice of Proposed Rule Making in the State Register on May 4, 2016, the State Education Department (SED) received the following comments:
1. COMMENT:
One commenter expressed strong support for the proposed amendment to the available endorsement pathways. The commenter identified themselves as a "Big 5 school district" that hires between 100-150 new teachers per year and serves a population of multi-racial students. This change is supported because it is essential to meet the needs of such populations, especially in an urban setting.
DEPARTMENT RESPONSE:
Since the comment is supportive of the proposed amendment, no response is necessary.
2. COMMENT:
One commenter disagreed with the creation of pathways which would allow out-of-state leaders to circumvent the New York State certification exams.
DEPARTMENT RESPONSE:
The Department recognizes that the amendments to 80-5.8 and 80-5.20 of the Regulations create a pathway for teachers and leaders certified out-of-state to become certified without taking the New York State certification exams. However, the amendments also include additional requirements in lieu of the certification examinations: three years of experience within the last five years, and ratings of effective or highly effective on the three most recent years of evaluations. These requirements are meant to ensure that certified individuals coming in from out-of-state seeking teacher or leader certification in New York have sufficient expertise in order to demonstrate that they are comparable to an in-state teacher or leader who has taken and passed the 'New York certification exams.

NOTICE OF ADOPTION

Examinations for Teacher Certification

I.D. No. EDU-18-16-00010-A
Filing No. 687
Filing Date: 2016-07-11
Effective Date: 2016-07-27

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

Action taken: Amendment of sections 52.21 and 80-1.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 215(not subdivided), 305(1), (2), 3001(2), 3004(1) and 3009(1)

Subject: Examinations for Teacher Certification.

Purpose: Extension of the safety net for certain teacher certification examinations.

Text or summary was published in the May 4, 2016 issue of the Register, I.D. No. EDU-18-16-00010-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 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.

Department of Environmental Conservation

NOTICE OF ADOPTION

Atlantic Ocean Surfclam Management

I.D. No. ENV-50-15-00003-A
Filing No. 693
Filing Date: 2016-07-12
Effective Date: 2016-07-27

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

Action taken: Amendment of Subparts 43-2 and 43-3 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 13-0309(12)

Subject: Atlantic Ocean surfclam management.

Purpose: To amend surfclam regulations to provide consistency with the management measures of the Fishery Management Plan.

Text of final rule: Part 43 of 6 NYCRR is amended to read as follows:
Subdivision 43-2.6(b) is amended to read as follows:
(b) [Effective January 1, 2010, an] *An* individual fishing quota system (IFQ) [shall be] *has been* established which will allocate to each eligible vessel an annual individual fishing quota. The individual fishing quota shall be determined annually based on the annual harvest limit referenced in subdivision (a) of this section divided equally by the number of eligible vessels authorized to participate in the Atlantic Ocean surfclam fishery. The IFQ assigned to an eligible vessel shall be nontransferable and each vessel can only be used to catch one quota allocation. *No eligible vessel shall take or attempt to take more than one quota allocation of surfclams on any surfclam/ocean quahog Atlantic Ocean permit or take more than the cumulative equivalent of one quota allocation if identified as the eligible vessel on one or more surfclam/ocean quahog Atlantic Ocean*

permits when authorized pursuant to section 43-3.5 of Subpart 43-3, during any calendar year. The IFQ will expire on December 31st of each year and any unused quota not taken prior to the end of the year will not roll over into the next year but will remain uncaught.

Subdivision 43-2.8(c) is amended to read as follows:

(c) [Effective January 1, 2010, all] *All* surfclam cages or individual standard bushel containers, or portions thereof, must be tagged with a cage tag prior to offloading from the vessel *except as authorized by the department*. Such tag must be firmly attached on or near the upper crossbar of the cage or affixed to an industry standard bushel container. A cage tag is required for every 60 cubic feet of cage volume of a standard cage, or portion thereof, or each container holding an industry standard bushel or portion thereof. Each cage tag shall indicate the state issuing the tag, the year issued, the Federal documentation number or State registration number of the vessel assigned the individual fishing quota (IFQ), and the serialized number assigned to that tag in ascending order. *Cage tags shall be affixed to standard cages or containers holding industry standard bushels or portions thereof in ascending order of the serial numbers assigned to the vessel.*

Subdivision 43-2.8(e) is amended to read as follows:

(e) It is unlawful to reuse, alter, sell, offer for sale or transfer any cage tag issued under this section. Once a [vessel owner's] *vessel's* allocation *or cumulative equivalent of one IFQ allocation* of cage tags is used, that vessel may no longer take surfclams by mechanical means from the New York State certified waters of the Atlantic Ocean. *No vessel shall take or attempt to take more than one quota allocation of surfclams on any surfclam/ocean quahog Atlantic Ocean permit or take more than the cumulative equivalent of one quota allocation if identified as the eligible vessel on one or more surfclam/ocean quahog Atlantic Ocean permits when authorized pursuant to section 43-3.5 of Subpart 43-3, during any calendar year.*

Subdivision 43-2.8(h) is amended to read as follows:

(h) It is unlawful to land, offer for sale or sell surfclams taken by mechanical means from New York State certified waters of the Atlantic Ocean in a standard cage or industry standard bushel container which are not properly tagged as described in this section *unless authorized by the department*. A cage tag or tags must not be removed from any standard cage or industry standard bushel container until the cage or standard bushel container is emptied by the processor, at which time the processor must promptly remove and retain the tag(s) for 60 days beyond the end of the calendar year, unless otherwise directed by the department or state or Federal law enforcement agents.

Existing subdivision 43-2.8(i) is renumbered 43-2.8(k) and remains unchanged.

New subdivisions 43-2.8(i) and 43-2.8(j) are adopted to read as follows:

(i) A vessel owner may apply for a temporary exemption from the cage tagging requirements of this section by submitting a written request to the department. The vessel owner must possess a valid surfclam/ocean quahog Atlantic Ocean permit and provide a copy of the cage tag order form that has been submitted to the department or department's approved vendor for the current calendar year. Any vessel taking surfclams under this temporary cage tagging exemption shall keep a copy of the department's written exemption onboard the vessel at all times and made immediately available to a department representative or an enforcement officer upon request.

(j) The captain/operator or owner/lessee of a vessel that has received a temporary exemption to harvest without cage tags shall notify the department prior to commencement of any and all surfclam harvest conducted under an IFQ assigned to an eligible vessel in the Atlantic Ocean surfclam fishery. Such notification must include the following information: identification of the name of the vessel to be fishing, name of captain/operator, date and time harvest will commence, expected time harvest will end, approximate location of fishing area to the nearest landmark or inlet, and identification of dockage and landing location(s). The notification must be made by email, fax or telephone prior to commencement of all surfclam harvesting activities conducted on a daily basis. The captain/operator or owner/lessee must complete and submit a surfclam vessel harvest report immediately following each surfclam harvest trip conducted without cage tags on a daily basis. All surfclam vessel harvest reports must be submitted to the department on the same day as harvest is conducted, on a form provided by the department. The permit holder shall notify the department in writing upon their receipt of cage tags from the authorized cage tag vendor and submit a written request for termination of the temporary cage tagging exemption. The permittee shall be required to surrender cage tags as directed by the department to account for the harvest conducted under the temporary cage tagging exemption based on the quantities of surfclams harvested and reported on the surfclam vessel harvest reports.

Existing subdivision 43-3.3(e) is renumbered 43-3.3(f) and remains unchanged.

New subdivision 43-3.3(e) is adopted to read as follows:

(e) 'Individual fishing quota' means the annual allocation of surfclam quota that is assigned to each eligible surfclam vessel based on the annual harvest limit divided equally by the number of eligible vessels authorized to participate in the Atlantic Ocean surfclam fishery.

New subdivision 43-3.5(d) is adopted to read as follows:

(d) No vessel in the Atlantic Ocean surfclam fishery which has been subject to and identified in the sale, transfer or replacement of an eligible vessel by the vessel owner or lessee under this section shall take more than one individual fishing quota (IFQ) or take more than the cumulative equivalent of one IFQ in any calendar year when identified on one or more Atlantic Ocean surfclam owner/lessee permit(s).

Final rule as compared with last published rule: Nonsubstantive changes were made in section 43-2.6(b).

Text of rule and any required statements and analyses may be obtained from: Debra Barnes, NYSDEC, 205 North Belle Mead Road, Suite 1, East Setauket, New York 11733, (631) 444-0477, email: debra.barnes@dec.ny.gov

Additional matter required by statute: The action is subject to SEQR as an Unlisted action and a Short EAF was completed. The Department has determined that an EIS need not be prepared and has issued a negative declaration. The EAF and negative declaration are available upon request.

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

The text of the proposed rule contains a non-substantive change in 6 NYCRR subdivision 43-2.6(b) which adds the last sentence of the existing subdivision that was unintentionally omitted from the proposed rule. The original proposed rule, which was published in the State Register on December 16, 2015, (I.D. Number: ENV-50-15-00003-P), mistakenly did not contain this portion of the existing regulation. This change in the final rule which is already part of subdivision 43-2.6(b) will not impose any new requirements on surfclam industry participants as it is currently a regulatory requirement.

The Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement that was published with the Notice of Proposed Rule Making remains accurate and does not require revision to address this non-substantive change.

Initial Review of Rule

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

Assessment of Public Comment

The New York State Department of Environmental Conservation (DEC) received a total of twenty-seven written comments on the proposed rule making to amend 6 NYCRR Part 43 (Subparts 43-2 and 43-3) pertaining to Atlantic Ocean Surfclam Management. Twenty-two were form letters having the same content that support the proposed rule as a way to prevent harmful practices in the industry which have led to the precipitous decline in the overall surfclam population in New York waters. One comment expressed similar support for the rule as a measure to address industry practices affecting the decline in the surfclam population. Two comments were supportive of any regulations involving cooperative harvesting and vessel replacement that allow eligible vessels to catch their individual fishing quotas but oppose any rule making that would prevent the harvesting of their yearly quotas. One comment expressed concern about the cage tagging exemption provision and potential enforcement loophole but was generally supportive of the need to protect family small businesses and traditional fishermen on Long Island. One commenter, representing thirteen out of seventeen surfclam permit holders, one shellfish shipper and one company that does not hold a surfclam permit but is having a vessel built, was opposed to the proposed rule that restricted each eligible surfclam vessel to be used to catch only one individual fishing quota regardless of the surfclam permit or permits the vessel was assigned to in a calendar year.

The comments are summarized below, followed by DEC's response:

Comment: The commenters have over twenty-five years' experience as owners of a surfclam vessel in New York's Atlantic Ocean fishery and feels that the proposed changes will help counteract harmful practices in the industry that have led to the precipitous decline in the overall surfclam population in New York waters. They supported the State's efforts to take action to encourage the vitality of the surfclam population. The twenty-two form letters contained the same overall comment although DEC cannot determine if any are participants in the surfclam fishery. These comments are addressed in a single response.

DEC response: The proposed rule is intended to address inconsistencies in the regulations and the Surfclam Fishery Management Plan (FMP) for the Atlantic Ocean pertaining to an eligible vessel's taking of surfclams

under an individual fishing quota (IFQ), use of cage tags and replacement of eligible vessels. The rule does not address the decline in the overall surfclam population.

Comment: Two commenters supported any type of cooperative harvesting or replacement vessel regulations that allow eligible vessels to harvest their permitted yearly quotas. The commenters currently do not have vessels capable of harvesting their available quotas and rely on cooperative harvesting or vessel replacement regulations to derive economic benefit from their permitted quota. They oppose any rule making that would not allow their permits to be cooperatively harvested or vessel replacements to occur for the purpose of harvesting their IFQs.

DEC response: State regulations controlling Atlantic Ocean Surfclam Management (6 NYCRR Part 43, Subpart 43-2) do not authorize cooperative harvesting of a vessel's IFQ by an eligible vessel assigned to another surfclam permit holder. Additionally, the regulations assign IFQs to eligible vessels owned or leased by the permit holder and do not allow for transfer or consolidation of quota. Therefore, in order to harvest surfclams from the Atlantic Ocean and participate in the fishery, a permit holder must own or lease a vessel consistent with the regulations in 6 NYCRR Part 43, Subparts 43-2 and 43-3. The proposed rule does not prohibit the replacement of eligible vessels in the fishery which has been done historically by surfclam permit holders for replacement of inoperable and inefficient vessels by other vessels not currently operating in the fishery. The permit holder may replace an eligible vessel in the fishery at any time to allow for harvest of the vessel's IFQ subject to the vessel replacement requirements in Subpart 43-3. The proposed rule clarifies that all vessels are limited to harvesting no more than one IFQ, regardless of the surfclam permit or permits they are assigned to, which is consistent with the management measures in the State's Atlantic Ocean Surfclam FMP. DEC cannot consider the alternative options of cooperative harvesting, unrestricted vessel replacement or cross-replacement (swapping) amongst permit holders of vessels already eligible to participate in the fishery for harvest of another vessel's IFQ if these options are inconsistent with or not authorized by the State's Atlantic Ocean Surfclam FMP. The FMP establishes the framework for harvest management provisions of New York's surfclam fishery.

Comment: The commenter requested clarification on the DEC's intent of the regulatory language in subdivision 43-2.6(b) because the last sentence of the existing rule was not included in the proposed text of the rule making as published in the State Register and on the DEC's website.

DEC response: The last sentence of the existing rule in subdivision 43-2.6(b) remains unchanged. This sentence was unintentionally omitted in the Notice of Proposed Rule Making Express Terms (text) but will be included in the text of the rule when published with the Notice of Adoption in the State Register to clarify and appropriately address this issue.

Comment: The commenter supports the need for the regulations to be consistent with New York State's FMP for the Atlantic Ocean Surfclam Fishery to minimize the potential for monopolization of the State's annual surfclam quota by a few vessels. They recognized the generations of Long Island families with long fishing traditions and expressed the need to support this family small business tradition.

DEC response: DEC concurs with this comment and acknowledges that the proposed rule is intended to take into consideration and maintain the economic viability of these traditional surfclam fishery participants.

Comment: The commenter expressed concern about the proposed cage tag exemptions which may create a potential enforcement loophole. They recommended that the rules for cage tag exemption ensure authenticity of every exemption, require an affirmation and also provide the public with information identifying the applicant in the Environmental Notice Bulletin or DEC's website.

DEC response: DEC agrees with the need to ensure enforceability of the cage tagging exemption provisions of the rule to prevent illegal harvesting of surfclams. The cage tagging exemption has been authorized by DEC since 2010 through special conditions on Atlantic Ocean surfclam permits to minimize any unnecessary hardship to the surfclam industry and allow surfclam permit holders to harvest surclams while their cage tag orders are processed by the authorized cage tag supply vendor. DEC's Division of Law Enforcement is provided with a list of those vessels that are temporarily authorized to harvest without cage tags. DEC is not aware of any non-compliance associated with this exemption. The temporary authorization includes daily pre-harvest notification and vessel catch report requirements to ensure compliance with the exemption provisions of the rule.

Comment: The commenter representing multiple fishery interests expressed opposition to the parts of the rule restricting each eligible vessel to harvest no more than one IFQ and stated that the impacts to the industry participants would be devastating. Over half of the permit holders do not have eligible and usable vessels capable of harvesting in the Atlantic Ocean fishery. These fishery participants have been cooperatively harvesting in the fishery since the advent of the replacement rule. They will be placed at an economic disadvantage or denied opportunity to harvest their IFQ as a result of the proposed rule.

DEC response: DEC disagrees with this comment. The replacement rule was adopted at the time of limited entry of vessels in the fishery as a means to allow for the replacement of an eligible vessel either temporarily or permanently while maintaining the vessel's eligibility in the fishery. The permit holders replaced their surfclam vessels with ones typically not already eligible to participate in the fishery. According to DEC's records, very few vessel replacements were requested by permit holders prior to 2014 and most of those replacements involved the permanent replacement of the eligible vessel with a more seaworthy, oceangoing vessel that was not participating in the fishery at that time. Since 1993, all permit holders have been required to own or lease a vessel to maintain eligibility in the fishery and harvest surfclams from the Atlantic Ocean. Additionally, prior to 2011, no cooperative harvesting was undertaken and all permit holders seeking to harvest surfclams from the Atlantic Ocean used their permitted eligible vessel to participate in the fishery. Prior to 2014, DEC has no records of any request under vessel replacement regulations for the cross-replacement (swapping) of eligible vessels in the fishery amongst permit holders to harvest surfclams from the Atlantic Ocean. During the years 2005, 2007, 2009, and 2010, a total of 22, 19, 17 and 16 eligible vessels, respectively, out of a total of 22 or 23 eligible vessels, reported harvesting surfclams in the Atlantic Ocean. In 2010, the majority of the 22 eligible vessels harvested surfclams from the Atlantic Ocean under an IFQ. DEC does not see any reason why a surfclam permit holder cannot continue to either fish the vessel assigned to their permit or seek a replacement vessel through purchase or lease as has been done in the past, if they want to harvest surfclams in the Atlantic Ocean. The proposed rule does not provide any economic advantage or disadvantage to fishery participants but rather implements a system of equally allocating fishing quota to all vessels in the fishery which is consistent with the State's Atlantic Ocean Surfclam FMP.

Comment: The commenter representing multiple fishery interests disagreed with DEC's justification for the proposed rule to prevent monopolization of the quota by a few vessels. They also expressed concern that there are a limited number of vessels capable of catching surfclams that also satisfy the State's eligibility requirements. This will create a hardship for permit holders with vessels not capable of fishing.

DEC response: DEC's justification is consistent with the harvest management measures of the Atlantic Ocean Surfclam FMP and individual fishing quota (IFQ) system which allocates IFQs equally to each eligible vessel on an annual basis. In 2010 when the IFQ system was established, 16 out of 22 vessels harvested surfclams in the Atlantic Ocean. Some vessels did not harvest due to lack of markets for their surfclams. In 2011, this number was reduced to 11 and in 2012 and 2013, only 7 vessels harvested surfclams, due to the amendment of the Environmental Conservation Law that allowed for cooperative harvesting amongst vessel owners and consolidation of a vessel's IFQ. This provision in law sunset as of December 31, 2013. The proposed rule reinforces the provisions of the regulations for IFQs that are consistent with the State's management of this fishery and provides for equal participation in the fishery by all permit holders. The FMP and regulations also recognize that if some vessels do not fish or do not harvest their full IFQ, any uncaught clams will have a positive benefit by providing an additional conservation measure to help sustain the surfclam population in the Atlantic Ocean. It is not uncommon for any fishery to have less than 100 percent participation in any given year. It is also expected that surfclam permit holders involved in a limited-entry fishery with nontransferable IFQs must make an investment in a vessel capable of harvesting surfclams, either by maintaining their own vessel or purchasing or leasing a replacement vessel, if they want to maintain eligibility in the fishery and take surfclams from the Atlantic Ocean. Lastly, the harvest management alternatives provided in this comment are outside the scope of the State's Atlantic Ocean Surfclam FMP and cannot be considered as viable alternatives under the proposed rule.

Comment: The commenter representing multiple fishery interests stated that the proposed rule should be rejected. DEC should focus on adopting a resumption of cooperative harvesting for the fishery.

DEC response: Cooperative harvesting is outside of the scope of the proposed rule and inconsistent with the Atlantic Ocean Surfclam FMP. Therefore, it cannot be considered as an alternative option under the adoption of the rule.

Office of Parks, Recreation and Historic Preservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Updated List of Facilities Within the Jurisdiction of the Office of Parks, Recreation and Historic Preservation

I.D. No. PKR-30-16-00010-P

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

Proposed Action: Amendment of sections 384.1-384.4, 384.7, 384.10 and 384.11 of Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, sections 3.09(8) and 13.03(1)

Subject: Updated list of facilities within the jurisdiction of the Office of Parks, Recreation and Historic Preservation.

Purpose: To keep accurate the list of facilities within the jurisdiction of the Office of Parks, Recreation and Historic Preservation.

Text of proposed rule: Title 9 NYCRR Part 384.1, pertaining to and entitled "Niagara Region," is amended as follows:

Subdivision (a), (b), and (c) of section 384.1 are amended as follows:

(a) State parks.

Amherst	Erie
Beaver Island	Erie
Buckhorn Island	Erie
Buffalo Harbor	*Erie*
DeVeaux Woods	Niagara
Devil's Hole	Niagara
Earl W. Brydges Artpark	Niagara
Evangola	Erie
Fort Niagara	Niagara
Four Mile Creek	Niagara
Golden Hill	Niagara
Joseph Davis	Niagara
Knox Farm	Erie
Niagara Falls	Niagara
Reservoir	Niagara
Strawberry Island	Erie
Whirlpool	Niagara
Wilson-Tuscarora	Niagara
Woodlawn Beach	Erie

(b) Boat launches.

Big Six Mile Creek Marina	Erie
[Buckhorn Island	Erie]
[Erie Canal	Niagara]
Rt. 62 North Tonawanda Boat Launch	Niagara
[Upper Niagara River	Erie]

(c) Parkways.

[Robert Moses] *Niagara Scenic Parkway*	Niagara
South State	Erie
West River	Erie

Title 9 NYCRR Part 384.2, pertaining to and entitled "Allegany Region," is amended as follows:

Subdivision (b) of Section 384.2 is amended as follows:

(b) Boat launches.

Allegheny Reservoir	[Allegany] *Cattaraugus*
Sunset Bay State Marine Park	*Chautauqua*

Title 9 NYCRR Part 384.3, pertaining to and entitled "Genesee Region," is amended as follows:

Subdivision (b) of Section 384.3 is amended as follows:

(b) Boat launches.

Canal Park at Lock 32 (Pittsford)	Monroe
Conesus Lake Marine Park	Livingston
Irondequoit Bay Marine Park	Monroe
[Oak Orchard Marine Park East	Orleans]
[Oak Orchard Marine Park West	Orleans]
Oak Orchard Marine Park	*Orleans*

Title 9 NYCRR Part 384.4, pertaining to and entitled "Finger Lakes Region," is amended as follows:

Subdivision (e) of Section 384.4 is amended as follows:

(e) Trails and miscellaneous.

Black Diamond Trail	Tompkins
Catharine Valley Trail	Chemung and Schuyler
[Sterling Conservation Easement	Cayuga]

Title 9 NYCRR Part 384.7, pertaining to and entitled "Palisades Region," is amended as follows:

Subdivision (a) of Section 384.7 is amended as follows:

(a) State parks.

Bear Mountain	Orange and Rockland
Blauvelt	Rockland
Bristol Beach	Ulster
Franny Reese [Preserve]	Ulster
Goose Pond Mountain	Orange
Harriman	Orange and Rockland
Haverstraw Beach	Rockland
Highland Lakes	Orange
High Tor	Rockland
Hook Mountain	Rockland
[Iona Island	Rockland]
Lake Superior	Sullivan
Minnewaska State Park Preserve	Ulster
Nyack Beach	Rockland
Palisades	Rockland
Rockland Lake	Rockland
Schunnemunk	Orange
Sterling Forest	Orange
Storm King	Orange
Tallman Mountain	Rockland

Title 9 NYCRR Part 384.10, pertaining to and entitled "Saratoga-Capital District Region," is amended as follows:

Subdivision (a), (d) and (e) of Section 384.10 are amended as follows:

(a) State parks.

Cherry Plain	Rensselaer
Grafton Lakes	Rensselaer
Hudson River Islands	Columbia
John Boyd Thacher	Albany
Lake Lauderdale	Washington
Max V. Shaul	Schoharie
Mine Kill	Schoharie

Mohawk River	Schenectady
Moreau Lake	Saratoga and Warren
Peebles Island	Saratoga
Saratoga Spa	Saratoga
Schodack Island	Columbia, Greene and Rensselaer
[Thompson's Lake	Albany]

(d) State historic sites.

Bennington Battlefield	Rensselaer and Washington
Crailo	Rensselaer
Grant Cottage	Saratoga
Guy Park	Montgomery
Johnson Hall	Fulton
[Rexford Aqueduct	Schenectady]
Schoharie Crossing	Montgomery
Schuyler Mansion	Albany
Susan B. Anthony	Washington

Subdivision (e) of Section 384.10 is amended as follows:
(e) Trails and miscellaneous.

Hudson-Mohawk Trail	Albany, Schenectady, Montgomery, Herkimer
Washington County Trail	Washington County
Albany Pine Bush Preserve	Albany
Rexford Aqueduct - (listed on National and State Registers of Historic Places)	*Schenectady*

Title 9 NYCRR Part 384.11, pertaining to and entitled "New York City Region," is amended as follows:
Subdivision (a) of Section 384.11 is amended as follows:
(a) State parks.

Bayswater Point	Queens
Clay Pit Ponds State Park Preserve	Richmond
East River	Kings
FDR Four Freedoms	*New York*
Gantry Plaza	Queens
[Hudson River Park	New York]
Riverbank	New York
Roberto Clemente	Bronx

Subdivision (b) of Section 384.11 is added as follows:
(b) State Historic Sites

Stonewall Inn	*New York*

Subdivision (c) of Section 384.11 is added as follows:
(c) Trails and miscellaneous.

Hudson River Park	*New York*

Text of proposed rule and any required statements and analyses may be obtained from: Shari Calnero, Office of Parks, Recreation and Historic Preservation, 625 Broadway, Albany, NY 12207, (518) 486-2921, email: Shari.Calnero@parks.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

Statutory Authority:

Section 3.09(8) of the Parks, Recreation and Historic Preservation Law (Parks Law) authorizes OPRHP to create, amend, or rescind its rules to adequately perform the functions, powers, and duties of the Office. In addition, Section 13.03(1) of the Parks Law directs the OPRHP Commissioner to maintain a current list of these facilities.

Legislative Objectives:

The Legislature has tasked OPRHP with maintaining, describing, and updating the list of facilities (Parks Law Section 13.03(1)).

Needs and Benefits:

The current list at 9 NYCRR Part 384 is outdated. This amendment will ensure that the list of facilities is accurate, allowing OPRHP to fulfill its statutory mandate under Parks Law Section 13.03(1).

Cost-Benefit Analysis:

There are no costs associated with updating OPRHP's official list of facilities. The State and the public will benefit from having an accurate, organized list and description of these facilities.

Local Government Mandates:

The proposed rule does not affect any local governments.

Paperwork:

The proposed rule does not require OPRHP staff to complete any additional paperwork other than processing the rule.

Duplication:

There is no overlap or duplication with other state or federal requirements.

Alternatives:

There is no alternative to updating the official list of OPRHP facilities because OPRHP is required to keep an accurate list of state parks, parkways, recreational facilities, and state historic sites.

Federal Standards:

The proposed regulatory changes do not violate any federal standards.

Compliance Schedule:

The rule will take effect on the date the Notice of Adoption is published in the New York State Register.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required for this proposal since it will not impose any adverse economic impact on small businesses or local governments. The proposed rule merely updates the list of facilities under OPRHP jurisdiction. Therefore, a Regulatory Flexibility Analysis is not required.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not required for this proposed rule because it does not impose an adverse economic impact on any private or public sector interests in rural areas. The proposed rule merely updates the list of facilities under OPRHP jurisdiction. Therefore, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

The regulations that are the subject of this proposed rule making (9 NYCRR 384.1 through 384.11) provide a listing of current state parks, parkways, recreation facilities, state land and historic sites within the jurisdiction of OPRHP (Facilities). The proposed amendments provide an updated list of these Facilities that have been added, renamed, merged, or are no longer within OPRHP's jurisdiction; therefore, the amendments will not affect jobs or employment opportunities.

Public Service Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Resuming Billing of Six Gas Customers on Sullivan Rd., Alden, NY

I.D. No. PSC-30-16-00002-EP
Filing Date: 2016-07-11
Effective Date: 2016-07-11

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

Proposed Action: The Commission, on July 11, 2016, adopted an order allowing Reserve Gas Company, Inc. to resume billing of its six natural gas customers who reside on Sullivan Road in Alden, New York.

Statutory authority: Public Service Law, sections 65 and 66

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

Specific reasons underlying the finding of necessity: In March, 2016,

Department of Public Service (DPS) Staff was alerted by individual customer complaints, state legislators, and the Town of Alden, New York, Supervisor that Reserve Gas Company, Inc. (Reserve), which has been providing gas service to six customers (the six customers) on Sullivan Road in the Town of Alden since 1999 intended to end their natural gas service on May 31, 2016 because the owner of the wells serving the customers had abandoned them. On May 10, 2016, at the direction of DPS Staff, Reserve again contacted the six customers this time to state that gas service would not end and the gas meters Reserve had installed in 1999 would remain in place, but that Reserve would not bill customers pending resolution of Reserve's gas supply issues, described herein. Reserve has offered to inspect, repair if necessary, and possibly take control of, a delivery pipe that serves the six customers. To allow Reserve rates to cover these costs and to help ensure continued gas service to the six customers, the Commission is authorizing Reserve to resume billing of the six customers at Reserve's tariffed rate, which Reserve had been charging the six customers prior to its May 10, 2016 letter.

Subject: Resuming billing of six gas customers on Sullivan Rd., Alden, NY.

Purpose: To allow Reserve Gas Company to resume billing its six Sullivan Rd. customers.

Substance of emergency/proposed rule: The Commission adopted an order allowing Reserve Gas Company (Reserve) to resume natural gas service billing of six customers who live on Sullivan Road in Alden, NY (the six customers). Reserve had stopped billing the six customers because their gas supply had become unpredictable due to the abandonment of the gas wells that serve the six customers (the wells), although the six customers continued to receive gas. To assist the Department of Public Service in resolving the gas service issues for the six customers, Reserve has proposed to inspect and possibly take ownership of the wells' delivery pipes so gas service is secured permanently before for winter 2016-2017. Because the 11th of each month is Reserve's monthly billing date, the Commission is allowing Reserve to resume billing of the six customers immediately to allow in rates the costs of inspecting the wells.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire October 8, 2016.

Text of rule may be obtained from: 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 amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(16-G-0181EP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-30-16-00005-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent, filed by 616 First Avenue LLC, to submeter electricity at 626 First Avenue, New York, New York, and the request for a waiver of 16 NYCRR section 96.5(k)(3), requiring an energy audit.

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 of 616 First Avenue LLC to submeter electricity at 626 First Avenue, New York, New York.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by 616 First Avenue LLC on June 21, 2016, to submeter electricity at 626 First Avenue, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission is also considering Petitioner'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-0377SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Application of NYSEG's Tariff to a Remote Net Metering Host Account Owned by Cornell University

I.D. No. PSC-30-16-00006-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 a petition filed by Cornell University and Argos Solar LLC on June 16, 2016 for a declaratory ruling or waiver of tariff provisions.

Statutory authority: Public Service Law, sections 5(2), 65, 66, 66-j and 66-l

Subject: Application of NYSEG's tariff to a remote net metering host account owned by Cornell University.

Purpose: To determine the appropriate tariff treatment for the Cornell account.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Cornell University and Argos Solar LLC on June 16, 2016 for a declaratory ruling or waiver of tariff provisions. The petitioners request that the Commission declare that a remote net metering host account owned by Cornell University should be classified under Service Class (S.C.) 6 rather than S.C. 2 of NYSEG's Tariff for Electric Service or, in the alternative, issue an order granting a waiver to the requirements of S.C. 2 and S.C. 6 with regard to the account so that it can be classified under S.C. 6. 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, 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-0368SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Municipal Electric and Gas Alliance's Community Choice Aggregation Implementation Plan

I.D. No. PSC-30-16-00007-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 the Municipal Electric and Gas Alliance's (MEGA) Community Choice Aggregation Implementation Plan.

Statutory authority: Public Service Law, sections 5(1), (2), 53, 65 and 66

Subject: Municipal Electric and Gas Alliance's Community Choice Aggregation Implementation Plan.

Purpose: To ensure appropriate consumer protections.

Substance of proposed rule: The Public Service Commission is considering the Municipal Electric and Gas Alliance's (MEGA) Community Choice Aggregation (CCA) Implementation Plan filed on July 6, 2016, in accordance with the Order Authorizing Framework for Community Choice Aggregation Opt-Out Program issued by the Commission in Case 14-M-0224 on April 21, 2016. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, 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-0015SP2)

State University of New York

EMERGENCY RULE MAKING

State Basic Financial Assistance for Operating Expenses of Community Colleges Under the Program of SUNY and CUNY

I.D. No. SUN-30-16-00008-E

Filing No. 691

Filing Date: 2016-07-12

Effective Date: 2016-07-12

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

Action taken: Amendment of section 602.8(c) of Title 8 NYCRR.

Statutory authority: Education Law, sections 355(1)(c) and 6304(1)(b); L. 2014, ch. 53

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

Specific reasons underlying the finding of necessity: The State University of New York finds that immediate adoption of amendments to the Code of Standards and Procedures for the Administration and Operation of Community Colleges (the Code) is necessary for the preservation of the general welfare and that compliance with the requirements of subdivision 1 Section 202 of the State Administrative Procedures Act would be contrary to the public interest. The 2016-2017 Education, Labor and Social Services Budget Bill (the Budget) requires amendments to the existing funding formula for State financial assistance for operating expenses of community colleges of the State and City Universities of New York. The funding formula is to be developed jointly with the City University of New York, subject to the approval of the Director of the Budget. Amendments to the Code on an emergency basis for the 2016-2017 fiscal year are necessary to:

1. provide timely State operating assistance to public community colleges of the State and City Universities of New York;

2. obtain the necessary revenue to maintain essential staffing levels, program quality, and accessibility. Compliance with the provision of subdivision 1 of Section 202(6) of the State Administrative Procedures Act would not be contrary to the public interest. The requirements of subdivision (1) of Section 202(6) of SAPA would not allow implementation of the State fiscal assistance provided in the Budget Bill in time for the 2016-2017 community college fiscal year.

Subject: State basic financial assistance for operating expenses of community colleges under the program of SUNY and CUNY.

Purpose: Modify limitations formula for basic State financial assistance for operating expenses and conform to Ed Law and Budget Bill.

Text of emergency rule: Subdivision (c) of section 602.8 of said Title 8 is amended to read as follows, subject to the approval of the Director of the Budget (brackets denote old material to be deleted; italics denote new material to be added):

(c) Basic State financial assistance.

(1) Full opportunity colleges. The basic State financial assistance for community colleges, implementing approved full opportunity programs, shall be the lowest of the following:

(i) two-fifths (40%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) two-fifths (40%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the current college fiscal year the total of the following:

(a) the budgeted or actual number (whichever is less) of fulltime equivalent students enrolled in programs eligible for State financial assistance multiplied by [$2,597] *$2,697*; and

(b) up to one-half (50%) of rental costs for physical space.

(2) Non-full opportunity colleges. The basic State financial assistance for community colleges not implementing approved full opportunity programs shall be the lowest of the following:

(i) one-third (33%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) one-third (33%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the college fiscal year current, the total of the following:

(a) the budgeted or actual number (whichever is less) of fulltime equivalent students enrolled in programs eligible for State financial assistance multiplied by [$2,081] *$2,248*; and

(b) up to one-half (50%) of rental cost for physical space.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subdivision, a community college or a new campus of a multiple campus community college in the process of formation shall be eligible for basic State financial assistance in the amount of one-third of the net operating budget or one-third of the net operating costs, whichever is the lesser, for those colleges not implementing an approved full opportunity program plan, or two-fifths of the net operating budget or two-fifths of the net operating costs, whichever is the lesser, for those colleges implementing an approved full opportunity program, during the organization year and the first two fiscal years in which students are enrolled.

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 October 9, 2016.

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, Albany, New York 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Regulatory Impact Statement

This is a technical amendment to implement the provisions of the 2016-2017 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York.

Regulatory Flexibility Analysis

This is a technical amendment to implement the provisions of the 2016-2017 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York. It will have no impact on small businesses and local governments.

Rural Area Flexibility Analysis

This is a technical amendment to implement the provisions of the 2016-2017 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York. This rule making will have no impact on rural areas or the recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the adoption of this rule does not impose any adverse economic impact on existing

jobs, employment opportunities, or self-employment. This rule making governs the financing of community colleges operating under the program of the State University and will not have any adverse impact on the number of jobs or employment opportunities in the state.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State University of New York Tuition and Fees Schedule

I.D. No. SUN-30-16-00003-EP
Filing No. 689
Filing Date: 2016-07-12
Effective Date: 2016-07-12

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

Proposed Action: Amendment of section 302.1(b) of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b) and (h)

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

Specific reasons underlying the finding of necessity: Amendment of these regulations needs to proceed on an emergency basis because tuition increases are intended to be effective for the Fall 2016 semester. Billing for these new tuition rates occurs during the summer of 2016; therefore, notice of the new rates needs to occur as soon as possible.

Subject: State University of New York Tuition and Fees Schedule.

Purpose: To amend the Tuition and Fees Schedule to increase tuition for students in all programs in the State University of New York.

Text of emergency/proposed rule: Section 302.1. Tuition and fees at State-operated units of State University.

* * * * *

(b) Tuition charges as listed in the following table for categories of students, terms and programs, and as modified, amplified or explained in footnotes 1 through [10] *11* are effective with the [2015] *2016* fall term and thereafter.

		Charge per Semester		Charge per Semester credit hour[1] Special Students	
		New York State residents	Out-of-State residents	New York State residents	Out-of-State residents
(1)	Students enrolled in degree-granting undergraduate programs leading to an associate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for Tuition Assistance Program Awards	$3,235	$8,160 $4,870[2] $5,420[3] $5,430[4] [$5,320[5]] *$5,500[5]* $8,160[6] *$3,880[7]*	$270 $270[7]	$680 $406[2] $452[3] $453[4] [$443[5]] *$458[5]* $680[6] *$323[7]* $270[7][8]
(2)	Students enrolled in degree-granting undergraduate programs leading to a baccalaureate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for Tuition Assistance Program Awards	$3,235	$8,160 [$10,775[8]] *$11,855[9]* [$9,795[9]] *$10,775[10]* $4,855[10][11] *$3,880[7]*	$270	$680 [$898[8]] *$988[9]* [$816[9]] *$898[10]* $405[10][11] *$323[7]*
(3)	Students enrolled in graduate programs (other than Masters of Business Administration, Architecture, Social Work or Physician Assistant) leading to a Master's, Doctor's or equivalent degree	$5,435	$11,105 $8,155[10][11]	$453	$925 $680[10][11]
(4)	Students enrolled in a graduate program leading to a Masters of Business Administration (MBA)	$7,205	$12,195	$600	$1,016
(5)	Students enrolled in a graduate program leading to a Masters of Architecture	[$6,495] *$6,690*	[$11,105] *$11,550*	[$541] *$558*	[$925] *$963*
(6)	Students enrolled in a graduate program leading to a Masters of Social Work	$6,475	$11,105	$540	$925
(7)	Students enrolled in the professional program of pharmacy	[$12,220] *$12,570*	$23,365	[$1,018] *$1,048*	$1,947
(8)	Students enrolled in the professional program of law	[$12,335] *$12,705*	$21,340	[$1,028] *$1,059*	$1,778
(9)	Students enrolled in the professional program of medicine	[$19,125] *$20,080*	[$31,630] *$32,580*	[$1,594] *$1,673*	[$2,636] *$2,715*
(10)	Students enrolled in the professional program of dentistry	[$16,480] *$17,220*	$31,475	[$1,373] *$1,435*	$2,623
(11)	Students enrolled in the professional programs of physical therapy	[$11,615] *$12,195*	$20,465	[$968] *$1,016*	$1,705
(12)	Students enrolled in the professional program of optometry	[$13,125] *$13,650*	[$23,400] *$24,340*	[$1,094] *$1,138*	[$1,950] *$2,028*
(13)	Students enrolled in the professional program of physician assistant	[$6,430] *$7,010*	[$14,405] *$14,695*	[$536] *$584*	[$1,200] *$1,225*
(14)	Students enrolled in the professional programs of doctor of nursing practice	[$11,615] *$12,195*	$21,440	[$968] *$1,016*	$1,787

[1] The Chancellor shall determine the equivalent of a credit hour.

[2] In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi, and Morrisville are authorized to charge a lower rate for non-resident students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students *enrolled* in degree-granting programs leading to a baccalaureate degree. Alfred is authorized to charge the rate noted effective with the fall [2015] *2016* term.

[3] In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi, and Morrisville are authorized to charge a lower rate for non-resident students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree. Delhi is authorized to charge the rate noted effective with the fall [2015] *2016* term.

[4] In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi, and Morrisville are authorized to charge a lower rate for non-resident students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree. Canton is authorized to charge the rate noted effective with the fall [2015] *2016* term.

[5] In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi, and Morrisville are authorized to charge a lower rate for non-resident students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students enrolled in

degree-granting programs leading to a baccalaureate degree. Morrisville is authorized to charge the rate noted effective with the fall [2015] *2016* term.

[6] In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi, and Morrisville are authorized to charge a lower rate for non-resident students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree. Cobleskill is authorized to charge the rate noted effective with the fall [2015] *2016* term.

[7] In accordance with [Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi, and Morrisville are authorized to charge this lower rate for special students (part-time) enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs, and taking classes at off-campus locations or during the summer or winter intercessions. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree] *Chapter 437 of the laws of 2015, the Board of Trustees is authorized to establish a new category of tuition for non-resident students enrolled in distance learning courses at SUNY.*

[8] In accordance with [the NY-SUNY 2020 Challenge Grant Program Act, the University Centers at Buffalo and Stony Brook are authorized to charge this rate for non-resident undergraduate students] *Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi, and Morrisville are authorized to charge this lower rate for special students (part-time) enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs, and taking classes at off-campus locations or during the summer or winter intercessions. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree.*

[9] In accordance with [the NY-SUNY 2020 Challenge Grant Program Act] *Chapter 54 of the laws of 2016*, the University Centers at [Binghamton and Albany] *Buffalo and Stony Brook* are authorized to charge this rate for non-resident undergraduate students.

[10] [As authorized by the Board of Trustees (2010-081), Maritime College is authorized to charge up to this rate for non-resident students from states considered to be in-region (Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Mississippi, Maryland, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, and Washington D.C.).] *In accordance with Chapter 54 of the laws of 2016, the University Centers at Binghamton and Albany are authorized to charge this rate for non-resident undergraduate students.*

[11] *As authorized by the Board of Trustees (2010-081), Maritime College is authorized to charge up to this rate for non-resident students from states considered to be in-region (Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Mississippi, Maryland, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, and Washington D.C.).*

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire October 9, 2016.

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, S-325, 353 Broadway, Albany, NY, (518) 320-1400, email: Lisa.Campo@SUNY.edu

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: Education Law, Sections 355(2)(b) and 355(2)(h). Section 355(2)(b) authorizes the State University Trustees to make and amend rules and regulations for the overall governance of the State University and institutions therein. Section 355(2)(h) authorizes the State University Trustees to regulate the admission of students, tuition charges, other fees and charges, curricula, and all other matters pertaining to the operation and administration of each State-operated institution of the State University.

2. Legislative Objectives: The present measure will provide essential financial support for the operations of the State University of New York (SUNY), in accordance with Chapter 437 of the Laws of 2015 and Chapter 54 of Laws of 2016.

3. Needs and Benefits: The present measure establishes a series of tuition rates in the various degree programs at the State-operated campuses.

Undergraduate Programs

- Resident undergraduate tuition will remain at $6,470.
- As stipulated by Chapter 54 of the Laws of 2016, non-resident undergraduate tuition for students at the University Centers will increase by 10%, resulting in an increase of $2,160 (to $23,710) for non-resident students at the University Centers at Buffalo and Stony Brook; and an increase of $1,960 (to $21,550) at the University Centers at Albany and Binghamton.
- The standard non-resident undergraduate tuition would remain flat at $16,320 for all undergraduate students at the Comprehensive Colleges, Environmental Science and Forestry, Downstate Health Science Center, Upstate Health Science Center, Farmingdale, SUNY Polytechnic, Maritime, and for students enrolled at baccalaureate programs at Alfred, Canton, Cobleskill, Delhi, and Morrisville.
- Non-resident undergraduate tuition for students enrolled in an associate's degree or non-degree granting program at the College of Technology at Morrisville would increase by $360 (3.4%), to $11,000.
- Non-resident undergraduate tuition would not increase for students enrolled in an associate's degree or non-degree granting program at the College of Technology at Alfred, remaining at $9,740; the College of Technology at Delhi, remaining at $10,840; the College of Technology at Canton, remaining at $10,860; or the College of Technology at Cobleskill, remaining at $16,320.
- Non-resident undergraduate tuition for students enrolled in an associate's, baccalaureate, or non-degree granting program, and taking exclusively distance learning courses, will be set at a rate of $7,760. In accordance with Chapter 37 of the Laws of 2015, the Board of Trustees is authorized to establish a new category of tuition for non-resident students enrolled in distance learning courses at SUNY.
- Maritime College tuition for non-resident students who are from a state defined as "in-region" (Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Mississippi, Maryland, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, and Washington D.C.) would remain flat at $9,710. Students not from one of the states identified above will pay the standard non-resident rate.

Graduate Programs

- For students enrolled in graduate programs not separately identified, the standard tuition would remain flat for resident students at $10,870 and for non-resident students at $22,210.
- For students enrolled in programs leading to a Master's in Business Administration degree, tuition would remain flat at $14,410 for resident students and $24,390 for non-resident students.
- For students enrolled in programs leading to a Master's in Architecture degree, tuition would increase by $390 (3.0%) to $13,380 for resident students, and by $890 (4.0%) to $23,100 for non-resident students.
- For students enrolled in programs leading to a Master's in Social Work degree, tuition would remain flat at $12,950 for resident students and $22,210 for non-resident students.
- Tuition for the Physicians' Assistant graduate master's program at Stony Brook and Upstate would increase by $1,160 (9.0%) to $14,020 for resident students, and by $580 (2.0%) to $29,390 for non-resident students.
- Maritime College tuition for non-resident students who are from a state defined as "in-region" (Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Mississippi, Maryland, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, and Washington D.C.) would remain flat at $16,310. Students not from one of the states identified above will pay the standard non-resident rate.

Professional Programs

- For students enrolled in the Medical Professional Program at the four health science centers, tuition would increase by $1,910 (5.0%) to $40,160 for residents and by $1,900 (3.0%) to $65,160 for non-residents.
- Tuition for the Dental Professional Program at the universities at Stony Brook and Buffalo would increase by $1,480 (4.5%) to $34,440 for residents. Tuition for non-resident students would not increase, remaining at $62,950.
- Tuition for the Optometry Program at the College of Optometry would increase by $1,050 (4.0%) to $27,300 for residents and by $1,880 (4.0%) to $48,680 for non-residents.
- Tuition at the Law School of the University at Buffalo would be increased by $740 (3.0%) to $25,410 for resident students. Tuition for non-resident students would not increase, remaining at $42,680.
- Tuition for the School of Pharmacy Professional Program at the University at Buffalo would increase by $700 (2.9%) to $25,140. Tuition for non-resident students would not increase, remaining at $46,730.
- Tuition for the Doctor of Physical Therapy would increase by $1,160 (5.0%) to $24,390 for residents. Tuition for non-resident students would not increase, remaining at $40,930.
- Tuition for the Doctor of Nursing Practice would increase by $1,160

(5.0%) to $24,390 for residents. Tuition for non-resident students would not increase, remaining at $42,880.

Even with the recommended increases, the tuition charged at the State-operated campuses of SUNY is still competitive when compared to peer institutions in other public university systems.

The tuition rates were last increased in the fall 2015.

4. Costs: Tuition rate increases for students enrolled in these programs of SUNY will range from no increase per year for resident undergraduate degrees to $2,160 for non-resident students enrolled in the undergraduate programs at the University at Buffalo and Stony Brook University. In setting the new tuition schedule, SUNY has examined its appropriation levels, the prevailing tuition rates charged by other public universities, and the status of various State and Federal student financial aid programs.

5. Local Government Mandates: There are no local government mandates. The amendment does not affect students enrolled in the community colleges operating under the program of the State University of New York.

6. Paperwork: No parties will experience any new reporting responsibilities. SUNY publications and documents containing notices regarding costs of attendance will need to be revised to reflect these changes.

7. Duplication: None.

8. Alternatives: Delays in tuition increases as well as higher increases were considered, however, there is no acceptable alternative to the proposed increases. The revenue from these tuition increases is necessary in order for the University to maintain quality of instruction and essential services to students, especially given the high cost professional programs.

9. Federal Standards: None.

10. Compliance Schedule: The amendment to the tuition schedule will go into effect for the fall 2016 semester.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, record-keeping or other compliance requirements on small businesses and local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on rural areas. The rule will not impose any adverse economic impact on rural areas or impose any reporting, record-keeping, professional services or other compliance requirements on rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs tuition charges for State University of New York and will not have any adverse impact on the number of jobs or employment.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

College Tuition and Fees and Definition of a Nonresident Student

I.D. No. SUN-30-16-00004-EP

Filing No. 690

Filing Date: 2016-07-12

Effective Date: 2016-07-12

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

Proposed Action: Amendment of sections 602.10(c)(10) and 602.12 of Title 8 NYCRR.

Statutory authority: Education Law, section 6305(1) and (8)

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

Specific reasons underlying the finding of necessity: Amendment of these regulations needs to proceed on an emergency basis because tuition increases are intended to be effective for the Fall 2016 semester. Billing for these new tuition rates occurs during the summer of 2016; therefore, notice of the new rates needs to occur as soon as possible.

Subject: College tuition and fees and definition of a nonresident student.

Purpose: To provide flexibility in establishing community college tuition rates for students from outside the State.

Text of emergency/proposed rule: § 602.10 College tuition and fees.

(c) Student tuition and fees.

(10) The full-time and part-time rates for out-of-state students and nonresident students not presenting certificates of residences shall be *set at a rate no higher than* [not more than] three times the *approved* full-time and part-time tuition rates, respectively, for residents of the sponsorship area and nonresidents of the sponsorship area presenting certificates of residence. *Out-of-state students shall be assessed an annual capital revenue fee of up to $300 for full-time students and pro-rated for part-time students at a maximum of $10 per credit hour. The capital revenue fee shall not be included in the operating budgets of community colleges and shall be subject to the restrictions and guidelines applicable to capital chargebacks set forth in section sixty-three hundred five of the Education Law.*

§ 602.12 Definition of a nonresident student.

A nonresident student is one who has resided in the State for a period of at least one year but has resided outside of the sponsorship area during a portion or all of the six months preceding the date of the application for a certificate of residence. For tuition purposes, out-of-state students shall be treated *in a manner consistent with these regulations and approved by the State University Board of Trustees* [the same as nonresident students].

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire October 9, 2016.

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, S-325, 353 Broadway, Albany, NY, (518) 320-1400, email: Lisa.Campo@SUNY.edu

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: Education Law, section 355(1)(c), which authorizes the state university trustees to provide a code of standards and regulations for the community colleges, that cover the organization and operation of their programs, curricula, course, financing arrangements, tuition and fees, state financial assistance, and any other matter relating to their operation.

Education Law, section 6305(1), permits community colleges to admit nonresident and out-of-state students. Education Law, section 6305(2) authorizes community colleges to charge nonresident students higher tuition and establishes the chargeback system. Education Law, section 6305(8) permits community colleges to charge out-of-state students "such tuition and fees as may be approved by the state university trustees."

2. LEGISLATIVE OBJECTIVES: The present measure will enable community colleges to operate more effectively within their respective markets and provide additional capital improvement funds that do not exist currently.

3. NEEDS AND BENEFITS: Education Law authorizes community colleges to charge a higher tuition to out-of-state students. These amendments will allow community colleges to capture capital revenue from these students, which is currently the case for resident students, while staying within the tuition guidelines as established by the state university trustees and the education law.

4. COSTS: The proposed regulations seek to clarify existing law and regulations and do not impose any new costs on community colleges or local sponsors.

5. LOCAL GOVERNMENT MANDATES: The proposed regulations do not impose any new requirements on local governments.

6. PAPERWORK: The proposed regulations do not impose any new paperwork requirements on any of the parties.

7. DUPLICATION: The proposed amendments clarify the authority of community colleges relating to tuition and fees set forth in the Education Law. The amendments are not redundant with other State requirements nor do they have any relationship with existing Federal requirements.

8. ALTERNATIVES: One alternative to the proposed amendments would be to leave the subject regulations unaltered. However, to do so would leave in place the existing inequity between resident and out-of-state students regarding capital revenue.

9. FEDERAL STANDARDS: The proposed amendments do not exceed any maximum standards of the federal government for the same or similar subject areas.

10. COMPLIANCE SCHEDULE: There is no mandatory compliance schedule, however the SUNY Trustees would like to adopt the regulations in their final form at their September 2016 meeting. The regulations will become effective after they are finally adopted by the SUNY Trustees and published in the State Register.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on small businesses and

local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on rural areas. The rule will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping, professional services or other compliance requirements on rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs tuition rates for the community colleges of the State University of New York and will not have any adverse impact on the number of jobs or employment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

State Basic Financial Assistance for Operating Expenses of Community Colleges Under the Program of SUNY and CUNY

I.D. No. SUN-30-16-00009-P

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

Proposed Action: This is a consensus rule making to amend section 602.8(c) of Title 8 NYCRR.

Statutory authority: Education Law, sections 355(1)(c) and 6304(1)(b); L. 2016, ch. 53

Subject: State basic financial assistance for operating expenses of community colleges under the program of SUNY and CUNY.

Purpose: To modify limitations formula for basic State Financial assistance and conform to the Education Law and the 2016-17 Budget Bill.

Text of proposed rule: Subdivision (c) of section 602.8 of said Title 8 is amended to read as follows, subject to the approval of the Director of the Budget (brackets denote old material to be deleted; underlining denote new material to be added):

(c) Basic State financial assistance.

(1) Full opportunity colleges. The basic State financial assistance for community colleges, implementing approved full opportunity programs, shall be the lowest of the following:

(i) two-fifths (40%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) two-fifths (40%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the current college fiscal year the total of the following:

(a) the budgeted or actual number (whichever is less) of fulltime equivalent students enrolled in programs eligible for State financial assistance multiplied by [$2,597] *$2,697*; and

(b) up to one-half (50%) of rental costs for physical space.

(2) Non-full opportunity colleges. The basic State financial assistance for community colleges not implementing approved full opportunity programs shall be the lowest of the following:

(i) one-third (33%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) one-third (33%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the college fiscal year current, the total of the following:

(a) the budgeted or actual number (whichever is less) of fulltime equivalent students enrolled in programs eligible for State financial assistance multiplied by [$2,081] *$2,248*; and

(b) up to one-half (50%) of rental cost for physical space.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subdivision, a community college or a new campus of a multiple campus community college in the process of formation shall be eligible for basic State financial assistance in the amount of one-third of the net operating budget or one-third of the net operating costs, whichever is the lesser, for those colleges not implementing an approved full opportunity program plan, or two-fifths of the net operating budget or two-fifths of the net operating costs, whichever is the lesser, for those colleges implementing an approved full opportunity program, during the organization year and the first two fiscal years in which students are enrolled.

Text of proposed rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, Albany, NY 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

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

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

Consensus Rule Making Determination

The State University of New York has determined that no person is likely to object to this rule as written because it provides timely State operating assistance to public community colleges of the State and City Universities of New York and adopts amendments to the tuition regulations for community colleges under the program of the State University of New York for the 2016-2017 fiscal year.

Job Impact Statement

No job impact statement is submitted with this notice because the adoption of this rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This rule making governs the financing of community colleges operating under the program of the State University and will not have any adverse impact on the number of jobs or employment opportunities in the state.

Department of Taxation and Finance

NOTICE OF ADOPTION

Computation of Property Percentage of the Apportionment Factor for Personal Income Tax

I.D. No. TAF-21-16-00002-A

Filing No. 692

Filing Date: 2016-07-12

Effective Date: 2016-07-27

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

Action taken: Amendment of sections 132.15(d), 262.2(a), (b) and (c) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 631(c), 697(a) and 1332(a); Code of the City of Yonkers, sections 15-108 and 15-118

Subject: Computation of property percentage of the apportionment factor for personal income tax.

Purpose: To clarify that the property percentage includes rented tangible personal property in the apportionment factor.

Text or summary was published in the May 25, 2016 issue of the Register, I.D. No. TAF-21-16-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist 1, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12207, (518) 530-4153, email: Kathleen.OConnell@tax.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.