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.

Adirondack Park Agency

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Access to Agency Records

I.D. No. APA-09-16-00005-P

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

Proposed Action: This is a consensus rule making to repeal section 587.1; and add new section 587.1 to Title 9 NYCRR.

Statutory authority: Executive Law, section 804(9); Public Officers Law, section 87

Subject: Access to Agency Records.

Purpose: To conform Adirondack Park Agency rules to the Public Officers Law and rules promulgated by the Committee on Open Government.

Text of proposed rule: Section 587.1 is repealed and a new section 587.1 is adopted to read as follows:

587.1 Access to Agency Records:

(a) Purpose. The agency shall provide access to records as required by, and in conformance with article 6 of the Public Officers Law, entitled ''Freedom of Information Law,'' and its implementing regulations in 21 NYCRR Part 1401. This section provides the regulations of the agency required by 21 NYCRR section 1401.1.

(b) Records access officer. One or more designated project administrators shall be the agency's records access officer(s). The business address of the records access officer(s) is at the Adirondack Park Agency, PO Box 99, Ray Brook, NY 12977. The email address of the records access officer is FOIL@apa.ny.gov. The record access officer(s) shall have the responsibilities set forth in 21 NYCRR section 1401.2. If at any time no project administrator has been designated as the agency's records access officer, then the agency's counsel shall be the records access officer.

(c) Requests for access to records. Records may be requested by email or by a writing mailed or otherwise delivered to the business address of the records access officer. Oral requests may be accepted at the discretion of the records access officer. Records may be available to a requestor via the internet or shall be available for public inspection and copying at the Adirondack Park Agency, 1133 NYS Route 86, Ray Brook, New York 12977.

(d) Hours for public inspection. Requests for public access to records shall be accepted and records produced during all hours that the agency is regularly open for business. Except on State holidays, or during weather or other emergencies, these hours are 8:30 a.m. to 5:00 p.m., Monday through Friday. Responses to requests shall be made in conformance with 21 NYCRR section 1401.5.

(e) Requests for exceptions from disclosure of records. A person submitting records to the agency may identify information therein for which an exception from disclosure is requested by specifying the specific provision of the Freedom of Information Law under which exception is authorized and the facts, in reasonable detail, supporting the request. The records access officer(s) shall identify the person(s) within the agency who shall have custody and/or access to such information and the manner of safeguarding against unauthorized access to such information until fifteen days after the entitlement to such exception has been finally determined or such further time as ordered by a court of competent jurisdiction. The determination of any entitlement to any requested exception shall be made by the agency no later than the last date specified in 21 NYCRR section 1401.5 for response to a request for the record.

(f) Appeal of denials. Any person denied access to records, or denied a requested exception from disclosure of records, in whole or in part, may appeal in writing to the agency's counsel unless the agency counsel was the records access officer making the denial in which case the appeal shall be made to the agency's executive director. The business address of the agency's counsel is P.O. Box 99, Ray Brook, New York 12977. The rules applicable to an appeal shall be those set forth in 21 NYCRR section 1401.7.

Text of proposed rule and any required statements and analyses may be obtained from: Paul Van Cott, Associate Attorney, Adirondack Park Agency, P.O. Box 99, Ray Brook, New York 12977, (518) 891-4050, email: APARuleMaking@apa.ny.gov

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

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

Consensus Rule Making Determination

The Adirondack Park Agency has determined that the proposed rule is a consensus rule that no person is likely to object to because it was developed with public input, corrects inaccuracies in and updates the existing rule, and otherwise does not change the Agency's responsibilities for complying with the Freedom of Information Law.

Job Impact Statement

A job impact statement (JIS) is not submitted for these proposed rules because they are not expected to create any substantial adverse impact upon jobs and employment opportunities in the Adirondack Park.

The goal of this rule making is to eliminate Adirondack Park Agency ("Agency") rules that duplicate requirements and procedures of the Freedom of Information Law ("FOIL") set forth in Article 6 of the Public Officers Law and the Committee on Open Government's ("COOG") FOIL rules in 21 NYCRR Part 1401. The proposed rules would ensure conformance with FOIL and COOG's rules without duplication of those requirements and procedures, by limiting Agency FOIL regulations to those specifically necessary for the Agency's implementation of FOIL.

Section 201-a of SAPA defines job impact as a "change in the number of jobs and employment opportunities" attributable to the adoption of the rule. A "substantial adverse impact on jobs" is defined as "a decrease of more than 100 full-time annual jobs and employment opportunities."

There will be no change in employment opportunities due to the proposed rules. The proposed rules will only serve to improve the conformance of the Agency's FOIL rules with FOIL and 22 NYCRR Part 1401.

Accordingly, a JIS is not required for the proposed rules.

Division of Criminal Justice Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Central Registry of Police Officers and Peace Officers

I.D. No. CJS-09-16-00002-P

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

Proposed Action: Repeal of Part 6056; and addition of new Part 6056 to Title 9 NYCRR.

Statutory authority: Executive Law, sections 837(13), 845(1) and (3) through L. 2010, ch. 491; General Municipal Law, section 209-q(1) and Criminal Procedure Law, section 2.30(6)

Subject: Central Registry of Police Officers and Peace Officers.

Purpose: To consolidate the police officer and peace officer registries; and to clarify the reporting requirements.

Text of proposed rule: Part 6056 of 9 NYCRR is repealed and a new Part 6056 is added to read as follows:

PART 6056

CENTRAL STATE REGISTRY OF POLICE OFFICERS AND PEACE OFFICERS

Section 6056.1 Purpose

The purpose of this Part is to set forth reporting and recordkeeping procedures to be followed by employers of police and peace officers and by the Division of Criminal Justice Services in maintaining the Central State Registry of Police Officers and Peace Officers, pursuant to section 845 of the Executive Law, and:

(a) to provide for the establishment and maintenance of a permanent system of identification for each police and peace officer whose name is required by law to be entered in the Central State Registry of Police Officers and Peace Officers, pursuant to section 845(3) of such law;

(b) to ensure the accuracy of the information contained in the Central State Registry of Police Officers and Peace Officers and the integrity of the registry as a public record;

(c) to ensure that persons whose names are contained in the Central State Registry of Police Officers and Peace Officers are lawfully appointed; and

(d) to enhance the ability of the Division of Criminal Justice Services to cooperate with the Division of State Police in making information in the Central State Registry of Police Officers and Peace Officers available for the purpose of verifying transactions involving firearms, pursuant to section 845(5) of such law.

Section 6056.2 Definitions

As used in this Part, the following terms shall have the following meanings:

(a) Division means the Division of Criminal Justice Services.

(b) Commissioner means the Commissioner of the Division of Criminal Justice Services or his or her designee.

(c) Employer means the chief executive officer of any State or local agency, unit of local government, State or local commission, public authority, or organization which employs police officers or peace officers.

(d) Police officer means a person designated as such in section 1.20(34) of the Criminal Procedure Law.

(e) Peace officer means a person designated as such in section 2.10 and 2.16 of the Criminal Procedure Law.

(f) Registry means the Central State Registry of Police Officers and Peace Officers created by section 845 of the Executive Law.

(g) Removal for cause means removal after a hearing on stated charges pursuant to section 75 of the Civil Service Law or retirement or resignation while disciplinary charges pursuant to section 75 of the Civil Service Law, which may result in removal, are pending.

(h) Removal during probationary period means a probationary period not successfully completed due to incompetence or misconduct that would have subjected a permanent employee to disciplinary charges pursuant to section 75 of the Civil Service Law.

Section 6056.3 Division responsibility

(a) The division shall maintain the Central State Registry of Police Officers and Peace Officers, pursuant to section 845 of the Executive Law. The division shall enter into such registry all information concerning police or peace officers required to be reported by employers by such law and in accordance with such rules and regulations as the commissioner may adopt to ensure the accuracy of such information and integrity of the registry as a public record.

(b) The division shall not enter the name of any person in the registry if it has knowledge that such person is not lawfully appointed or eligible to be a police or peace officer, notwithstanding the submission of the name of such person by an employer for registration.

(c) Where the division has cause to believe that any person whose name is submitted for entry in the registry or who is registered as a police or peace officer may not be eligible, the division shall proceed pursuant to section 6056.6 of this Part.

Section 6056.4 Employer reporting requirements

(a) Each employer shall, in the form set forth in section 6056.5 of this Part, with respect to each police or peace officer employed by it, submit or cause to be submitted the following:

(1) name;
(2) social security number;
(3) date of birth;
(4) rank or title;
(5) official station;
(6) whether employed full-time or part-time; and
(7) date of appointment or employment.

Employers shall inform police or peace officer employees that disclosure of an employee's social security number is for identification purposes only and is voluntary on the employee's part. A post-office box number shall not be accepted as an employee's permanent residence or domicile.

(b) The commissioner may require any employer to report the following additional information in such form as he may prescribe:

(1) a certified copy of its articles of incorporation and bylaws relating to the authority and procedure for the employment, election, appointment and removal of officers, agents and employees having police or peace officer status;

(2) minutes of meetings or proceedings concerning appointment and removal of police or peace officers; and

(3) the street address of its principal place of business or official station and its telephone number.

(c) Each employer shall, in the form set forth in section 6056.5 of this Part, with respect to each police or peace officer employed by it, immediately notify the division when such officer ceases to serve and the reason for such, which shall include one of the following:

(1) Leave of Absence
(2) Resignation
(3) Removal
(4) Removal for Cause as defined in 6056.2(g) of this Part
(5) Removal during Probationary Period as defined in 6056.2(h) of this Part
(6) Subdivision (c)(1)(2) and (3) constitute an interruption in service pursuant to General Municipal Law 209-q(1)(c) and Criminal Procedure Law 2.30(6).

(d) A certificate of completion attesting to the fulfillment of the training requirements for police officers set forth in section 209-q(1) of the General Municipal Law and a certificate of completion attesting to the fulfillment of the training requirements for peace officers set forth in Criminal Procedure Law 2.30 shall immediately be deemed invalid when an officer ceases to serve pursuant to subdivision (c)(4) or (5) of this section, as authorized by General Municipal Law section 209-q(1)(c) and Criminal Procedure Law 2.30(6).

(e) Upon inquiry from an employer, the division shall notify the employer of the reason a police or peace officer ceased to be previously employed as reported pursuant to subdivision (c) of this section.

Section 6056.5 Form for reports

Information reported in accordance with the provisions of section 6056.4 of this Part shall be reported as follows:

(a) Each police officer employer shall complete and submit for each police officer employee the form entitled "Police Officer Registry Entry Form" available on request from the division. Such form shall be submitted to the division at the time of initial appointment.

(b) Each peace officer employer shall complete and submit for each peace officer employee the form entitled "Peace Officer Registry Entry Form" available on request from the division. Such form shall be submitted to the division at the time of initial appointment.

(c) Each employer shall immediately notify the division when an officer's registry information needs to be modified or deleted, including when such officer ceases to serve pursuant to section 6056.4(c). Such information shall be submitted on the form entitled "Registry Update Form."

(d) Each employer shall notify the division no later than the 15th day of each January of the names of all police or peace officers who have ceased to be employed by it in the preceding twelve months.

(e) The division may provide each employer with a list of all police or peace officers identified in the registry as employed by it. The employer shall examine such list and return it to the division, deleting therefrom the names of any persons no longer employed by it as police or peace officers. Completion and submission of such a list shall be deemed compliance with the reporting requirements of subdivision (d) of this section.

(f) The commissioner may approve a reporting format other than that set forth in subdivisions (a), (b), (c) or (d) of this section. Such approval shall be granted in writing.

Section 6056.6 Exclusion from registry

(a) Where the division has cause to believe that any person whose name has been submitted for entry in the registry, or who is already registered as a police or peace officer, may be ineligible under any provision of article 2 or article 3 of the Public Officers Law or of article 1 or article 2 of the Criminal Procedure Law to be a police or peace officer, or prohibited from possessing firearms by federal law, the division shall notify the person's employer and the employer shall notify the division within 30 days that the person's name should be deleted from the registry.

(b) The division shall also notify the Division of State Police where questions concerning the lawful possession of firearms are involved, and the Attorney General where questions concerning charitable corporations are involved.

(c) Where the division has cause to believe that a person who is registered as a police or peace officer has not completed the required training in the timeframe prescribed by law or regulation, the division may notify the person's employer and the employer shall notify the division within 30 days that the person's name should be deleted from the registry.

Section 6056.7 Review

(a) Any person whose name is not accepted for entry in the registry, or whose name is removed therefrom, shall, on request, be provided the opportunity to review all information in the possession of the division on which such determination was based subject to the requirements and conditions set forth in Part 6050 of this Title, where applicable. Such person may present argument on issues of law and fact to the employer. The employer may then resubmit such person's name for registration, along with a statement of the reasons establishing such person's eligibility to be a police or peace officer.

(b) When such person is removed from the registry pursuant to section 6056. 4(c)(4) or (5) of this Part the division may submit such person's name to the national decertification index.

Section 6056.8 Severability

If any provision of this Part or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons or circumstances.

Text of proposed rule and any required statements and analyses may be obtained from: Natasha M. Harvin, Esq., NYS Division of Criminal Justice Services, 80 South Swan St., Albany, New York 12210, (518) 457-8420, email: natasha.harvin@dcjs.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: The authority for the promulgation of these regulations is contained in Executive Law section 837(13), Executive Law section 845(1) and (3) through Chapter 491 of the Laws of 2010, General Municipal Law section 209-q(1) and Criminal Procedure Law 2.30(6).

Executive Law section 837(13) authorizes the Division of Criminal Justice Services (Division) to adopt, amend or rescind regulations "as may be necessary or convenient to the performance of the functions, powers and duties of the [D]ivision."

Executive Law section 845(1) requires the Division to maintain a Central State Registry of Police Officers and Peace Officers. Executive Law section 845(3) authorizes the Division to establish rules and regulations for a permanent system of identification for each police officer and peace officer.

Pursuant to General Municipal Law section 209-q(1) and Criminal Procedure Law 2.30(6), a certificate of completion attesting to the fulfillment of the training requirements for police officers or peace officers shall immediately be deemed invalid when an officer ceases to serve and the reason is removal for cause.

2. Legislative objectives: Chapter 491 of the Laws of 2010 repealed Executive Law section 845-a and amended Executive Law section 845 to consolidate the registries of police and peace officers. The objective is to ensure a consistent registry process for both classes of officers, and facilitate more efficient processing of the information by Division staff.

In addition, these regulations are proposed to conform to General Municipal Law 209-q(1) and Criminal Procedure Law 2.30(6) which deem a basic police officer and peace officer training certificate to be invalid upon an officer's removal for cause.

Historically, when an officer separated from a department after a disciplinary hearing, or resigned or retired while disciplinary proceedings were pending, there was no reporting mechanism in place to ensure the invalidation of the officer's training certificate. These "certified" officers are attractive candidates to other departments for a variety of reasons, but they are hired in relative anonymity with respect to the misconduct leading to their prior separation.

The proposed regulations will seek to prevent these occurrences by defining removal for cause and removal during probationary period; compelling police departments to report, to the Division, officers who cease to serve in their departments and the reasons for such; and immediately invalidating a training certificate when an officer is removed for cause or removed during a probationary period. Removal for cause means removal after a hearing on stated charges pursuant to section 75 of the Civil Service Law, or retirement or resignation while disciplinary charges pursuant to section 75 of the Civil Service Law, which may result in removal, are pending. Removal during probationary period means a probationary period not successfully completed due to incompetence or misconduct that would have subjected a permanent employee to disciplinary charges pursuant to section 75 of the Civil Service Law.

3. Needs and benefits: Potential hiring departments will be able to obtain, from the Division, the grounds for a prospective officer's separation from a previous department and the status of the officer's training certificate. This will enable a potential employer to make a well-informed hiring decision and protect the employer from a number of potential risks.

4. Costs:

a. There are no costs to regulated parties expected for the implementation of and continuing compliance with the rule.

b. There are no costs to the agency or State and local governments expected for the implementation of and continuing compliance with the rule.

c. The cost analysis is based on the fact that the proposed rule will merely consolidate the police officer and peace officer registries; and clarify the reporting requirements.

5. Local government mandates: The proposed regulations will require police departments to report, to the Division, officers who cease to serve in their departments and the reason(s).

6. Paperwork: Employers are already required to file the names of all persons who cease to serve with the employer. The proposed regulations will require them to provide the reason(s).

7. Duplication: There are no other federal or State legal requirements that duplicate the proposed rule.

8. Alternatives: There are no alternatives. The existing rule required modification pursuant to legislation.

9. Federal standards: There are no federal standards.

10. Compliance schedule: Regulated parties are expected to be able to achieve compliance with the proposed rule immediately.

Regulatory Flexibility Analysis

A regulatory analysis for small businesses and local governments is not submitted with this rule-making because the proposed rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The proposed rule will merely consolidate the police officer and peace officer registries; and clarify the reporting requirements.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this rule-making because the proposed rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The proposed rule will merely consolidate the police officer and peace officer registries; and clarify the reporting requirements.

Job Impact Statement

1. Nature of impact: Pursuant to General Municipal Law section 209-q(1) and Criminal Procedure Law 2.30(6), a certificate of completion attesting to the fulfillment of the training requirements for police officers or peace officers shall immediately be deemed invalid when an officer ceases to serve and the reason is removal for cause.

Historically, when an officer separated from a department after a disciplinary hearing, or resigned or retired while disciplinary proceedings were pending, there was no reporting mechanism in place to ensure the invalidation of the officer's training certificate. These "certified" officers are attractive candidates to other departments for a variety of reasons, but

they are hired in relative anonymity with respect to the misconduct leading to their prior separation.

The proposed regulations will seek to prevent these occurrences by defining removal for cause and removal during probationary period; compelling police departments to report, to the Division of Criminal Justice Services (Division), officers who cease to serve in their departments and the reasons for such; and immediately invalidating a training certificate when an officer is removed for cause or removed during a probationary period. Removal for cause means removal after a hearing on stated charges pursuant to section 75 of the Civil Service Law, or retirement or resignation while disciplinary charges pursuant to section 75 of the Civil Service Law, which may result in removal, are pending. Removal during probationary period means a probationary period not successfully completed due to incompetence or misconduct that would have subjected a permanent employee to disciplinary charges pursuant to section 75 of the Civil Service Law.

It is possible that some departments may not hire a prospective police officer or peace officer applicant who was previously discharged by an employer for misconduct and lost his or her training certification. In such cases, employment opportunities would be impacted. However, the department still has the discretion as to whether or not to hire an individual.

2. Categories and numbers affected: The categories of jobs affected would be police officers and peace officers who have their training certificate invalidated when such officers are removed from a department for cause or removed during a probationary period. However, it is difficult to estimate the number of jobs at issue.

3. Regions of adverse impact: The proposed rule applies equally throughout New York State, except New York City, which is exempt from the Municipal Police Training Council training requirements/certificate.

4. Minimizing adverse impact: Potential hiring departments will be able to obtain, from the Division, the grounds for a prospective officer's separation and the status of the officer's training certificate. However, the department still has the discretion as to whether or not to hire an individual.

Delaware River Basin Commission

INFORMATION NOTICE

NOTICE OF FINAL RULE ADOPTION

Amendments to the Rules of Practice and Procedure to Allow Each Signatory Party and the DRBC to Administer a Single Process for the Review and Adjudication of Projects

FILING DATE: February 9, 2016

EFFECTIVE DATE: This regulation will be effective on March 4, 2016 (30 days from publication of the final rule in the Federal Register, which occurred on February 3, 2016).

ACTION TAKEN: By Resolution No. 2015-9 on December 9, 2015, the Delaware River Basin Commission (DRBC or "Commission") approved amendments to Article 3 of the Commission's Administrative Manual Part II – Rules of Practice and Procedure (21 NYCRR Subchapter A, Part 833) to provide for the One Process/One Permit Program.

STATUTORY AUTHORITY: Delaware River Basin Compact, United States Public Law 87-328, Approved September 27, 1961, 75 Statutes at Large 688; 53 Delaware Laws, Chapter 71, Approved May 26, 1961; New Jersey Laws of 1961, Chapter 13, Approved May 1, 1961; New York Laws of 1961, Chapter 148, Approved March 17, 1961; and Pennsylvania Acts of 1961, Act No. 268, Approved July 7, 1961.

PURPOSE: This final rule amends the Administrative Manual Part II – Rules of Practice and Procedure by the addition of a new section, 21 NYCRR § 833.11, providing for DRBC and each of the parties to the Delaware River Basin Compact – Delaware, New Jersey, New York, Pennsylvania and the federal government ("Signatory Parties") – to coordinate and collaborate in the administration of a single process for the review and adjudication of certain projects, including, where appropriate, issuance of a single permit or other approval instrument. The Program is intended to promote interagency cooperation and collaboration on shared mission objectives, achieve regulatory program efficiencies, avoid unnecessary duplication of effort, and reduce the potential for confusion on the part of regulated entities and the public regarding regulatory requirements applicable to projects.

For Further Information Contact: For legal aspects, Pamela M. Bush, Commission Secretary and Assistant General Counsel, 609-477-7203. For technical aspects, David Kovach, Supervisor, Project Review Section, 609-477-7264.

SUPPLEMENTARY INFORMATION: The Delaware River Basin Commission is a federal-interstate compact agency charged with managing the water resources of the Delaware River Basin on a regional basis without regard to political boundaries. Its members are the governors of the four basin states – Delaware, New Jersey, New York and Pennsylvania – and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the federal government. DRBC is not subject to the New York State Administrative Procedure Act. The purpose of this notice is to advise the public that duly adopted regulations of the Commission have been filed with the state in accordance with Section 14.2 of the Delaware River Basin Compact.

Background. Currently, the sponsors of many water resource-related projects in the Delaware River Basin are required to apply to both the DRBC and a state agency, among others, for approvals. New section 833.11 of the Commission's Rules of Practice and Procedure provides for the DRBC and the administrative agencies of the Signatory Parties to identify regulatory programs that by mutual agreement will be managed through a single process that may result in one decision or approval. The program, known as One Process/One Permit (hereinafter, "the Program or "One Permit") is intended to promote interagency cooperation and collaboration on shared mission objectives, achieve regulatory program efficiencies, avoid unnecessary duplication of effort, and reduce the potential for confusion on the part of regulated entities and the public regarding regulatory requirements applicable to projects. Importantly, the rule expressly preserves the authorities of the DRBC and each of its Signatory Parties and effects no change to federal, state or DRBC substantive standards and requirements.

In accordance with the final rule, administrative agreements between DRBC and Signatory Party agencies to implement the Program may be approved by the Commission after each such agreement undergoes a duly noticed public hearing. Notably, each Signatory Party may choose whether and when to initiate an agreement or agreements with DRBC to implement the Program.

In accordance with DRBC Resolution No. 2015-4, which was adopted on March 11, 2015 following a public hearing on March 10, an administrative agreement between the DRBC and the New Jersey Department of Environmental Protection (NJDEP) was executed, in part to demonstrate how the Program would operate in New Jersey. With adoption of the final rule, DRBC and NJDEP will fully implement their March 2015 agreement. A draft agreement between DRBC and the New York State Department of Environmental Protection (NYSDEC) for implementation of the Program in the New York portion of the Delaware River Basin was published by the Commission on January 29, 2016 (see www.nj.gov/drbc/library/documents/Res__NYSDEC-AA__draft.pdf), and a public hearing on the draft agreement was held on February 10, 2016. The earliest date on which the Commission could consider action on the draft agreement with NYSDEC is during its public meeting scheduled for March 16, 2016 (see public meeting notice at www.nj.gov/drbc/meetings/upcoming/index.html).

Public Process. The Commission introduced One Permit to the basin community during meetings with regulated entities, environmental organizations and other stakeholders on February 12 and March 3, 2015 and through publication on the DRBC website of a press release and a set of FAQs on February 27, 2015. During the Commission's quarterly public meeting on March 10-11, 2015, the Commission approved Resolution No. 2015-4, in part authorizing and directing the Executive Director to initiate rulemaking to amend DRBC's Rules of Practice and Procedure to provide specific authorization for and define the scope of the Program. A notice of proposed rulemaking was published on the Commission's web site on May 17, 2015.

Notice of the proposed rule amendments subsequently appeared in the Federal Register at 80 FR 28567, May 19, 2015. Notices were also published in the Delaware Register of Regulations, 18 DE Reg. 1002, June 1, 2015; New Jersey Register, 47 N.J.R. 1256, June 1, 2015; New York State Register, May 27, 2015 (page 4); and Pennsylvania Bulletin, 45 Pa. B. 2611, May 30, 2015. The Commission held a public hearing on the proposed rule on June 9, 2015 and accepted written comments on the rule through July 1, 2015.

Changes to the Draft Rule. In its action adopting the final rule, the Commission also adopted a detailed comment and response document identifying the commenters and comments received during the comment period and setting forth the Commission's responses, including changes to the rule to address concerns and respond to recommendations submitted by stakeholders.

Key revisions to the draft rule in response to comments received are described below. Because DRBC's regulatory numbering system, which is different from New York's, was used for the draft rule, references to the draft rule below carry their original DRBC unit designations, with the final NYCRR citations shown in parentheses.

• Paragraph B (21 NYCRR § 833.11(b)) was clarified to provide that applications for approvals required by the Compact and Commission regulations, but not within the scope of the Program, must continue to be submitted to the Commission. This clarification makes express the intent of the draft rule.

• To ensure continued public access to information on the status of all projects under review pursuant to the Delaware River Basin Compact, including those administered under One Permit, a new paragraph D.2 (21 NYCRR § 833.11(d)(2)) was added, establishing that participating Signatory Party agencies will notify DRBC at least once monthly of applications received under the Program; and paragraph D.5 (21 NYCRR § 833.11(d)(5)) was revised to establish that the list that the Commission will maintain of projects being administered under One Permit will be posted on the Commission's website. Additional benefits of these changes are described in the comment and response document.

• Paragraph H (21 NYCRR § 833.11(h)) of the draft rule was revised to clarify that DRBC's current Project Review Fee Schedule as set forth in Resolution No. 2009-2 will be the operative fee schedule for projects reviewed under the Program, unless and until the Commission replaces it.

• Paragraph I (21 NYCRR § 833.11(i)) was revised to provide more efficient mechanisms for the disposition of Commission dockets during the transition to One Permit. A new paragraph I.1 (21 NYCRR § 833.11(i)(1)) provides that for projects covered by the Program, the most recent docket will be deemed administratively continued when a renewal application is timely submitted to the Signatory Party Agency. A new paragraph I.2 (21 NYCRR § 833.11(i)(2)) eliminates the need for separate Executive Director action to terminate provisions of each docket by providing that unless the Executive Director or the Commission otherwise directs, upon the Signatory Party Agency's final action on an application for a project subject to the Program, (a) any existing or administratively continued docket will terminate as to all of its provisions and conditions within the scope of the Signatory Party Agency approval; and (b) such docket will continue in effect as to any provisions and conditions outside the scope of the Signatory Party Agency approval, including for example, addition of a project to the Comprehensive Plan.

• The rule as proposed authorizes Signatory Party agencies, in accordance with an applicable administrative agreement, to issue in their approvals for projects to be administered under the Program the finding and determination required by section 3.8 of the Compact that a project subject to section 3.8 review does not substantially impair or conflict with the Commission's Comprehensive Plan ("the finding"). Paragraph D.4 (21 NYCRR § 833.11(d)(4)) of the draft rule was revised to clarify that where in accordance with an applicable administrative agreement implementing One Permit the finding continues to be made by the Commission, the Signatory Party agency may include the Commission's finding in the agency's approval, together with any conditions identified by the Commission as necessary to support it, thereby achieving a unified permit.

Minor additional revisions to the rule text were made as deemed necessary for clarity or accuracy. In particular, changes were made to underscore two aspects of the rule that have been part of One Permit from the start: (1) that participation in the program by Signatory Party agencies is voluntary; and (2) that the scope of a Signatory Party Agency's participation is defined by an administrative agreement between DRBC and the agency that has been duly adopted in accordance with paragraph D (21 NYCRR § 401.42(d)) of the rule.

RELATED MATERIALS: Additional information, including related documents, can be found on the Commission's web site at www.drbc.net. These include DRBC Resolution No. 2015-9 approving the final rule, at www.nj.gov/drbc/library/documents/Res2015-09__OPOPwith-final-rule-text.pdf; and the Commission's detailed comment and response document, which identifies commenters, summarizes comments received on the proposed rule, and sets forth the Commission's responses, at www.nj.gov/drbc/library/documents/OPOP/comment-and-response__OPOP.pdf.

The version of the Rules of Practice and Procedure currently posted on DRBC's website at www.nj.gov/drbc/library/documents/admin__manual.pdf uses DRBC's original numbering system. A list of the NYCRR units and corresponding CFR and DRBC units for the One Permit Rule follows. A complete version of the Rules of Practice and Procedure using the CFR system will be available on the DRBC website shortly.

NYCRR Unit	CFR Unit	DRBC Unit	Title or Caption
Title 21. Miscellaneous	Title 18 Conservation of Power and Water Resources	—	—
Chapter XVIII. Delaware River Basin Commission	Chapter III—Delaware River Basin Commission	—	—
—	Subchapter A—Administrative Manual	Administrative Manual [Part II]	—
Subchapter A. Rules of Practice and Procedure	Part 401—Rules of Practice and Procedure	Rules of Practice and Procedure	—
Part 833. Project Review Under Section 3.8 of the Compact (Article 3)	Subpart C—Project Review Under Section 3.8 of the Compact	Article 3—Project Review Under Section 3.8 of the Compact	—
833.11	401.42	2.3.11	One Permit Program
833.11(a)	401.42(a)	2.3.11 A.	Purpose
833.11(b)	401.42(b)	2.3.11 B.	Scope
833.11(c)	401.42(c)	2.3.11 C.	Regulatory programs
833.11(d)	401.42(d)	2.3.11 D.	Procedure
833.11(e)	401.42(e)	2.3.11 E.	Comprehensive Plan projects
833.11(f)	401.42(f)	2.3.11 F.	Retention of Commission review and enforcement authorities
833.11(g)	401.42(g)	2.3.11 G.	Exhaustion of Signatory Party administrative remedies prerequisite to appeal
833.11(h)	401.42(h)	2.3.11 H.	Fees
833.11(i)	401.42(i)	2.3.11 I.	Effect of One Permit Program on Commission dockets
833.11(j)	401.42(j)	2.3.11 J.	Modification of Rules of Practice and Procedure to conform to this section
833.11(k)	401.42(k)	2.3.11 K.	No interference with Supreme Court decree

Dated: February 11, 2016
Pamela M. Bush, Esquire
Commission Secretary and Assistant General Counsel

For the reasons set forth in the preamble, the Delaware River Basin Commission amends Part 833 of Title 21, Chapter XVIII of the Codes, Rules and Regulations of the State of New York as follows:

Part 833

PROJECT REVIEW UNDER SECTION 3.8 OF THE COMPACT (ARTICLE 3)

(Statutory authority: Delaware River Basin Compact, United States Public Law 87-328, Approved September 27, 1961, 75 U.S. Statutes at Large 688; New York Laws of 1961, Chapter 148, Approved March 17, 1961, § 14.2.)

[Addition of a new section § 833.11 to read as follows:]

§ 833.11 One Permit Program.

(a) Purpose. The purpose of the One Permit Program set forth in this section is to provide the opportunity for the environmental agency and/or

other administrative agency of a Signatory Party ("Signatory Party Agency") and the Commission to coordinate and collaborate in the administration of a single process for the review and adjudication of projects. The One Permit Program allows the Signatory Party Agency and Commission to incorporate requirements and determinations of both entities in a single permit or other approval instrument, pursuant to a duly adopted Administrative Agreement under paragraph (d) of this section.

(b) Scope. This section applies to all projects that: (1) are reviewable under the Compact; (2) meet the thresholds for review set forth in § 833.5 of these Rules of Practice and Procedure; (3) are subject to review by a Signatory Party Agency under its own statutory authorities; and (4) are within regulatory programs that have been identified in a duly adopted Administrative Agreement between the Commission and a Signatory Party Agency under this section. For any project that requires an approval under the Compact that is outside the scope of the Signatory Party Agency's approval issued in accordance with an Administrative Agreement under this section, the project sponsor shall apply to the Commission in accordance with procedures established by the Commission.

(c) Regulatory Programs. Regulatory programs eligible for administration under the One Permit Program may include but are not limited to those concerning: Basin discharges, Basin water withdrawals, and Basin flood plain requirements.

(d) Procedure. The categories of projects covered and the procedures for processing applications under the One Permit Program shall be set forth in one or more Administrative Agreements between the Commission and the Signatory Party Agency that have been adopted by the Commission following a duly noticed public hearing and are in form and substance acceptable to the Commission and the Signatory Party Agency, consistent with the following:

(1) Except as provided in paragraphs (b) and (e) of this section or in an Administrative Agreement that has been duly executed by the Commission and the Signatory Party Agency under this section, an application for initial approval, renewal or revision of any project subject to the One Permit Program shall be filed only with the Signatory Party Agency.

(2) To enable the Commission to compile and make available to the public a current list of pending applications for projects within the Basin subject to Commission jurisdiction, the Signatory Party Agency shall notify the Commission at least monthly of applications the Signatory Party has received during the preceding month that may be eligible for review under the One Permit Program.

(3) For those categories of projects identified in the Administrative Agreement as requiring Commission input, the Commission staff shall provide the Signatory Party Agency with such input, including where specified by the Administrative Agreement, a recommendation as to any conditions of approval that may be necessary or appropriate to include in the project review determination under § 3.8 of the Compact as to those regulatory programs identified in an Administrative Agreement in accordance with paragraph (b) above.

(4) Unless the Signatory Party Agency disapproves the project or the Administrative Agreement provides for separate Commission action under § 3.8 of the Compact, the Signatory Party Agency shall make the project review determination under § 3.8 of the Compact, as specified in the Administrative Agreement, as to the regulatory program covered by the Signatory Party Agency's approval and include the determination and any associated conditions of approval within the permit or other approval instrument that it issues to the project sponsor. If in accordance with the applicable Administrative Agreement the determination under § 3.8 of the Compact is made by the Commission, the Signatory Party Agency may include the determination together with any associated conditions of approval in its permit or other approval instrument covering the project.

(5) The Commission will maintain on its website a list of all projects being administered pursuant to the Program.

(e) Comprehensive Plan Projects. Articles 11 and 13 of the Compact require certain projects to be included in the Comprehensive Plan. To add a project not yet included in the Comprehensive Plan, the project sponsor shall submit a separate application to the Commission. If following its review and public hearing the Commission approves the addition of the project to the Comprehensive Plan, the Commission's approval will include such project requirements as are necessary under the Compact and Commission regulations. All other project approvals that may be required from the Signatory Party Agency or the Commission under regulatory programs administered pursuant to this section may be issued through the One Permit Program. An application for renewal or modification of a project in the Comprehensive Plan that does not change the project so substantially as to render it a new and different project may be submitted only to the Signatory Party Agency unless otherwise specified in the Administrative Agreement.

(f) Retention of Commission Review and Enforcement Authorities. Notwithstanding any other provision of this section, any Commissioner or the Executive Director may designate for Commission review any project that is reviewable under the Compact. Nothing in this section shall limit the authority of the Commission to exercise its review authority under the Compact and applicable Commission regulations. Similarly, although Administrative Agreements executed pursuant to this section may include collaborative and cooperative compliance and enforcement procedures, nothing in this section shall limit the authority of the Commission to exercise its enforcement authority under the Compact and applicable regulations.

(g) Exhaustion of Signatory Party Administrative Remedies Prerequisite to Appeal. Before commencing an action in a court of appropriate jurisdiction challenging any final action taken by a Signatory Party Agency under this section, the appellant must first exhaust its administrative remedies under the law of the Signatory Party whose agency issued the decision at issue.

(h) Fees. The Commission shall establish and maintain a schedule of fees for any or all of the services it renders pursuant to this section. Unless and until a different schedule is established, the applicable fee(s) for Commission services rendered pursuant to this section shall be those set forth in DRBC Resolution No. 2009-2 for the review and renewal of project approvals. Project sponsors shall pay such fees, if any, directly to the Commission in accordance with the then-current schedule and applicable rules.

(i) Effect of One Permit Program on Commission Dockets.

(1) Unless the Executive Director or Commission otherwise directs, if a docket holder submits, or has submitted, a timely application to a Signatory Party Agency for a project subject to review under an Administrative Agreement duly adopted under paragraph (d) of this section, the most recent docket for the project shall, upon expiration, be deemed administratively continued until final action is taken in accordance with paragraph (i)(2) below.

(2) Unless the Executive Director or Commission otherwise directs, upon a Signatory Party Agency's final action on an application for a project subject to the One Permit Program, (i) any existing or administratively continued docket for such project shall terminate as to all of its provisions and conditions that pertain to regulatory programs administered by the Signatory Party Agency under the Administrative Agreement ("the Covered Programs"); and (ii) the docket shall continue in effect as to any provisions and conditions not pertaining only to Covered Programs, including, as applicable, the incorporation of the project in the Commission's Comprehensive Plan.

(j) Modification of Rules of Practice and Procedure to Conform to this Section. Any project subject to review under an Administrative Agreement duly adopted under paragraph (d), shall be governed by this section and not §§ 831.4, 831.5, 831.6, 831.8, 833.4(a), (c) and (e), 833.6, 833.7 and 21 NYCRR part 836, where they are inconsistent with the procedures provided in this section.

(k) No Interference with Supreme Court Decree. In accordance with sections 3.3(a) and 3.5 of the Compact, nothing in this section shall grant the authority to any Signatory Party Agency to impair, diminish or otherwise adversely affect the diversions, compensating releases, rights, conditions, obligations and provisions for administration thereof provided in the United States Supreme Court decree in New Jersey v. New York, 347 U.S. 995 (1954) ("Decree"). Any such action shall be taken only by the Commission with the unanimous consent of the parties to the Decree or upon unanimous consent of the members of the Commission following a declaration of a state of emergency in accordance with section 3.3(a) of the Compact.

Education Department

EMERGENCY RULE MAKING

Graduate-Level Teacher and Educational Leadership Programs

I.D. No. EDU-40-15-00009-E
Filing No. 202
Filing Date: 2016-02-12
Effective Date: 2016-02-14

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

Action taken: Amendment of section 52.21 of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary to implement Education Law sections 210-a and 210-b, as added by Subpart B of Part EE of Chapter 56 of the Laws of 2015, regarding admission requirements for graduate-level teacher and educational leadership programs and the suspension and deregistration of certain registered programs with certain passage rates on the certification examinations.

The proposed rule was adopted by emergency action at the September 16-17, 2015 and December Regents meetings, effective September 21, 2015 and December 20, 2015, respectively. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on October 7, 2015. Additional time is needed for the Department to further review the proposed rule's provisions before presenting the rule for permanent adoption. However, the December emergency rule will expire on February 13, 2016, 60 days after its filing with the Department of State on December 15, 2015. A lapse in the rule could disrupt the administration of registered graduate-level teacher and educational leadership programs provided pursuant to Education Law sections 210-a and 210-b. Therefore, emergency action is necessary for the preservation of the general welfare at the January 2016 Regents meeting in order to ensure that the emergency rule adopted at the December 2015 Regents meeting remains continuously in effect until it can take effect as a permanent rule.

Subject: Graduate-level teacher and educational leadership programs.

Purpose: To establish minimum admission standards for graduate level teacher and leader preparation programs and requirements for the suspension and/or deregistration of certain programs with completers who fail to achieve a minimum pass rate on certification examinations for three consecutive years.

Text of emergency rule: 1. A new clause (l) shall be added to subparagraph (i) of paragraph (2) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education, effective February 14, 2016, to read as follows:

(l) Minimum Selection Criteria by Graduate-Level Teacher and Educational Leadership Programs Commencing Instruction on or after July 1, 2016.

(1) Institutions with registered graduate level teacher and educational leadership programs shall adopt rigorous selection criteria geared to predicting a candidate's academic success in its program. These rigorous selection criteria shall include, but not be limited to, a minimum score on the Graduate Record Examination or a substantially equivalent admission examination, as determined by the institution, and achievement of a cumulative grade point average of 3.0, or its equivalent, in the candidate's undergraduate program.

(2) Each program may exempt no more than 15 percent of any incoming class of students from such selection criteria described in this subclause based on such student's demonstration of potential to positively contribute to the teaching and/or educational leadership professions, as applicable. A program shall report to the Department the number of students admitted pursuant to such exemption and the selection criteria used for such exemptions.

2. Subclause (3) 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 renumbered as subclause (4) and a new subclause (3) shall be added, effective February 14, 2016, to read as follows:

(3) Requirements for Suspension and/or Deregistration of Graduate-Level Teacher and Educational Leadership Program.

(i) The authority of a graduate-level teacher and educational leadership program to admit new students shall be suspended if, for three consecutive academic years, fewer than fifty percent of its students who have satisfactorily completed the program pass each examination that they have taken that is required for such student's first initial certification, or certification examinations associated with the program leading to a student's additional certification. The pass rate calculation shall include students who have taken one of the certification examinations and used a safety net pursuant to section 80-1.5(c) of this Title. Notwithstanding such suspension, the program shall be permitted to continue operations for the length of time it would take all currently admitted and/or enrolled students, if such students were to attend classes on a full-time basis, to complete the requirements for their degrees. Upon such suspension, the graduate program shall promptly notify each admitted and/or enrolled student of such suspension and in the case of students attending classes on a part-time basis, the institution shall notify these students that they will not be able to the complete the program. If, during this time period, the Commissioner determines that student and/or program performance has significantly improved, the Commissioner may reinstate the program's ability to admit new students. If the Commissioner does not affirmatively reinstate the program's authority to admit new students during such time period, the program shall be deregistered.

(a) For purposes of this subclause, students who have satisfactorily completed the graduate program shall mean students who have met each educational requirement of the program, without regard to whether such students have been awarded a degree, and excluding any requirement that the student pass each required certification examination for such student's first initial certificate, or each required certification examination for such student's school building leader certificate in order to complete the program.

(b) Following suspension of a program pursuant to the subclause, the institution may submit an appeal, on a form prescribed by the Commissioner, to the Commissioner within 30 days of such suspension. The Office of College and University Evaluation shall then have 10 days to submit a written reply to the Commissioner. The Commissioner shall then review the written papers submitted and issue a written decision on the appeal within 30 days of either the Office of College and University Evaluation' reply or if such office does not submit a reply, within 30 days of receipt of the appeal, whichever occurs later. However, a program that has had its ability to admit students suspended shall not admit new students while awaiting the Commissioner's decision on any appeal. An institution with a deregistered program shall not admit any new students in such program while awaiting the Commissioner's decision on its application for registration.

[(3)] *(4)* By January 15, 2000 and annually by January 15th thereafter, each institution with programs registered pursuant to this section shall provide the department with a list of all students who satisfactorily complete each of its teacher education programs in the preceding year, July 1st through June 30th.

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-40-15-00009-EP, Issue of October 7, 2015. The emergency rule will expire April 11, 2016.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 210 of the Education Law authorizes the Department to fix the value of degrees, diplomas and certificates issued by institutions of other states or countries as presented for entrance to schools, colleges and the professions of the state.

Sections 210-a of the Education Law, added by Chapter 56 of the Laws of 2015, requires all institutions with graduate level teacher and leader preparation programs registered by the Department to adopt rigorous selection criteria geared to predicting a candidate's academic success in its program.

Sections 210-b of the Education Law, added by Chapter 56 of the Laws of 2015 requires that, if fewer than 50 percent of the program completers in a graduate teacher or educational leadership program pass each examination required for certification for three consecutive academic years, the Department must suspend the program's authority to admit new students. This provision in the new law became effective July 1, 2015.

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

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

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

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

Paragraph (b) of Subdivision (1) of the Education Law provides that no part of school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment will carry out the objectives of the above referenced statutes by requiring all institutions with graduate level teacher and leader preparation programs registered by the Department to adopt rigorous selection criteria geared to predicting a candidate's academic success in its program. The proposed amendment also implements Chapter 56 of the Laws of 2015 by requiring the Department to suspend a graduate level teacher or leader preparation program's authority to admit new students if, for three consecutive academic years, fewer than fifty percent of its students who have completed the program, pass each of the certification assessments required for their first initial certificate, and deregister the program if it does not significantly improve.

3. NEEDS AND BENEFITS:

Admission Requirements

The Department, consistent with the requirements of 210-a, will require registered programs with graduate level teacher and educational leader programs commencing instruction on or after July 1, 2016, to establish rigorous minimum selection criteria geared to predicting a candidate's academic success in the program. The law requires candidates who are seeking their first initial certificate admitted to such programs to have a minimum cumulative undergraduate grade point average of 3.0 or higher in the candidate's undergraduate program, and to have achieved a minimum score, to be set by the institution, on the Graduate Record Examination (GRE), or a substantially equivalent admission assessment. Pursuant to the law, each program is entitled to exempt up to fifteen percent of its incoming class from these admission requirements based on the exempted student's demonstrated "potential to positively contribute to the teacher profession" or for "other extenuating circumstances pursuant to the regulations of the commissioner. The Department has clarified this exemption to also extend to a student's ability to positively contribute to the educational leadership profession for students in a graduate-level educational leadership program. However, the Department did not list any other extenuating circumstances in the regulation because it believes that an exemption should only be permitted where a student is able to demonstrate the potential to positively contribute to the teaching and/or educational leadership profession and if a student cannot demonstrate such potential, an exemption should not be granted. Further, adding extenuating circumstances does not increase the percentage of students exempted from the admission criteria set forth in the statute.

Minimum Program Completer Certification Assessment Pass Rate, Suspension and Deregistration

Section 210-b requires that, if fewer than fifty percent of the program completers in a graduate teacher or leader preparation program pass each examination required for certification for three consecutive academic years, the Department must suspend the program's authority to admit new students. This provision in the new law became effective July 1, 2015. The law provides that the program shall be permitted to continue operations for the length of time it would take all students currently admitted and/or enrolled students to complete the program based on a full-time course schedule. If, during that time, the Commissioner determines that student and/or program performance has significantly improved, the Commissioner may reinstate the program's ability to admit new students. In making this determination, the statute instructs the Department to consider performance on each certification examination of the cohort of 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 30 following the end such academic year, where such academic year is defined as July 1 through June 30th, and shall consider only the highest score of individuals taking a test more than once. The Department will seek input from the field and, at a future date, recommend to the Board of Regents how it will define significant improvement.

A program that has been suspended would be permitted to continue operations for the length of time it would take all currently admitted and/or enrolled students, if such students were to attend classes on a full-time basis, to complete the requirements for their degrees. The institution would be required to notify all admitted and/or enrolled students of the suspension and, in the case of students attending classes on a part-time basis, the institution would be required to notify these students that they may not be able to the complete the program.

The program may also appeal the suspension during this time, in a manner and timeframe prescribed by the Commissioner. The law further provides authority to the Commissioner to affirmatively reinstate the program's ability to admit new students if: (i) student or program performance improves; or (ii) the Department's suspension is successfully overturned on appeal. If the program's ability to admit new students is not affirmatively reinstated by the Commissioner, the law requires the program to be deregistered.

Education Law § 210-b also authorizes the Commissioner to conduct expedited suspension and registration reviews for graduate programs pursuant to the Commissioner's regulations. The Department will be discussing this provision of the new law with stakeholders and the State Professional and Practices Board to determine what situations should trigger expedited reviews and will come back to the Board sometime this winter to discuss their recommendations.

4. COSTS:

(a) Cost to State government. The amendment will not impose any additional cost on State government, including the State Education Department.

(b) Cost to local government. The amendment does not impose additional costs upon local governments, including schools districts and BOCES.

(c) Cost to private regulated parties. The amendment will not impose additional costs on private regulated parties.

(d) Costs to the regulatory agency. As stated above in Costs to State Government, the amendment will not impose any additional costs on the State Education Department.

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:

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements, except that the proposed amendment establishes an appeal process for institutions who choose to challenge the suspension of their program. Following suspension of a program, the institution may submit an appeal, on a form prescribed by the Commissioner, to the Commissioner within 30 days of such suspension. The Office of College and University Evaluation shall then have 10 days to submit a written reply to the Commissioner. The Commissioner shall then review the written papers submitted and issue a written decision on the appeal within 30 days of either the Office of College and University Evaluation' reply or if such office does not submit a reply, within 30 days of receipt of the appeal, whichever occurs later. However, a program that has had its ability to admit students suspended shall not admit new students while awaiting the Commissioner's decision on any appeal.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternatives were considered because the proposed amendment implements the statutory requirements in Education Law §§ 210-a and 210-b, as added by Chapter 56 of the Laws of 2015.

9. FEDERAL STANDARDS:

There are no Federal standards that deal with the subject matter of this amendment.

10. COMPLIANCE SCHEDULE:

Regulated parties must comply with the proposed amendment on its effective date. Because of the nature of the proposed amendment, no additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The purpose of the proposed amendment is to implement Education Law §§ 210-a and 210-b, as added by Chapter 56 of the Laws of 2015, by requiring all institutions with graduate level teacher and leader preparation programs registered by the Department to adopt rigorous selection criteria geared to predicting a candidate's academic success in its program and to authorize the Department to suspend a graduate level teacher or leader preparation program's authority to admit new students if, for three consecutive academic years, fewer than fifty percent of its students who have completed the program, pass each of the certification assessments required for their first initial certificate, and deregister the program if it does not significantly improve. Since the proposed amendment has no impact on small businesses or local governments, no regulatory flexibility analysis for small businesses and local governments has been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect teacher and leader graduate-level candidates in all parts of the State and institutions offering graduate level teacher and educational leader programs in all parts of this State, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

Admission Requirements

The Department, consistent with the requirements of 210-a, will require registered programs with graduate level teacher and educational leader programs commencing instruction on or after July 1, 2016, to establish rigorous minimum selection criteria geared to predicting a candidate's academic success in the program. The law requires candidates who are seek-

ing their first initial certificate admitted to such programs to have a minimum cumulative undergraduate grade point average of 3.0 or higher in the candidate's undergraduate program, and to have achieved a minimum score, to be set by the institution, on the Graduate Record Examination (GRE), or a substantially equivalent admission assessment. Pursuant to the law, each program is entitled to exempt up to fifteen percent of its incoming class from these admission requirements based on the exempted student's demonstrated "potential to positively contribute to the teacher profession" or for "other extenuating circumstances pursuant to the regulations of the commissioner. The Department has clarified this exemption to also extend to a student's ability to positively contribute to the educational leadership profession for students in a graduate-level educational leadership program. However, the Department did not list any other extenuating circumstances in the regulation because it believes that an exemption should only be permitted where a student is able to demonstrate the potential to positively contribute to the teaching and/or educational leadership profession and if a student cannot demonstrate such potential, an exemption should not be granted. Further, adding extenuating circumstances does not increase the percentage of students exempted from the admission criteria set forth in the statute.

Minimum Program Completer Certification Assessment Pass Rate, Suspension and Deregistration

Section 210-b requires that, if fewer than fifty percent of the program completers in a graduate teacher or leader preparation program pass each examination required for certification for three consecutive academic years, the Department must suspend the program's authority to admit new students. This provision in the new law became effective July 1, 2015. The law provides that the program shall be permitted to continue operations for the length of time it would take all students currently admitted and/or enrolled students to complete the program based on a full-time course schedule. If, during that time, the Commissioner determines that student and/or program performance has significantly improved, the Commissioner may reinstate the program's ability to admit new students. In making this determination, the statute instructs the Department to consider performance on each certification examination of the cohort of 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 30 following the end such academic year, where such academic year is defined as July 1 through June 30th, and shall consider only the highest score of individuals taking a test more than once. The Department will seek input from the field and, at a future date, recommend to the Board of Regents how it will define significant improvement.

A program that has been suspended would be permitted to continue operations for the length of time it would take all currently admitted and/or enrolled students, if such students were to attend classes on a full-time basis, to complete the requirements for their degrees. The institution would be required to notify all admitted and/or enrolled students of the suspension and, in the case of students attending classes on a part-time basis, the institution would be required to notify these students that they may not be able to the complete the program.

The program may also appeal the suspension during this time, in a manner and timeframe prescribed by the Commissioner. The law further provides authority to the Commissioner to affirmatively reinstate the program's ability to admit new students if: (i) student or program performance improves; or (ii) the Department's suspension is successfully overturned on appeal. If the program's ability to admit new students is not affirmatively reinstated by the Commissioner, the law requires the program to be deregistered.

Education Law § 210-b also authorizes the Commissioner to conduct expedited suspension and registration reviews for graduate programs pursuant to the Commissioner's regulations. The Department will be discussing this provision of the new law with stakeholders and the State Professional and Practices Board to determine what situations should trigger expedited reviews and will come back to the Board sometime this winter to discuss their recommendations.

3. COSTS:

There are no additional costs imposed by the proposed amendment.

4. MINIMIZING ADVERSE IMPACT:

Subpart B of Part EE of the Laws of 2015 does not make any exceptions for teacher/leader candidates or institutions in rural areas of the State, except pursuant to the law, each program is entitled to exempt up to fifteen percent of its incoming class from the admission requirements based on the exempted student's demonstrated "potential to positively contribute to the teacher profession" or for "other extenuating circumstances pursuant to the regulations of the commissioner". The Department has clarified this exemption to also extend to a student's ability to positively contribute to the educational leadership profession for students in a graduate-level educational leadership program. This exemption may apply to student's who meet this requirement, and who live or work in rural areas of this State.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed amendment is to conform regulations to the requirements of the new sections 210-a and 210-b to the Education Law, as added by Subpart B of Part EE of Chapter 56 of the Laws of 2015, to adopt rigorous admission requirements and to establish the requirements for the suspension and deregistration of graduate-level teacher and educational leader programs. 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 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

EMERGENCY RULE MAKING

Extension and Expansion of the Collaborative Drug Therapy Management (CDTM) Demonstration Program for Pharmacists

I.D. No. EDU-48-15-00009-E

Filing No. 203

Filing Date: 2016-02-12

Effective Date: 2016-02-15

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

Action taken: Amendment of section 63.10 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a) and 6801-a; L. 2015, ch. 238; L. 2011, ch. 21

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

Specific reasons underlying the finding of necessity: The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement Chapter 238 of the Laws of 2015, which amended Education Law section 6801-a in relation to the Collaborative Drug Therapy Management (CDTM) Demonstration Program enacted in 2011 for physicians and pharmacists working under the auspices of a teaching hospital, by extending the CDTM program for an additional three year period and expanding CDTM to general hospitals and nursing homes with an on-site pharmacy staffed by a licensed pharmacist. The purpose of such collaboration is to reduce morbidity and mortality, reduce emergency room visits and hospital admissions, and otherwise reduce health care spending. Included among the many disease states in which such improvements have been documented are asthma, diabetes, and clotting disorders or other indications for anticoagulation.

The proposed amendment was adopted as an emergency action at the November 16-17, 2015 Regents meeting, effective December 13, 2015. A Notice of Emergency Action and Proposed Rule Making was published in the State Register on December 2, 2015. Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the required 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), would be the February 22-23, 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the February meeting, would be March 9, 2016, the date a Notice of Adoption would be published in the State Register. However, the November emergency rule will expire on February 14, 2016, 90 days from its filing with the Department of State on November 17, 2015.

A lapse in the rule's effective date could disrupt the expansion of the CDTM to general hospitals and nursing homes with an on-site pharmacy staffed by a licensed pharmacist, which could adversely impact New Yorkers' access CDTM and its documented benefits. Emergency action is therefore necessary for the preservation of the public health and general welfare to ensure that the proposed rule adopted by emergency action at the November 2015 Regents meeting remains continuously in effect until

the proposed rule can be presented for adoption and take effect as a permanent rule.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the February 22-23, 2016 meeting of the Board of Regents, which is the first meeting scheduled after expiration of the 45-day public comment period required by the State Administrative Procedure Act.

Subject: Extension and expansion of the Collaborative Drug Therapy Management (CDTM) Demonstration Program for Pharmacists.

Purpose: To implement Chapter 238 of the Laws of 2015 to extend and expand the CDTM program for pharmacists.

Text of emergency rule: Section 63.10 of the Regulations of the Commissioner of Education is amended, effective February 15, 2016, to read as follows:

(a) Applicability. This section shall apply only to the extent that the applicable provisions in Education Law sections 6801 and 6801-a, authorizing certain pharmacists to participate in collaborative drug therapy management, have not expired or been repealed.

[(b) Experience requirement for participating pharmacists.

(1) As used in Education Law section 6801-a(2)(b), a year of experience shall mean not less than 1,680 hours of work as a pharmacist within a period of one calendar year.

(2) In order to be counted as a year of experience that includes clinical experience in a health facility, such experience shall include, on average, not less than 15 hours per week of clinical experience which involves consultation with physicians with respect to drug therapy, as determined by the facility that employs or is affiliated with the pharmacist.]

(b) Definitions. As used in this section:

(1) Board means the State Board of Pharmacy as established by section 6804 of the Education Law.

(2) Clinical services means the collection and interpretation of patient data for the purpose of initiating, modifying and monitoring drug therapy with associated accountability and responsibility for outcomes in a direct patient care setting.

(3) Collaborative drug therapy management means the performance of clinical services by a pharmacist relating to the review, evaluation and management of drug therapy to a patient, who is being treated by a physician for a specific disease or associated disease states, in accordance with a written agreement or protocol with a voluntarily participating physician and in accordance with the policies, procedures, and protocols of the facility.

(4) Facility means:

(i) a teaching hospital or general hospital, including any diagnostic center, treatment center, or hospital-based out-patient department as defined in section 2801 of the Public Health Law; or

(ii) a nursing home with an on-site pharmacy staffed by a licensed pharmacist; provided, however, for the purposes of this section the term facility shall not include dental clinics, dental dispensaries, residential health care facilities and rehabilitation centers.

(5) Teaching hospital means a hospital licensed pursuant to Article 28 of the Public Health Law that is eligible to receive direct or indirect graduate medical education payments pursuant to Article 28 of the Public Health Law.

(6) Physician means the physician selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient for the disease and associated disease states that are the subject of the collaborative drug therapy management.

(7) Written agreement or protocol means a written document, pursuant to and consistent with an applicable state or federal requirements, that addresses a specific disease or associated disease states and that describes the nature and scope of collaborative drug therapy management to be undertaken by the pharmacists, in collaboration with the participating physician in accordance with the requirements of this section.

(c) Requirements. A pharmacist seeking to engage in collaborative drug therapy management shall submit his or her credentials, in a form determined by the department, to the department for review. Those pharmacists who the department determines to meet the requirements of paragraph (3) of this subdivision and who are employed by or otherwise affiliated with a facility shall be permitted to enter into a written agreement or protocol with a physician authorizing collaborative drug therapy management, subject to the limitations set forth in this section, within the scope of such employment or affiliation, and shall be identified as being so authorized by a designation determined by the department.

(1) As used in section 6801-a(2)(b) of the Education Law, a year of experience shall mean not less than 1,680 hours of work as a pharmacist within a period of one calendar year.

(2) In order to be counted as a year of experience that includes clinical experience in a health facility, such experience shall include, on average, not less than 15 hours per week of clinical experience which involves consultation with physicians with respect to drug therapy, as determined by the facility with which the pharmacist is employed or affiliated.

(3) A participating pharmacist shall:

(i)(a) have been awarded either a master of science in clinical pharmacy or a doctor of pharmacy degree;

(b) maintain a current unrestricted license; and

(c) have a minimum of two years experience, of which at least one year of such experience shall include clinical experience in a health facility, which involves consultation with physicians with respect to drug therapy and may include a residency at a facility involving such consultation, and such clinical experience shall be gained within the three years immediately preceding the pharmacist's submission of his or her credentials to the department for review; or

(ii) (a) have been awarded a bachelor of science in pharmacy;

(b) maintain a current unrestricted license; and

(c) within the last seven years, have a minimum of three years experience, of which at least one year of such experience shall include clinical experience in a health facility, which involves consultation with physicians with respect to drug therapy and may include a residency at a facility involving such consultation, and such clinical experience shall be gained within the three years immediately preceding the pharmacist's submission of his or her credentials to the department for review; and

(iii) (a) have residency training in a program accredited or accreditation-pending by a nationally recognized accreditation body acceptable the department; or

(b) have board certification awarded by a certification body acceptable to the department and shall include baseline and ongoing competency assessments; and

(iv) meet additional experience provisions as follows:

(a) for pharmacists seeking to engage in collaborative drug therapy management by satisfying the requirements of clauses (a) though (c) of subparagraph (i) of this paragraph, if he or she seeks to utilize residency training to satisfy the one year of clinical experience requirement, the second year of required experience shall also be clinical experience, unless such pharmacist possesses board certification that satisfies the requirements of clause (b) of subparagraph (iii) of this paragraph.

(b) for pharmacists seeking to engage in collaborative drug therapy by satisfying the requirements of clauses (a) through (c) of subparagraph (ii) of this paragraph, if he or she seeks to utilize residency training to satisfy the one year of clinical experience requirement, an additional year's experience of the three years required shall also be clinical experience, unless such pharmacist possesses board certification that satisfies the requirements of clause (b) of subparagraph (iii) of this paragraph.

(d) Requirements for collaborative drug therapy management written agreements or protocols. A physician who is a party to a written agreement or protocol to authorize collaborative drug treatment shall be employed by or otherwise affiliated with the same facility with which the pharmacist is also employed or affiliated and their written agreement or protocol may include, and shall be limited to, the following:

(1) Adjusting or managing a drug regimen of a patient, pursuant to a patient specific order or protocol made by the patient's physician, which may include adjusting drug strength, frequency of administration or route of administration. Adjusting the drug regimen shall not include substituting or selecting a different drug which differs from that initially prescribed by the patient's physician unless such substitution is expressly authorized in the written order or protocol. The pharmacist shall be required to immediately document in the patient's medical record changes made to the patient's drug therapy and shall use any reasonable means or method established by the facility to notify the patient's other treating physicians with whom he or she does not have a written agreement or protocol regarding such changes. The patient's physician may prohibit, by written instruction, any adjustment or change in the patient's drug regiment by the pharmacist;

(2) Evaluating and, only if specifically authorized by the protocol and only to the extent necessary to discharge the responsibilities set forth in this section, ordering disease state laboratory tests related to the drug therapy management for the specific disease or disease state specified within the written agreement or protocol; and

(3) Only if specifically authorized by the written agreement or protocol and only to the extent necessary to discharge the responsibilities set forth in this section, ordering or performing routine patient monitoring functions as may be necessary in the drug therapy management, including the collecting and reviewing of patient histories, and ordering or checking patient vital signs, including pulse, temperature, blood pressure and respiration.

(e) Additional provisions relating to collaborative drug therapy management written agreements and protocols.

(1) The existence of a written agreement or protocol on collaborative drug therapy management and the patient's right to choose to not partici-

pate in collaborative drug therapy management shall be disclosed to any patient who is eligible to receive collaborative drug therapy management. Collaborative drug therapy management shall not be utilized unless the patient or the patient's authorized representative consents, in writing, to such management. If the patient or the patient's authorized representative consents, it shall be noted on the patient's medical record. If the patient or the patient's authorized representative who consented to collaborative drug therapy management chooses to no longer participate in such management, at any time, it shall be noted in the patient's medical record. In addition, the existence of the written agreement or protocol and the patient's consent to such management shall be disclosed to the patient's primary care physician and any other treating physician or healthcare provider.

(2) Participation in a written agreement or protocol authorizing collaborative drug therapy management shall be voluntary, and no patient, physician, pharmacist, or facility shall be required to participate.

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-48-15-00009-EP, Issue of December 2, 2015. The emergency rule will expire April 11, 2016.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

Section 6801-a of the Education Law establishes the Collaborative Drug Therapy Management (CDTM) Demonstration Program.

Section (5) of Chapter 21 of the Laws of 2011 authorizes and directs the promulgation of any rule or regulation necessary for the implementation of the CDTM Demonstration Program.

Chapter 238 of the Laws of 2015 extends and expands the provisions that were enacted by Chapter 21 of the Laws of 2011 by extending the CDTM Demonstration Program for an additional three years and expanding CDTM to general hospitals and nursing homes with an on-site pharmacy staffed by a licensed pharmacist.

Section (4) of Chapter 238 of the Laws of 2015 authorizes and directs the promulgation of any rule or regulation necessary for the implementation of the extension and expansion of the CDTM Demonstration Program.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes and will conform the Regulations of the Commissioner of Education to Chapter 238 of the Laws of 2015, which amended Education Law section 6801-a, as added by Chapter 21 of the Laws of 2011.

On May 17, 2011, Governor Cuomo signed into law Chapter 21 of the Laws of 2011, which added a new section 6801-a of the Education Law authorizing the CDTM Demonstration Program for physicians and pharmacists working under the auspices of a teaching hospital. This law, which was scheduled to sunset three years from its effective date, restricted collaboration to pharmacists who meet specified education and experience requirements. CDTM authorizes collaboration between medication prescribers and pharmacists for the purpose of improving therapeutic outcomes from medication therapies.

In 2011, the Board of Regents added section 63.10 to the Regulations of the Commissioner of Education to implement this law by establishing the standards for the experience required for a pharmacist to participate in CDTM and amended section 63.7 of the Regulations of the Commissioner of Education to revise the continuing education requirements to reflect the statutory provisions of Chapter 21 of the Laws of 2011 for pharmacists engaging in CDTM.

On September 14, 2015, Governor Cuomo signed into law Chapter 238 of the Laws of 2015, which extends and expands the provisions that were enacted in 2011 by extending the CDTM program for an additional three years and expanding CDTM to general hospitals and nursing homes with an on-site pharmacy staffed by a licensed pharmacist. Chapter 238 of the Laws of 2015 also directs the Department to prepare a report on the expanded CDTM program at least four months prior to the program's expiration.

This legislation further authorizes the Department to develop regulations necessary to implement it. The proposed amendment establishes the experience and education requirements for pharmacists seeking to participate in CDTM. It requires such pharmacists to submit an application to the Department for approval to participate in CDTM. The proposed amendment further establishes the requirements for CDTM written agreements and protocols.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 238 of the Laws of 2015, which extends and expands the CDTM Demonstration Program that was established by Chapter 21 of the Laws of 2011.

At least 46 other states have already authorized collaboration between medication prescribers and pharmacists for the purpose of improving therapeutic outcomes from medication therapies. The purpose of such collaboration is to reduce morbidity and mortality, reduce emergency room visits and hospital admissions, and otherwise reduce health care spending. Included among the many disease states in which such improvements have been documented are asthma, diabetes, and clotting disorders or other indications for anticoagulation.

4. COSTS:

(a) Costs to State government: The proposed amendment is necessary to implement Chapter 238 of the Laws of 2015 and imposes no additional costs on State government, other than those inherent in the statute.

(b) Costs to local government: The proposed amendment relates solely to the requirements of the CDTM program, including requirements for licensees engaged in the practice of pharmacy, and does not impose any additional costs on local government.

(c) Costs to private regulated parties: The proposed amendment will not increase costs and may provide cost-savings to regulated parties, patients and institutions. Therefore, there will be no additional costs to private regulated parties.

(d) Costs to the regulatory agency for implementation and continued administration of the amendment. The proposed amendment imposes no additional costs on the State Education Department, other than those inherent in the statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates solely to the requirements of the CDTM program, including requirements for licensees engaged in the practice of pharmacy, and does not impose any programs, service, duty, or responsibility upon local governments.

6. PAPERWORK:

As required by Chapter 238 of the Laws of 2015, the proposed rule will require pharmacists seeking to participate in CDTM to submit an application to the Department for approval to participate in CDTM. The proposed rule further implements the requirements of Chapter 238 of the Laws of 2015 for CDTM written practice agreements and protocols.

7. DUPLICATION:

The proposed amendment does not duplicate other existing state or federal requirements and is necessary to implement Chapter 238 of the Laws of 2015.

8. ALTERNATIVES:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Chapter 238 of the Laws of 2015, which extends and expands the CDTM Demonstration Program that was established by Chapter 21 of the Laws of 2011. There are no viable significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 238 of the Laws of 2015. Consistent with the statute, the proposed amendment will become effective on December 13, 2015, at which time licensees and participating facilities must comply with the proposed amendments if engaged in CDTM. Participation in CDTM is voluntary and it is anticipated that regulated parties will be able to comply with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

On May 17, 2011, Governor Cuomo signed into law Chapter 21 of the Laws of 2011, which added a new section 6801-a of the Education Law authorizing the Collaborative Drug Therapy Management (CDTM) Demonstration Program for physicians and pharmacists working under the auspices of a teaching hospital. This law, which was scheduled to sunset three years from its effective date, restricted collaboration to pharmacists who meet specified education and experience requirements. CDTM authorizes collaboration between medication prescribers and pharmacists for the purpose of improving therapeutic outcomes from medication therapies.

In 2011, the Board of Regents added section 63.10 to the Regulations of

the Commissioner of Education to implement this law by establishing the standards for the experience required for a pharmacist to participate in CDTM and amended section 63.7 of the Regulations of the Commissioner of Education to revise the continuing education requirements to reflect the statutory provisions of Chapter 21 of the Laws of 2011 for pharmacists engaging in CDTM.

On September 14, 2015, Governor Cuomo signed into law Chapter 238 of the Laws of 2015, which extends and expands the provisions that were enacted in 2011 by extending the CDTM program for an additional three years and expanding CDTM to general hospitals and nursing homes with an on-site pharmacy staffed by a licensed pharmacist.

The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement the extension and expansion of the CDTM program pursuant to Chapter 238 of the Laws of 2015. The proposed amendment establishes the experience and education requirements for pharmacists seeking to participate in CDTM. It requires such pharmacists to submit an application to the Department for approval to participate in CDTM. The proposed amendment further establishes the requirements for CDTM written agreements and protocols.

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The rule will apply to the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the 25,535 pharmacists registered by the State Education Department, 3,025 pharmacists report their permanent address of record is in a rural county.

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

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law section 6801-a, as amended by Chapter 238 of the Laws of 2015. The proposed rule will require pharmacists seeking to engage in collaborative drug therapy management (CDTM) to submit an application to the Department for approval to participate in CDTM. The proposed rule further implements the requirement of Chapter 238 of the Laws of 2015 for CDTM written practice agreements and protocols. The proposed rule does not impose any professional services requirements on entities in rural areas.

3. COSTS:

The proposed rule is necessary to implement Chapter 238 of the Laws of 2015 and does not impose any additional costs on regulated parties, including those in rural areas. The proposed rule will not increase costs, and may provide cost-savings to regulated parties, patients and institutions.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law section 6801-a, as amended by Chapter 238 of the Laws of 2015. Following discussion, including obtaining input from practicing professionals, the State Board for Pharmacy has considered the terms of the proposed amendment to the Regulations of the Commissioner of Education and has recommended the change. Additionally, the measures have been shared with educational institutions, professional associations, and practitioners representing the profession of pharmacy. The amendments are supported by representatives of these sectors. The proposals make no exception for individuals who live in rural areas. The Department has determined that such requirements should apply to all pharmacists and pharmacies State-wide, regardless of their geographic location, to ensure a uniform standard of practice across the State. Accordingly, it is neither appropriate nor warranted to establish different requirements for entities located in rural areas. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

5. RURAL AREAS PARTICIPATION:

Comments on the proposed rule were solicited from Statewide organizations representing all parties having an interest in the practice of pharmacy. Included in this group were members of the State Board of Pharmacy, educational institutions, and professional associations representing the pharmacy profession, such as the Pharmacists Society of the State of New York and the New York State Council of Health-system Pharmacists. These groups, which have representation in rural areas, have been provided notice of the proposed rule making and opportunity to comment on the regulations.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements in Chapter 238 of the Laws of 2015 and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

On May 17, 2011, Governor Cuomo signed into law Chapter 21 of the Laws of 2011, which added a new section 6801-a of the Education Law authorizing the Collaborative Drug Therapy Management (CDTM) Demonstration Program for physicians and pharmacists working under the auspices of a teaching hospital. This law, which was scheduled to sunset three years from its effective date, restricted collaboration to pharmacists who meet specified education and experience requirements. CDTM authorizes collaboration between medication prescribers and pharmacists for the purpose of improving therapeutic outcomes from medication therapies.

In 2011, the Board of Regents added section 63.10 to the Regulations of the Commissioner of Education to implement this law by establishing the standards for the experience required for a pharmacist to participate in CDTM and amended section 63.7 of the Regulations of the Commissioner of Education to revise the continuing education requirements to reflect the statutory provisions of Chapter 21 of the Laws of 2011 for pharmacists engaging in CDTM.

On September 14, 2015, Governor Cuomo signed into law Chapter 238 of the Laws of 2015, which extends and expands the provisions that were enacted in 2011 by extending the CDTM program for an additional three years and expanding CDTM to general hospitals and nursing homes with an on-site pharmacy staffed by a licensed pharmacist.

The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement the extension and expansion of the CDTM program pursuant to Chapter 238 of the Laws of 2015. The proposed amendment establishes the experience and education requirements for pharmacists seeking to participate in CDTM. It requires such pharmacists to submit an application to the Department for approval to participate in CDTM. The proposed amendment further establishes the requirements for CDTM written agreements and protocols.

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

Department of Health

EMERGENCY RULE MAKING

Protection Against Legionella

I.D. No. HLT-09-16-00001-E
Filing No. 199
Filing Date: 2016-02-11
Effective Date: 2016-02-11

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

Action taken: Addition of Part 4 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 225(5)(a)

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

Specific reasons underlying the finding of necessity: Improper maintenance of cooling towers can contribute to the growth and dissemination of Legionella bacteria, the causative agent of legionellosis. Legionellosis causes cough, shortness of breath, high fever, muscle aches, headaches and can result in pneumonia. Hospitalization is often required, and between 5-30% of cases are fatal. People at highest risk are those 50 years of age or older, current or former smokers, those with chronic lung diseases,

those with weakened immune systems from diseases like cancer, diabetes, or kidney failure, and those who take drugs to suppress the immune system during chemotherapy or after an organ transplant. The number of cases of legionellosis reported in New York State between 2005-2014 increased 323% when compared to those reported in the previous ten year period.

Outbreaks of legionellosis have been associated with cooling towers. A cooling tower is an evaporative device that is part of a recirculated water system incorporated into a building's cooling, industrial process, refrigeration, or energy production system. Because water is part of the process of removing heat from a building, these devices require biocides—chemicals that kill or inhibit bacteria (including Legionella)—as means of controlling bacterial overgrowth. Overgrowth may result in the normal mists ejected from the tower having droplets containing Legionella.

For example, in 2005, a cooling tower located at ground level adjacent to a hospital in New Rochelle, Westchester County resulted in a cluster of 19 cases of legionellosis and multiple fatalities. Most of the individuals were dialysis patients or companions escorting the patients to their dialysis session. One fatality was in the local neighborhood. The cooling tower was found to have insufficient chemical treatment. The entire tower was ultimately replaced by the manufacturer in order to maintain cooling for the hospital and to protect public health. In June and July of 2008, 12 cases of legionellosis including one fatality were attributed to a small evaporative condenser on Onondaga Hill in Syracuse, Onondaga County. An investigation found that the unit was not operating properly and this resulted in the growth of microorganisms in the unit. Emergency biocide treatment was initiated and proper treatment was maintained. No new cases were then detected thereafter.

Recent work has shown that sporadic cases of community legionellosis are often associated with extended periods of wet weather with overcast skies. A study conducted by the New York State Department of Health that included data from 13 states and one United States municipality noted a dramatic increase in sporadic, community acquired legionellosis cases in May through August 2013. Large municipal sites such as Buffalo, Erie County reported 2- to 3-fold increases in cases without identifying common exposures normally associated with legionellosis. All sites in the study except one had a significant correlation, with some time lag, between legionellosis case onset and one or more weather parameters. It was concluded that large municipalities produce significant mist (droplet) output from hundreds of cooling towers during the summer months. Periods of sustained precipitation, high humidity, cloud cover, and high dew point may lead to an "urban cooling tower" effect. The "urban cooling tower" effect is when a metropolitan area with hundreds of cooling towers acts as one large cooling tower producing a large output of drift, which is entrapped by humid air and overcast skies.

More recently, 133 cases of legionellosis, which included 16 fatalities, occurred in Bronx, NY (July-September, 2015). This event was preceded by an outbreak in Co-Op City in the Bronx, from December 2014 to January 2015, which involved 8 persons and no fatalities. Both of these outbreaks have been attributed to cooling towers, and emergency disinfection of compromised towers helped curtail these outbreaks. These events highlight the need for proper maintenance of cooling towers.

The heating, ventilation, and air-conditioning (HVAC) industry has issued guidelines on how to seasonally start a cooling tower; treat it with biocides and other chemicals needed to protect the components from scale and corrosion; and set cycles of operations that determine when fresh water is needed; and how to shut down the tower at the end of the cooling season. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) has recently released a new Standard entitled Legionellosis: Risk Management for Building Water Systems (ANSI/ASHRAE Standard 188-2015). Section 7.2 of that document outlines components of the operations and management plan for cooling towers. The industry also relies on other guidance for specific treatment chemicals, emergency disinfection or decontamination procedures and other requirement.

However, none of the guidance is obligatory. Consequently, poor practice in operation and management can result in bacterial overgrowth, increases in legionellae, and mist emissions that contain a significant dose of pathogenic legionellae. This regulation requires that all owners of cooling towers ensure proper maintenance of the cooling towers, to protect the public and address this public health threat.

Further, these regulations require all general hospitals and residential health care facilities (i.e., nursing homes) to develop a sampling plan, report the results, and take necessary actions to protect the safety of their patients or residents. The details of each facility's sampling plan and remedial measures will depend on the risk factors for acquiring Legionnaires' disease in the population served by the hospital or nursing home.

Most people in nursing homes should be considered at risk, as residents are typically over 50 years of age. In general hospitals, persons at risk include those over 50 years of age, as well as those receiving chemotherapy, those undergoing transplants, and other persons housed on healthcare units that require special precautions. Additional persons who might be at increased risk for acquiring Legionnaires' disease include persons on high-dose steroid therapy and persons with chronic lung disease. Certain facilities with higher risk populations, such as those with hematopoietic stem-cell transplant (HSCT) and solid organ transplant units, require more protective measures.

An environmental assessment involves reviewing facility characteristics, hot and cold water supplies, cooling and air handling systems and any chemical treatment systems. The purpose of the assessment is to discover any vulnerabilities that would allow for amplification of Legionella spp. and to determine appropriate response actions in advance of any environmental sampling for Legionella. Initial and ongoing assessment should be conducted by a multidisciplinary team that represents the expertise, knowledge and functions related to the facility's operation and service. A team should include, at a minimum, representatives from the following groups: Infection Control; Physical Facilities Management; Engineering; Clinicians; Laboratory; and Hospital Management.

These regulations, which originally became effective on August 17, 2015, implemented important requirements that protect the public from the threat posed by Legionella. To ensure that protection is maintained, the Commissioner of Health and the Public Health and Health Planning Council have determined it necessary to file these regulations on an emergency basis. Public Health Law § 225, in conjunction with State Administrative Procedure Act § 202(6) empowers the Council and the Commissioner to adopt emergency regulations when necessary for the preservation of the public health, safety or general welfare and that compliance with routine administrative procedures would be contrary to the public interest.

Subject: Protection Against Legionella.

Purpose: To protect the public from the immediate threat posed by Legionella.

Text of emergency rule: Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 225(5)(a) of the Public Health Law, Part 4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is added, to be effective upon filing with the Secretary of State, to read as follows:

4.1 Scope.

All owners of cooling towers, and all general hospitals and residential health care facilities as defined in Article 28 of the Public Health Law, shall comply with this Part.

4.2 Definitions.

As used in this Part, the following terms shall have the following meanings:

(a) Building. The term "building" means any structure used or intended for supporting or sheltering any use or occupancy. The term shall be construed as if followed by the phrase "structure, premises, lot or part thereof" unless otherwise indicated by the text.

(b) Commissioner. The term "commissioner" means the New York State Commissioner of Health.

(c) Cooling Tower. The term "cooling tower" means a cooling tower, evaporative condenser or fluid cooler that is part of a recirculated water system incorporated into a building's cooling, industrial process, refrigeration or energy production system.

(d) Owner. The term "owner" means any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of the premises.

4.3 Registration.

All owners of cooling towers shall register such towers with the department within 30 days after the effective date of this Part. Thereafter, all owners of cooling towers shall register such towers with the department prior to initial operation, and whenever any owner of the cooling tower changes. Such registration shall be in a form and manner as required by the commissioner and shall include, at a minimum, the following information:

(a) street address of the building at which the cooling tower is located, with building identification number, if any;

(b) intended use of the cooling tower;

(c) name(s), address(es), telephone number(s), and email address(es) of all owner(s) of the building;

(d) name of the manufacturer of the cooling tower;

(e) model number of the cooling tower;

(f) specific unit serial number of the cooling tower;

(g) cooling capacity (tonnage) of the cooling tower;

(h) basin capacity of the cooling tower;

(i) whether systematic disinfection is maintained manually, through timed injection, or through continuous delivery;

(j) the contractor or employee engaged to inspect and certify the cooling tower; and

(k) commissioning date of the cooling tower.

4.4 Culture sample collection and testing; cleaning and disinfection.

(a) All owners of cooling towers shall collect samples and obtain culture testing:

(1) within 30 days of the effective date of this Part, unless such culture testing has been obtained within 30 days prior to the effective date of this Part, and shall take immediate actions in response to such testing, including interpreting Legionella culture results, if any, as specified in Appendix 4-A.

(2) in accordance with the maintenance program and plan, and shall take immediate actions in response to such testing as specified in the plan, including interpreting Legionella culture results, if any, as specified in Appendix 4-A; provided that if a maintenance program and plan has not yet been obtained in accordance with section 4.6 of this Part, bacteriological culture samples and analysis (dip slides or heterotrophic plate counts) to assess microbiological activity shall be obtained, at intervals not exceeding 90 days while the tower is in use, and any immediate action in response to such testing shall be taken, including interpreting Legionella culture results, if any, as specified in Appendix 4-A.

(b) Any person who performs cleaning and disinfection shall be a commercial pesticide applicator or pesticide technician who is qualified to apply biocide in a cooling tower and certified in accordance with the requirements of Article 33 of the Environmental Conservation Law and 6 NYCRR Part 325, or a pesticide apprentice under the supervision of a certified applicator.

(c) Only biocide products registered by the New York State Department of Environmental Conservation may be used in disinfection.

(d) All owners shall ensure that all cooling towers are cleaned and disinfected when shut down for more than five days.

4.5 Inspection and certification.

(a) Inspection. All owners of cooling towers shall inspect such towers within 30 days of the effective date of this Part, unless such tower has been inspected within 30 days prior to the effective date of this Part. Thereafter, owners shall ensure that all cooling towers are inspected at intervals not exceeding every 90 days while in use. All inspections shall be performed by a: New York State licensed professional engineer; certified industrial hygienist; certified water technologist; or environmental consultant with training and experience performing inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015, as incorporated by section 4.6 of this Part.

(1) Each inspection shall include an evaluation of:

(i) the cooling tower and associated equipment for the presence of organic material, biofilm, algae, and other visible contaminants;

(ii) the general condition of the cooling tower, basin, packing material, and drift eliminator;

(iii) water make-up connections and control;

(iv) proper functioning of the conductivity control; and

(v) proper functioning of all dosing equipment (pumps, strain gauges).

(2) Any deficiencies found during inspection will be reported to the owner for immediate corrective action. A person qualified to inspect pursuant to paragraph (a) of this section shall document all deficiencies, and all completed corrective actions.

(3) All inspection findings, deficiencies, and corrective actions shall be reported to the owner, recorded, and retained in accordance with this Part, and shall also be reported to the department in accordance with section 4.10 of this Part.

(b) Certification. Each year, the owner of a cooling tower shall obtain a certification from a person identified in paragraph (a) of this section, that such cooling tower was inspected, tested, cleaned, and disinfected in compliance with this Part, that the condition of the cooling tower is appropriate for its intended use, and that a maintenance program and plan has been developed and implemented as required by this Part. Such certification shall be obtained by November 1, 2016, and by November 1 of each year thereafter. Such certification shall be reported to the department.

4.6 Maintenance program and plan.

(a) By March 1, 2016, and thereafter prior to initial operation, owners shall obtain and implement a maintenance program and plan developed in accordance with section 7.2 of Legionellosis: Risk Management for Building Water Systems (ANSI/ASHRAE 188-2015), 2015 edition with final approval date of June 26, 2015, at pages 7-8, incorporated herein by reference. The latest edition of ASHRAE 188-2015 may be purchased from the ASHRAE website (www.ashrae.org) or from ASHRAE Customer Service, 1791 Tullie Circle, NE, Atlanta, GA 30329-2305. E-mail: orders@ashrae.org. Fax: 678-539-2129. Telephone: 404-636-8400, or toll free 1-800-527-4723. Copies are available for inspection and copying at: Center for Environmental Health, Corning Tower Room 1619, Empire State Plaza, Albany, NY 12237.

(b) In addition, the program and plan shall include the following elements:

(1) a schedule for routine bacteriological sampling and analysis (dip slides or heterotrophic plate counts) to assess microbiological activity and a schedule for Legionella sampling and culture analysis; provided that where the owner is a general hospital or residential health care facility, as defined in Article 28 of the Public Health Law, routine testing shall be performed at a frequency in accordance with the direction of the department.

(2) emergency sample collection and submission of samples for Legionella culture testing to be conducted in the case of events including, but not limited to:

(i) power failure of sufficient duration to allow for the growth of bacteria;

(ii) loss of biocide treatment sufficient to allow for the growth of bacteria;

(iii) failure of conductivity control to maintain proper cycles of concentration;

(iv) a determination by the commissioner that one or more cases of legionellosis is or may be associated with the cooling tower, based upon epidemiologic data or laboratory testing; and

(v) any other conditions specified by the commissioner.

(3) immediate action in response to culture testing, including interpreting Legionella culture results, if any, as specified in Appendix 4-A; provided that where the owner is a general hospital or residential health care facility, as defined in Article 28 of the Public Health Law, the provisions shall additionally require immediately contacting the department for further guidance, but without any delay in taking any action specified in Appendix 4-A.

(c) An owner shall maintain a copy of the plan required by this subdivision on the premises where a cooling tower is located. Such plan shall be made available to the department or local health department immediately upon request.

4.7 Recordkeeping.

An owner shall keep and maintain records of all inspection findings, deficiencies, corrective actions, cleaning and disinfection, and tests performed pursuant to this Part, and certifications, for at least three years. An owner shall maintain a copy of the maintenance program and plan required by this Part on the premises where a cooling tower is located. Such records and plan shall be made available to the department or local health department immediately upon request.

4.8 Discontinued use.

The owner of a cooling tower shall notify the department within 30 days after removing or permanently discontinuing use of a cooling tower. Such notice shall include a statement that such cooling tower has been disinfected and drained in accordance with the same procedures as set forth in the shutdown plan, as specified in the maintenance program and plan required pursuant to this Part.

4.9 Enforcement.

(a) An officer, employee or agent of the department or local health department may enter onto any property to inspect the cooling tower for compliance with the requirements of this Part, in accordance with applicable law.

(b) Where an owner does not register, obtain certification, clean or disinfect, culture test or inspect a cooling tower within the time and manner set forth in this Part, the department or local health department may determine that such condition constitutes a nuisance and may take such action as authorized by law. The department or local health department may also take any other action authorized by law.

(c) A violation of any provision of this Part is subject to all civil and criminal penalties as provided for by law. Each day that an owner remains in violation of any provision of this Part shall constitute a separate and distinct violation of such provision.

4.10 Electronic registration and reporting.

(a)(1) Within 30 days of the effective date of this Part, and thereafter within 10 days after any action required by this Part, owners shall electronically input the following information in a statewide electronic system designated by the commissioner:

(i) registration information;

(ii) date of last routine culture sample collection, sample results, and date of any required remedial action;

(iii) date of any legionella sample collection, sample results, and date of any required remedial action;

(iv) date of last cleaning and disinfection;

(v) dates of start and end of any shutdown for more than five days;

(vi) date of last certification and date when it was due;

(vii) date of last inspection and date when it was due;

(viii) date of discontinued use; and

(ix) such other information as shall be determined by the department.

(2) The commissioner may suspend this requirement in the event that the electronic system is not available.

(b) The data in the system referenced in paragraph (a) shall be made publicly available, and shall be made fully accessible and searchable to any local health department. Nothing in this Part shall preclude a local health department from requiring registration and reporting with a local system or collecting fees associated with the administration of such system.

4.11 Health care facilities

(a) All general hospitals and residential health care facilities, as defined in Article 28 of the Public Health Law, shall, as the department may determine appropriate:

(1) adopt a Legionella sampling plan for its facilities' potable water distribution system;

(2) report the results of such sampling; and

(3) take necessary responsive actions.

(b) With respect to such general hospitals and residential health care facilities, the department shall investigate to what extent, if any, requirements more stringent than those set forth in this Part are warranted.

4.12 Severability.

If any provisions of this Part or the application thereof to any person or entity or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons, entities, and circumstances.

Appendix 4-A

Interpretation of Legionella Culture Results from Cooling Towers

Legionella Test Results in CFU[1] /ml	*Approach*
No detection (< 10 CFU /ml)	*Maintain treatment program and Legionella monitoring.*
For levels at ≥ 10 CFU /ml but < 1000 CFU /ml perform the following:	*o Review treatment program.* *o Institute immediate online disinfection[2] to help with control* *o Retest the water in 3 – 7 days.* • *Continue to retest at the same time interval until two consecutive readings show acceptable improvement, as determined by a person identified in 10 NYCRR 4.5(a). Continue with regular maintenance strategy.* • *If < 100 CFU /ml repeat online disinfection[2] and retest.* • *If ≥ 100 CFU /ml but < 1000 CFU /ml further investigate the water treatment program and immediately perform online disinfection.[2] Retest and repeat attempts at control strategy.* *o If ≥ 1000 CFU /ml undertake control strategy as noted below.*
For levels ≥ 1000 CFU /ml perform the following:	*o Review the treatment program* *o Institute immediate online decontamination[3] to help with control* *o Retest the water in 3 – 7 days.* • *Continue to retest at the same time interval until two consecutive readings show acceptable improvement, as determined by a person identified in 10 NYCRR 4.5(a). Continue with regular maintenance strategy.* • *If < 100 CFU /ml repeat online disinfection[2] and retest;* • *If ≥ 100 CFU /ml but < 1000 CFU /ml further investigate the water treatment program and immediately perform online disinfection.[2] Re-test and repeat attempts at control strategy.* • *If ≥ 1000 CFU /ml carry out system decontamination[4]*

[1] *Colony forming units.*

[2] *Online disinfection means – Dose the cooling tower water system with either a different biocide or a similar biocide at an increased concentration than currently used.*

[3] *Online decontamination means – Dose the recirculation water with a chlorine-based compound equivalent to at least 5 mg/l (ppm) free residual chlorine for at least one hour; pH 7.0 to 7.6.*

[4] *System decontamination means – Maintain 5 to 10 mg/l (ppm) free residual chlorine for a minimum of one hour; drain and flush with disinfected water; clean wetted surface; refill and dose to 1 – 5 mg/l (ppm) of free residual chlorine at pH 7.0 – 7.6 and circulate for 30 minutes. Refill, re-establish treatment and retest for verification of treatment.*

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 May 10, 2016.

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

Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council (PHHPC) is authorized by Section 225 of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC) subject to the approval of the Commissioner of Health. PHL Section 225(5)(a) provides that the SSC may deal with any matter affecting the security of life or health, or the preservation or improvement of public health, in the state of New York.

Legislative Objectives:

This rulemaking is in accordance with the legislative objective of PHL Section 225 authorizing the PHHPC, in conjunction with the Commissioner of Health, to protect public health and safety by amending the SSC to address issues that jeopardize health and safety. Specifically, these regulations establish requirements for cooling towers relating to: registration, reporting and recordkeeping; testing; cleaning and disinfection; maintenance; inspection; and certification of compliance. Additionally, these regulations require general hospitals and nursing homes to implement a Legionella sampling plan and take necessary responsive actions, as the department may deem appropriate.

Needs and Benefits:

Improper maintenance of cooling towers can contribute to the growth and dissemination of Legionella bacteria, the causative agent of legionellosis. Optimal conditions for growth of Legionella include warm water that is high in nutrients and protected from light. People are exposed to Legionella through inhalation of aerosolized water containing the bacteria. Person-to-person transmission has not been demonstrated. Symptoms of legionellosis may include cough, shortness of breath, high fever, muscle aches, and headaches, and can result in pneumonia. Hospitalization is often required and between 5-30% of cases are fatal. People at highest risk are those 50 years of age or older; current or former smokers; those with chronic lung diseases; those with weakened immune systems from diseases like cancer, diabetes, or kidney failure; and those who take drugs to suppress the immune system during chemotherapy or after an organ transplant. The number of cases of legionellosis reported in New York State between 2005-2014 increased 323% when compared to those reported in the previous ten year period.

Outbreaks of legionellosis have been associated with cooling towers. A cooling tower is an evaporative device that is part of a recirculated water system incorporated into a building's cooling, industrial process, refrigeration, or energy production system. Because water is part of the process of removing heat from a building, these devices require disinfectants—chemicals that kill or inhibit bacteria (including Legionella)—as means of controlling bacterial overgrowth. Overgrowth may result in the normal mists ejected from the tower having droplets containing Legionella.

For example, in 2005, a cooling tower located at ground level adjacent to a hospital in New Rochelle, Westchester County resulted in a cluster of 19 cases of legionellosis and multiple fatalities. Most of the individuals were dialysis patients or companions escorting the patients to their dialysis session. One fatality was in the local neighborhood. The cooling tower was found to have insufficient chemical treatment. The entire tower was ultimately replaced by the manufacturer in order to maintain cooling for the hospital and to protect public health. In June and July of 2008, 12 cases of legionellosis including one fatality were attributed to a small evaporative condenser on Onondaga Hill in Syracuse, Onondaga County. An investigation found that the unit was not operating properly and this resulted in the growth of microorganisms in the unit. Emergency biocide treatment was initiated and proper treatment was maintained. No new cases were then detected thereafter.

Recent work has shown that sporadic cases of community legionellosis are often associated with extended periods of wet weather with overcast skies. A study conducted by the New York State Department of Health that included data from 13 states and one United States municipality noted a dramatic increase in sporadic, community acquired legionellosis cases in May through August 2013. Large municipal sites such as Buffalo, Erie County reported 2- to 3-fold increases in cases without identifying com-

mon exposures normally associated with legionellosis. All sites in the study except one had a significant correlation, with some time lag, between legionellosis case onset and one or more weather parameters. It was concluded that large municipalities produce significant mist (droplet) output from hundreds of cooling towers during the summer months. Periods of sustained precipitation, high humidity, cloud cover, and high dew point may lead to an "urban cooling tower" effect. The "urban cooling tower" effect is when a metropolitan area with hundreds of cooling towers acts as one large cooling tower producing a large output of drift, which is entrapped by humid air and overcast skies.

More recently, 133 cases of legionellosis, which included 16 fatalities, occurred in Bronx, NY (July-September, 2015). This event was preceded by an outbreak in Co-Op City in the Bronx, from December 2014 to January 2015, which involved 8 persons and no fatalities. Both of these outbreaks have been attributed to cooling towers, and emergency disinfection of compromised towers helped curtail these outbreaks. These events highlight the need for proper maintenance of cooling towers.

The heating, ventilation, and air-conditioning (HVAC) industry has issued guidelines on how to: seasonally start a cooling tower; treat it with biocides and other chemicals needed to protect the components from scale and corrosion; set cycles of operations that determine when fresh water is needed; and shut down the tower at the end of the cooling season. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) has recently released a new Standard entitled Legionellosis: Risk Management for Building Water Systems (ANSI/ASHRAE Standard 188-2015). Section 7.2 of that document outlines components of the operations and management plan for cooling towers. The industry also relies on other guidance for specific treatment chemicals, emergency disinfection or decontamination procedures, and other requirements.

However, none of the guidance is obligatory. Consequently, maintenance deficiencies such as poor practice in operation and management can result in bacterial overgrowth, increases in Legionella, and mist emissions that contain pathogenic legionellae. This regulation requires that all owners of cooling towers ensure proper maintenance of the cooling towers, to protect the public and address this public health threat.

Further, these regulations requires that all owners of cooling towers ensure proper maintenance of the cooling tower Legionella sampling plan for their potable water system, report the results, and take necessary actions to protect the safety of their patients or residents, as the Department may deem appropriate. The details of each facility's sampling plan and remedial measures will depend on the risk factors for acquiring Legionnaires' disease in the population served by the hospital or nursing home.

Most people in nursing homes should be considered at risk, as residents are typically over 50 years of age. In general hospitals, persons at risk include those over 50 years of age, as well as those receiving chemotherapy, those undergoing transplants, and other persons housed on healthcare units that require special precautions. Additional persons who might be at increased risk for acquiring Legionnaires' disease include persons on high-dose steroid therapy and persons with chronic lung disease. Certain facilities with higher risk populations, such as those with hematopoietic stem-cell transplant (HSCT) and solid organ transplant units, require more protective measures.

An environmental assessment involves reviewing facility characteristics, hot and cold water supplies, cooling and air handling systems, and any chemical treatment systems. The purpose of the assessment is to discover any vulnerabilities that would allow for amplification of Legionella and to determine appropriate response actions in advance of any environmental sampling for Legionella. Initial and ongoing assessment should be conducted by a multidisciplinary team that represents the expertise, knowledge, and functions related to the facility's operation and service. A team should include, at a minimum, representatives from the following groups: Infection Control, Physical Facilities Management, Engineering, Clinicians, Laboratory, and Hospital Management.

Costs:

Costs to Private Regulated Parties:

Building owners already incur costs for routine operation and maintenance of cooling towers. This regulation establishes the following new requirements:

- Routine Bacteriological Culture Testing – The regulations require routine bacteriological testing pursuant to their cooling tower maintenance program and plan. The cost per dip slide test is $3.50. Assuming that some plans may require tests be performed twice a week, this could result in an annual cost of $364. If heterotrophic plate count analysis is used the cost per sample on average is $25.
- Emergency Legionella Culture Testing – Owners of cooling towers are required to conduct additional testing for Legionella in the event of disruption of normal operations or process control, or when indicated by epidemiological evidence. The average cost of each sample analysis is estimated to be approximately $125.00.
- Maintenance Program and Plan Development – The formulation of a cooling tower program and sampling plan would require 4 to 8 hours at $150 per hour ($600 to $1200). The range represents the cost for reviewing and modifying an existing plan versus the preparation of a new plan.
- Inspection – Owners of cooling towers shall obtain the services of a professional engineer (P.E.), certified industrial hygienist (C.I.H.), certified water technologist, or environmental consultant with training and experience performing inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015, for inspection of the cooling towers at intervals not exceeding 90 days while in use. The cost of such services is estimated to be approximately $150.00 per hour and estimated to take approximately eight (8) hours.
- Annual Certification – The same persons qualified to perform inspections are qualified to perform annual certifications. The certification can follow one of the required inspections and requires some additional evaluation and considerations. The cost of such services is estimated to be approximately $150.00 per hour and is estimated to take approximately four (4) hours.
- Emergency Cleaning and Disinfection – If emergency cleaning and disinfection is required, owners of cooling towers are required to obtain the services of a certified commercial pesticide applicator or pesticide technician who is qualified to apply biocide in a cooling tower, or a pesticide apprentice under the supervision of a certified applicator. The cost of such services is estimated to be approximately $5,000.00 for labor, plus the cost of materials.
- Recordkeeping and Electronic Reporting – Owners of cooling towers are required to maintain certain specified records and to electronically report certain specified information. The costs of these administrative activities are predicted to be minimal.
- Health Care Facilities – The cost of adopting a sampling plan for Article 28 facilities is dependent upon any existing plan and the status of existing record keeping. It is estimated that with prior records and a maintenance plan the time required should a consultant be hired would be 6.5 hours at $150 per hour ($975). Without a prior plan and poor maintenance documentation the time required would be 13 hours at $150 per hour ($1950). It is anticipated that facilities may develop the plan using existing staff.

Costs to State Government and Local Government:

State and local governments will incur costs for administration, implementation, and enforcement. Exact costs cannot be predicted at this time. However, some local costs may be offset through the collection of fees, fines and penalties authorized pursuant to this Part. Costs to State and local governments may be offset further by a reduction in the need to respond to community legionellosis outbreaks.

Local Government Mandates:

The SSC establishes a minimum standard for regulation of health and sanitation. Local governments can, and often do, establish more restrictive requirements that are consistent with the SSC through a local sanitary code. PHL § 228. Local governments have the power to enforce the provisions of the State Sanitary Code, including this new Part, utilizing both civil and criminal options available. PHL §§ 228, 229, 309(1)(f) and 324(1)(e).

Paperwork:

The regulation imposes new registration, reporting and recordkeeping requirements for owners of cooling towers.

Duplication:

This regulation does not duplicate any state requirements.

Alternatives:

The no action alternative was considered. Promulgating this regulation was determined to be necessary to address this public health threat.

Federal Standards:

There are no federal standards or regulations pertaining to registration, maintenance, operation, testing, and inspection for cooling towers.

Compliance Schedule:

On August 17, 2015, when this regulation first became effective, owners were given until September 16, 2015, to register their cooling towers and perform bacteriological sampling. Now that the deadline has past, all owners should have registered their cooling towers, and any owners that have not registered their cooling towers must come into compliance immediately. All owners must register such towers prior to initial operation.

By March 1, 2016, all owners of existing cooling towers must obtain and implement a maintenance program and plan. Until such plan is obtained, culture testing must be performed every 90 days, while the tower is in use.

All owners must inspect their cooling towers at least every 90 days while in use. All owners of cooling towers shall obtain a certification that regulatory requirements have been met by November 1, 2016, with subsequent annual certifications by November 1st of each year.

Owners must register cooling towers and report certain actions, using a

statewide electronic system. Reportable events include date of sample collections; date of cleaning and disinfection; start and end dates of any shutdown lasting more than five days; dates of last inspection and when due; dates of last certification and when due; and date of discontinued use. These events must be reported to the statewide electronic system within 10 days of occurrence.

Regulatory Flexibility Analysis

Effect of Rule:

The rule will affect the owner of any building with a cooling tower, as those terms are defined in the regulation. This could include small businesses. At this time, it is not possible to determine the number of small businesses so affected. This regulation affects local governments by establishing requirements for implementing, administering, and enforcing elements of this Part. Local governments have the power to enforce the provisions of the State Sanitary Code, including this new Part. PHL §§ 228, 229, 309(1)(f) and 324(1)(e).

Compliance Requirements:

Small businesses that are also owners of cooling towers must comply with all provisions of this Part. A violation of any provision of this Part is subject to all civil and criminal penalties as provided for by law. Each day that an owner remains in violation of any provision of this Part shall constitute a separate and distinct violation of such provision.

Professional Services:

To comply with inspection and certification requirements, small businesses will need to obtain services of a P.E., C.I.H., certified water technologist, or environmental consultant with training and experience performing inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015. Small businesses will need to secure laboratory services for routine culture sample testing and, if certain events occur, emergency Legionella culture testing.

To comply with disinfection requirements, small businesses will need to obtain the services of a commercial pesticide applicator or pesticide technician, or pesticide apprentice under supervision of a commercial pesticide applicator. These qualifications are already required for the properly handling of biocides that destroy Legionella.

Compliance Costs:

Costs to Private Regulated Parties:

Building owners already incur costs for routine operation and maintenance of cooling towers. This regulation establishes the following new requirements:

- Routine Bacteriological Culture Testing – The regulations require routine bacteriological testing pursuant to industry standards. The cost per test is $3.50. Assuming tests are performed twice a week, this would result in an annual cost of $364.
- Emergency Legionella Culture Testing – Owners of cooling towers are required to conduct additional testing for Legionella in the event of disruption of normal operations. The average cost of each sample analysis is estimated to be approximately $125.00.
- Inspection – Owners of cooling towers shall obtain the services of a professional engineer (P.E.), certified industrial hygienist (C.I.H.), certified water technologist, or environmental consultant with training and experience performing inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015; for inspection of the cooling towers at intervals not exceeding once every 90 days while the cooling towers are in use. The cost of such services is estimated to be approximately $150.00 per hour and estimated to take approximately eight (8) hours.
- Annual Certification – The same persons qualified to perform inspections are qualified to perform annual certifications. The cost of such services is estimated to be approximately $150.00 per hour and is estimated to take approximately four (4) hours.
- Emergency Cleaning and Disinfection – If emergency cleaning and disinfection is required, owners of cooling towers are required to obtain the services of a certified commercial pesticide applicator or pesticide technician who is qualified to apply biocide in a cooling tower, or a pesticide apprentice under the supervision of a certified applicator. The cost of such services is estimated to be approximately $5,000.00 for labor, plus the cost of materials.
- Recordkeeping and Electronic Reporting – Owners of cooling towers are required to maintain certain specified records and to electronically report certain specified information. The costs of these administrative activities are predicted to be minimal.
- The formulation of a cooling tower program and sampling plan would require 4 to 8 hours at $150 per hour ($600 to $1200). The range represents the cost for reviewing and modifying an existing plan versus the preparation of a new plan.
- Formulation of a sampling plan for Article 28 facilities is dependent upon any existing plan and the status of existing record keeping. It is estimated that with prior records and a maintenance plan the time required should a consultant be hired would be 6.5 hours at $150 per hour ($975). Without a prior plan and poor maintenance documentation the time required would be 13 hours at $150 per hour ($1950). It is anticipated that facilities may develop the plan using existing staff.

Costs to State Government and Local Government:

State and local governments possess authority to enforce compliance with these regulations. Exact costs cannot be predicted at this time. However, some local costs may be offset through the collection of fees, fines and penalties authorized pursuant to this Part. Costs to State and local governments may be offset by a reduction in the need to respond to community legionellosis outbreaks.

Economic and Technological Feasibility:

Although there will be an impact of building owners, including small businesses, compliance with the requirements of this regulation is considered economically and technologically feasible as it enhances and enforces existing industry best practices. The benefits to public health are anticipated to outweigh any costs. This regulation is necessary to protect public health.

Minimizing Adverse Impact:

The New York State Department of Health will assist local governments by providing a cooling tower registry and access to the database, technical consultation, coordination, and information and updates.

Small Business and Local Government Participation:

Development of this regulation has been coordinated with New York City.

Cure Period:

Violation of this regulation can result in civil and criminal penalties. In light of the magnitude of the public health threat posed by the improper maintenance and testing of cooling towers, the risk that some small businesses will not comply with regulations justifies the absence of a cure period.

Rural Area Flexibility Analysis

Pursuant to Section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas. The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any disproportionate reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

Nature of the Impact:

The Department of Health expects there to be a positive impact on jobs or employment opportunities. The requirements in the regulation generally coincide with industry standards and manufacturers specification for the operation and maintenance of cooling towers. However, it is expected that a subset of owners have not adequately followed industry standards and will now hire firms or individuals to assist them with compliance and to perform inspections and certifications.

Categories and Numbers Affected:

The Department anticipates no negative impact on jobs or employment opportunities as a result of the proposed regulations.

Regions of Adverse Impact:

The Department anticipates no negative impact on jobs or employments opportunities in any particular region of the state.

Minimizing Adverse Impact:

Not applicable.

Assessment of Public Comment

The NYS Department of Health ("DOH") received two comment letters in response to the emergency regulations. Specifically, DOH received a joint letter from Baltimore Aircoil Company (BAC), Evapco, and SPX, which included an attachment of mark-ups to the emergency regulations. Nalco, an Ecolab Company, also submitted a letter to DOH. In addition, DOH engaged with numerous stakeholders, including cooling tower manufacturers, the consultants who maintain them, the power industry, and healthcare and building owner associations. During these engagements, stakeholders shared comments, questions, and concerns with DOH. DOH is taking all this feedback into consideration as it develops the proposed permanent regulations and guidance documents. The proposed permanent regulations will be available for public review and comment.

The letters primarily addressed three topics. First, both commenters recommended that DOH broaden the scope of the regulations to include management of the entire building water systems, including the potable water systems. One commenter stated that cooling towers represent only one of several potential sources of Legionella exposure. The commenter identified other sources, including decorative fountains, showers, hydrotherapy pools, faucets and ice machines. Further, the commenter urged DOH to adopt the entire ANSI/ASHRAE Standard 188-2015 to address the need to implement a plan for those additional water systems.

DOH acknowledges that cooling towers are only one potential source of Legionella. Scientific literature, as well as the policies and regulations of other governments, recognize the need for proper cooling tower

management and treatment for both process optimization and biological control. In addition, the emergency regulations address potable water systems in hospitals and nursing homes, to protect the most vulnerable populations.

By regulating cooling towers as well as potable water in hospitals and nursing homes, these regulations address an important potential source of Legionella. DOH will continue to consider whether and how to regulated premise water systems more broadly. No changes have been made to the emergency regulations as a result of these comments.

Second, both commenters requested an increase of the lowest control threshold value (less than 10 CFU/mL) for Legionella culture, as established in Appendix 4-A of the emergency regulations. DOH is further considering this recommendation by examining detection limitations, achievability, and prevalence of Legionella in cooling towers. Based on the findings, DOH will determine whether a different threshold value should be established in the proposed permanent regulations. No changes have been made to the emergency regulations as a result of these comments, but DOH will take the suggested revision under advisement as it develops the proposed permanent regulations.

Lastly, both commenters recommended revisions to certain terms used in the emergency regulations. DOH has reviewed these recommendations and intends to incorporate revised definitions and additional terms in the proposed permanent regulations. No changes have been made to the emergency regulations as a result of these comments.

Additional comments from each letter, as well as DOH's responses, are as follows:

Comment: One commenter requested that the regulations require testing of potable water whenever legionellosis cases are identified.

Response: During legionellosis investigations at Article 28 facilities and for clusters of cases in the community, the response protocol for DOH and/or local health departments is to consider the premise water system and related water exposures including ice machines, internal and external water displays, therapeutic and recreational spas and pools, showers, and other potential sources. During and after the assessment, a variety of water quality parameters may be measured and Legionella culture samples may be collected from multiple locations including cooling towers. Further, with respect to Article 28 facilities, this approach is contained in guidance in a DOH Health Alert sent to Article 28 facilities on August 10, 2015 and includes prevention and surveillance measures. Because evaluation of potable water systems is already part of the protocol for Legionella investigations, no changes have been made to the emergency regulations as a result of these comments.

Comment: One commenter requested that the online decontamination procedures be expanded to allow for the use of bromine as an alternative to chlorine-based biocide. This question has been raised by other stakeholders as well.

Response: DOH is reviewing the use of both halogens, bromine and chlorine, for routine and emergency treatment. No changes have been made to the emergency regulations as a result of these comments, but DOH will take the suggested revision under advisement as it develops the permanent regulations.

Comment: One commenter stated that the application of chlorine-based compounds may result in violations of permitted discharge limits at power plants.

Response: DOH, in cooperation with the New York State Department of Environmental Conservation, is continuing to investigate how chlorine-based compounds may impact energy production operations, treatment, tower discharges and State Pollutant Discharge Elimination System (SPDES) permit conditions. No changes have been made to the emergency regulations as a result of these comments, but DOH will take the suggested revision under advisement as it develops the proposed permanent regulations.

Comment: One commenter stated that certification could play a greater role as part of the registration requirements, and also proposed that cooling tower owners or their water treatment professional be permitted to certify that a cooling tower was inspected, tested, cleaned and disinfected in compliance with the emergency regulation.

Response: The emergency regulation requires that cooling towers are certified by a New York State licensed professional engineer, certified industrial hygienist, certified water technologist, or environmental consultant with training and experience performing inspections in accordance with the current standard industry protocols, including, but not limited to, ASHRAE 188-2015. This certification by qualified personnel, as specified in the emergency regulation, whether facility staff or a third party, ensures annual review of the inspection information, data, maintenance plan, and any maintenance activities. No changes have been made to the emergency regulations as a result of these comments.

Comment: One commenter stated that the bacteriological sampling should not be relied upon to correct system deviations and instead the regulation should require owners to take a proactive approach to properly maintain their water systems by having a building water management program in place, taking into account the specific water system of the building, assessment of hazards and establishment of hazard controls, ongoing monitoring, specific corrective actions, and program auditing, as well as documentation of all procedures, inspections, and actions taken.

Response: The maintenance program required by the emergency regulations promotes proper cooling tower management and treatment for biological control, where bacteriological sampling serves as validation of that control. No changes have been made to the emergency regulations as a result of these comments.

Comment: One commenter requested that the regulation specify Legionella culture testing shall be performed using the ISO 11731 test procedure.

Response: While no changes have been made to the emergency regulations as a result of this comment, DOH will take the suggested revision under advisement as it develops the proposed permanent regulations.

Comment: One commenter suggested changes to Regulatory Impact Statement (RIS), primarily to acknowledge the multiple potential causes of legionellosis. In particular, the commenter questioned whether a cooling tower was the source of contamination in the New Rochelle hospital discussed in the RIS. Lastly, the commenter suggested that because the regulations include potable water regulation of hospitals and nursing homes, further clarification in the RIS would be helpful to why this requirement doesn't apply to other buildings.

Response: DOH will take these comments under advisement as the final regulations are being developed.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Immediate Need for Personal Care Services (PCS) and Consumer Directed Personal Assistance (CDPA)

I.D. No. HLT-43-15-00003-RP

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

Proposed Action: Amendment of sections 505.14 and 505.28 of Title 18 NYCRR.

Statutory authority: Public Health Law, section 201(1)(v); Social Services Law, sections 363-a(2), 365-a(2)(e) and 365-f

Subject: Immediate Need for Personal Care Services (PCS) and Consumer Directed Personal Assistance (CDPA).

Purpose: To implement 2015 State law changes regarding Medicaid applicants and recipients with immediate needs for PCS or CDPA.

Substance of revised rule: The proposed regulations amend the Department's personal care services regulations by adding paragraphs (7) and (8) to 18 NYCRR § 505.14(b). They also amend the Department's consumer directed personal assistance program regulations by adding subdivisions (k) and (l) to 18 NYCRR § 505.28.

New paragraph 505.14(b)(7) sets forth expedited procedures for social services districts' determinations of Medicaid eligibility and personal care services eligibility for Medicaid applicants with an immediate need for personal care services.

Clause 505.14(b)(7)(i)(a) defines the term "Medicaid applicant with an immediate need for personal care services." The term includes two groups of individuals who seek Medicaid coverage: those who are not currently authorized for any type of Medicaid coverage; and those who are currently authorized for Medicaid coverage but only for community-based coverage not including coverage for long-term care services such as personal care services. These individuals must provide the social services district with a physician's order for personal care services and a signed attestation that they have an immediate need for personal care services and that they have no informal caregivers, are not receiving personal care services from a home care services agency, have no adaptive or specialized equipment or supplies to meet their needs, and have no third party insurance or Medicare benefits available to pay for needed assistance.

Clause 505.14(b)(7)(i)(b) defines the term "complete Medicaid application." This term means a signed Medicaid application and all documentation necessary for the district to determine the applicant's Medicaid eligibility. An applicant who would otherwise be required to document his or her accumulated resources may attest to the current value of any real property and to the current dollar amount of any bank accounts. After the determination of Medicaid eligibility, if the commissioner or district has information indicating an inconsistency with the information to which the applicant had attested prior to being determined eligible for Medicaid, and the inconsistency is material to the individual's Medicaid eligibility, the district shall request documentation adequate to verify the resources.

Subparagraph 505.14(b)(7)(ii) requires the social services district to take certain action as soon as possible but no later than four calendar days after receipt of the Medicaid application, physician's order and signed attestation. Within this period, the district must determine whether the applicant submitted a "complete Medicaid application." When the district determines that the individual has not submitted a complete Medicaid application, the district must also within this time period notify the applicant of the additional documentation the applicant must provide; the date by which the applicant must provide such documentation; and that the district will determine the applicant's Medicaid eligibility within seven calendar days after receipt of the documentation.

Subparagraph 505.14(b)(7)(iii) requires the social services district to determine whether a Medicaid applicant with an immediate need for personal care services is eligible for Medicaid, including Medicaid coverage of community-based long-term care services, and notify the applicant of such determination. The district must make this determination and notify the applicant as soon as possible but no later than seven calendar days after receipt of a complete Medicaid application.

Subparagraph 505.14(b)(7)(iv) provides that, concurrently with determining the Medicaid eligibility of an applicant with an immediate need for personal care services, the social services district would determine whether the applicant, if found eligible for Medicaid, would be eligible for personal care services. As soon as possible after receipt of a complete Medicaid application from a Medicaid applicant with an immediate need for personal care services, but no later than twelve calendar days after receipt of the complete Medicaid application, the social services district would obtain or complete a social assessment, nursing assessment and an assessment of other services; refer the case to the local professional director if it involves the provision of continuous personal care services or live-in 24-hour personal care services, and determine whether the Medicaid applicant, if determined eligible for Medicaid, would be eligible for personal care services and, if so, the amount and duration of services that would be authorized. Personal care services would not be authorized to be provided unless the individual is determined to be eligible for Medicaid, including Medicaid coverage of community-based long-term care services.

The proposed regulations also add paragraph (8) to Section 505.14(b), which sets forth expedited procedures for Medicaid recipients with an immediate need for personal care services.

Subparagraph 505.14(b)(8)(i) defines the term "Medicaid recipient with an immediate need for personal care services."

Under subclauses 505.14(b)(8)(i)(a)(1) and (2), a "Medicaid recipient with an immediate need for personal care services" means an individual who is exempt or excluded from enrollment in a managed long term care plan or managed care provider or an individual who is not exempt or excluded from enrollment in such a plan or provider but who has not yet been enrolled.

In addition, a "Medicaid recipient with an immediate need for personal care services" means an individual who also meets the criteria in either subclause (i)(b)(1) of Section 505.14(b)(8) or subclause (i)(b)(2) of Section 505.14(b)(8).

Under subclause (i)(b)(1) of Section 505.14(b)(8), a "Medicaid recipient with an immediate need for personal care services" means a recipient who was a "Medicaid applicant with an immediate need for personal care services" pursuant to paragraph 505.14(b)(7) and who was determined, pursuant to such paragraph, to be eligible for Medicaid and personal care services. Under subparagraph 505.14(b)(8)(ii), social services districts would be required to notify such a "Medicaid recipient with an immediate need for personal care services" promptly of the amount and duration of personal care services to be authorized and arrange for the provision of such services, which must be provided as expeditiously as possible. For recipients who are not exempt or excluded from enrollment in a managed care entity, the district would authorize services to be provided until the person is enrolled in such an entity.

Under subclause (i)(b)(2) of Section 505.14(b)(8), a "Medicaid recipient with an immediate need for personal care services" means a Medicaid recipient who has been determined to be eligible for Medicaid, including Medicaid coverage of community-based long-term care services, and who provides to the social services district a physician's order for personal care services and a signed attestation of immediate need. Under clause 505.14(b)(8)(iii)(a), social services districts would be required, as soon as possible after receipt of the physician's order and signed attestation of immediate need from such a recipient but no later than twelve calendar days after receipt of such documentation, to assess the recipient's eligibility for personal care services and determine whether the recipient is eligible for services and, if so, the amount and duration of services to be authorized. For recipients who are not exempt or excluded from enrollment in a managed care entity, the district would authorize services to be provided until the person is enrolled in such an entity.

The proposed regulations make similar revisions to the Department's regulations governing the consumer directed personal assistance program at 18 NYCRR § 505.28. New subdivision 505.28(k) sets forth expedited procedures for social services districts' determinations of Medicaid eligibility for applicants with an immediate need for consumer directed personal assistance. These expedited procedures are similar to those set forth in proposed new 505.14(b)(7) for Medicaid applicants with an immediate need for personal care services. In addition, new subdivision 505.28(l) sets forth expedited consumer directed assistance assessment procedures for Medicaid recipients with immediate needs for consumer directed personal assistance. These expedited assessment procedures are similar to those set forth at proposed new 505.14(b)(8) for Medicaid recipients with an immediate need for personal care services.

Section 505.14(b)(3) and Section 505.28(d)(3) would be amended to permit nursing assessments to be performed by additional registered professional nurses, those under contract with a social services district.

Revised rule compared with proposed rule: Substantial revisions were made in sections 505.14(b)(3), (5), (7), (8), (h) and 505.28(d), (k) and (l).

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

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

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

Revised Regulatory Impact Statement

Statutory Authority:

Social Services Law ("SSL") § 363-a(2) and Public Health Law § 201(1)(v) empower the Department to adopt regulations implementing the State's Medical Assistance ("Medicaid") program. Under SSL § 366-a(12), the Department must develop expedited procedures for social services districts' determinations of Medicaid eligibility for applicants with immediate needs for personal care services ("PCS") or consumer directed personal assistance ("CDPA"). Under SSL § 364-j(31), the Department must provide PCS and CDPA, as appropriate, to Medicaid recipients with immediate needs for such services pending approval by managed care providers under SSL § 364-j or managed long term care ("MLTC") plans under Public Health Law § 4403-f. Under SSL § 365-a(2)(e)(iii), the Department must provide assistance, consistent with SSL § 364-j(31), to Medicaid PCS recipients who are transitioning to receive care from MLTC plans.

Legislative Objectives:

The Legislature's objective in enacting the statutory authority was two-fold: to expedite Medicaid eligibility determinations for Medicaid applicants with immediate needs for PCS or CDPA, and, for those Medicaid applicants with immediate needs for either service who are determined eligible for Medicaid, to require the provision of PCS and CDPA, as appropriate, pending the individuals' enrollment in a managed care provider or MLTC plan. The proposed regulations are consistent with the Legislature's objectives.

Needs and Benefits:

The purpose of the proposed regulations is to implement the Legislature's recent amendments to the SSL with regard to Medicaid applicants and recipients with immediate needs for PCS or CDPA.

The Legislature added new SSL § 366-a(12), as follows:

The commissioner shall develop expedited procedures for determining medical assistance eligibility for any medical assistance applicant with an immediate need for personal care or consumer directed personal assistance services. . . Such procedures shall require that a final eligibility determination be made within seven days of the date of a complete medical assistance application.

See Ch. 57, pt. B, § 36-c.

The Legislature also added SSL § 364-j(31)(a) as follows:

The commissioner shall require managed care providers. . . managed long term care plans. . . and other appropriate long-term service programs to adopt expedited procedures for approving personal care services for a medical assistance recipient who requires immediate personal care or consumer directed personal assistance services. . . and provide such care or services as appropriate, pending approval by such provider or program.

See Ch. 57, pt. B, § 36-b.

In addition, the Legislature amended SSL § 365-a(2)(e)(iii) as follows:

The commissioner shall provide assistance to persons receiving personal care services under this paragraph who are transitioning to receiving care from a managed long term care plan certified pursuant to section forty-four hundred three-f of the public health law, consistent with subdivision thirty-one of section three hundred sixty-four-j of this title.

See Ch. 57, pt. B, § 36-a.

The proposed regulations would reflect the Legislature's mandate in SSL § 366-a(12) for expedited Medicaid eligibility determinations for Medicaid applicants who have immediate needs for PCS or CDPA. It

would also reflect the Legislature's mandate in SSL §§ 364-j(31)(a) and 365-a(2)(e)(iii) that PCA and CDPA be provided to Medicaid recipients in immediate need of such services prior to enrollment in a managed care entity.

Costs to Regulated Parties:

Regulated parties are social services districts that determine whether Medicaid applicants are eligible for Medicaid and whether Medicaid recipients are eligible for PCS or CDPA. Social services districts may incur administrative costs to comply with the expedited assessment procedures set forth in the proposed regulations. Districts would not incur any additional expense for the cost of PCS or CDPA provided to Medicaid recipients in immediate need of such services.

Costs to State Government:

The Department estimates that the proposed regulations could increase the State share of Medicaid costs by approximately $328,000 annually.

This cost estimate assumes that social services districts would annually authorize PCS or CDPA on a fee-for-service basis for an additional 88 newly eligible Medicaid recipients who the districts determine to be in immediate need of such services. This figure derives from Medicaid fee-for-service data for State Fiscal Years 2012-13 and 2013-14, which indicate that approximately 175 new Medicaid recipients were authorized annually for PCS and CDPA. The average monthly per-person cost of such services was $1,886.00. The Department assumed that, under the proposed regulations, fifty percent of the approximately 175 newly eligible Medicaid recipients (i.e. 88 recipients) would be found to be in "immediate need" of PCS or CDPA. The estimated annual Medicaid State share cost of providing PCS and CDPA to these 88 newly eligible Medicaid recipients would be approximately $996,000.00.

The Department estimates that this potential annual Medicaid State share cost of $996,000.00 would be reduced to the extent that Medicaid recipients in nursing or other facilities would be found to be in "immediate need" of PCS or CDPA and could be discharged home more quickly and with less costly PCS or CDPA. Based on Department historical data, approximately 7,980 nursing facility or adult home residents received PCS or CDPA upon discharge. The average monthly per person cost of care in such facilities was $3,879.00 whereas the average monthly cost of PCS or CDPA was $537.00, an average monthly savings of $3,342.00. For every 400 persons (roughly five percent of 7,980) who may be discharged one month more quickly from institutional settings to receive PCS or CDPA at home, the estimated annual gross federal and State Medicaid cost savings could be $1.3 million (400 x $3,342). The estimated Medicaid State share savings would be half of this total, or $668,400.00. When subtracted from the annual estimated Medicaid State share costs of $996,000.00, this results in an estimated net increase in Medicaid State share costs of $328,000.00.

Costs to Local Government:

Social services districts may incur administrative costs to comply with the expedited assessment procedures set forth in the proposed regulations. Districts would not incur any additional expense for the cost of PCS or CDPA provided to Medicaid recipients in immediate need of such services. State law limits the amount that districts must pay for Medicaid services provided to district recipients.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

The proposed regulations require that social services districts perform expedited Medicaid eligibility determinations of Medicaid applicants with an immediate need for PCS or CDPA. The revised proposed regulations also provide for expedited PCS or CDPA assessments of Medicaid applicants, and these assessments would be conducted concurrently with expedited Medicaid eligibility determinations. Districts would also have to perform expedited PCS or CDPA assessments for Medicaid recipients who have an immediate need for either service.

Paperwork:

The proposed regulations do not impose any reporting requirements on social services districts.

Duplication:

The proposed regulations do not duplicate any existing federal, state or local regulations.

Alternatives:

There are no significant alternatives to the proposed regulations.

Federal Standards:

The proposed regulations do not exceed any minimum federal standards.

Compliance Schedule:

Social services districts should be able to comply with the regulations when they become effective.

Revised Regulatory Flexibility Analysis

Effect of Rule:

The proposed regulations affect social services districts. There are 62 counties in New York State, but only 58 social services districts. The City of New York comprises five counties but is one social services district.

Compliance Requirements:

Pursuant to proposed new §§ 505.14(b)(7) and 505.28(k), social services districts would be required to perform expedited Medicaid eligibility determinations for Medicaid applicants who have an immediate need for personal care services ("PCS") or consumer directed personal assistance ("CDPA"). Medicaid applicants with an immediate need for PCS or CDPA include those who are not currently authorized for any type of Medicaid coverage as well as those who are currently authorized for Medicaid but only for community-based Medicaid coverage without coverage for long-term care services.

As soon as possible after receipt of the Medicaid application, physician's order and signed attestation of immediate need, but no later than four calendar days after receipt of such documentation, the social services district would be required to determine whether the Medicaid applicant has submitted a complete Medicaid application. If the applicant has not submitted a complete Medicaid application, the district must notify the applicant, within this four day period, of the additional documentation that the applicant must provide, the date by which the applicant must provide such documentation, and that the district will determine the applicant's Medicaid eligibility within seven calendar days after receipt of such documentation.

The revised proposed regulations also provide for concurrent Medicaid eligibility determinations and PCS or CDPA assessments of Medicaid applicants with an immediate need for PCS or CDPA. As soon as possible after receipt of a complete Medicaid application from a Medicaid applicant with an immediate need for PCS or CDPA, but no later than seven calendar days after receipt of a complete Medicaid application, the district must determine whether the applicant is eligible for Medicaid, including Medicaid coverage of community-based long-term care services, and notify the applicant of that determination. At the same time, the district must conduct a PCS or CDPA assessment of a Medicaid applicant with an immediate need for PCS or CDPA.

Specifically, as soon as possible after receipt of a complete Medicaid application from a Medicaid applicant with an immediate need for PCS or CDPA, but no later than twelve calendar days after receipt of a complete Medicaid application, the district must assess the Medicaid applicant and determine whether the applicant would be eligible for PCS or CDPA, if determined eligible for Medicaid. No PCS or CDPA would be authorized, however, unless the applicant is determined eligible for Medicaid, including Medicaid coverage of community-based long-term care services.

Notice to the individual of the PCS or CDPA for which the individual is authorized would be sent promptly after the individual has been determined eligible for Medicaid, including Medicaid coverage of community-based long-term care services. Authorized PCS or CDPA must be provided to these Medicaid recipients as expeditiously as possible. If the recipient is subject to enrollment in a managed long term care plan or managed care provider, the district would be required to authorize the services and arrange for their provision until the recipient is enrolled in such managed long term care plan or provider.

The proposed regulations also provide for expedited PCS or CDPA assessments of Medicaid recipients with immediate needs for PCS or CDPA who are also eligible for Medicaid coverage of community-based long-term care services. Medicaid recipients with immediate needs for PCS or CDPA may be exempt or excluded from enrollment in a managed long term care plan or a managed care provider or not so exempt or excluded but not yet enrolled in any such plan or provider. As soon as possible after receiving a physician's order for PCS or CDPA and a signed attestation of immediate need, but no later than twelve calendar days after receipt of such documentation, the social services district must conduct a PCS or CDPA assessment and determine whether the recipient is eligible for PCS or CDPA. The district must promptly notify the recipient and arrange for the provision of services, which must be provided as expeditiously as possible. If the recipient is subject to enrollment in a managed long term care plan or managed care provider, the district would be required to authorize the services and arrange for their provision until the recipient is enrolled in such managed long term care plan or provider.

Professional Services:

Social services would need to have contracts with sufficient number of Medicaid-enrolled providers to furnish authorized PCS or CDPA to Medicaid recipients with immediate needs for such services. The proposed regulations would not otherwise require social services to obtain new or additional professional services.

Compliance Costs:

The proposed regulations would not impose capital costs on social services districts. Social services districts may incur administrative costs to comply with the proposed regulations. These administrative costs would be associated with districts' performance of expedited Medicaid eligibility determinations and PCS or CDPA assessments of Medicaid applicants with immediate needs for PCS or CDPA as well expedited PCS or CDPA assessments of Medicaid recipients with immediate needs for such services.

Economic and Technological Feasibility:

There are no additional economic costs or technology requirements associated with the proposed regulations.

Minimizing Adverse Impact:

The proposed regulations should not have an adverse economic impact on social services districts. Each social services district's share of the cost of total Medicaid expenditures for PCS and CDPA is limited to the district's Medicaid "cap" amount established pursuant to State law. The proposed regulations would not require social services districts to incur any additional Medicaid expenditures for PCS or CDPA in excess of their Medicaid cap amounts. In addition, the revised proposed regulations would permit districts to contract with additional registered professional nurses for the conduct of nursing assessments.

Small Business and Local Government Participation:

The Department shared the proposed regulations with social services districts prior to publication.

Cure Period:

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

Revised Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, include towns with population densities of 150 or fewer persons per square mile.

The following 43 counties have populations of less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

The following nine counties have certain townships with population densities of 150 or fewer persons per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

Pursuant to proposed new §§ 505.14(b)(7) and 505.28(k), rural social services districts would be required to perform expedited Medicaid eligibility determinations for Medicaid applicants who have an immediate need for personal care services ("PCS") or consumer directed personal assistance ("CDPA"). Medicaid applicants with an immediate need for PCS or CDPA include those who are not currently authorized for any type of Medicaid coverage as well as those who are currently authorized for Medicaid but only for community-based Medicaid coverage without coverage for long-term care services.

As soon as possible after receipt of the Medicaid application, physician's order and signed attestation of immediate need, but no later than four calendar days after receipt of such documentation, rural districts would be required to determine whether the Medicaid applicant has submitted a complete Medicaid application. If the applicant has not submitted a complete Medicaid application, the district must notify the applicant, within this four day period, of the additional documentation that the applicant must provide, the date by which the applicant must provide such documentation, and that the district will determine the applicant's Medicaid eligibility within seven calendar days after receipt of such documentation.

The revised proposed regulations also provide for concurrent Medicaid eligibility determinations and PCS or CDPA assessments of Medicaid applicants with an immediate need for PCS or CDPA. As soon as possible after receipt of a complete Medicaid application from a Medicaid applicant with an immediate need for PCS or CDPA, but no later than seven calendar days after receipt of a complete Medicaid application, the rural district must determine whether the applicant is eligible for Medicaid, including Medicaid coverage of community-based long-term care services, and notify the applicant of that determination. At the same time, the rural district must conduct a PCS or CDPA assessment of a Medicaid applicant with an immediate need for PCS or CDPA.

Specifically, as soon as possible after receipt of a complete Medicaid application from a Medicaid applicant with an immediate need for PCS or CDPA, but no later than twelve calendar days after receipt of a complete Medicaid application, the rural district must assess the Medicaid applicant and determine whether the applicant would be eligible for PCS or CDPA, if determined eligible for Medicaid. No PCS or CDPA would be authorized, however, unless the applicant is determined eligible for Medicaid, including Medicaid coverage of community-based long-term care services. Notice to the individual of the PCS or CDPA for which the individual is authorized would be sent promptly after the individual has been determined eligible for Medicaid, including Medicaid coverage of community-based long-term care services. Authorized services must be provided to these Medicaid recipients as expeditiously as possible. If the recipient is subject to enrollment in a managed long term care plan or managed care provider, the rural district would be required to authorize the services and arrange for their provision until the recipient is enrolled in such managed long term care plan or provider.

The proposed regulations also provide for expedited PCS or CDPA assessments of Medicaid recipients with immediate needs for PCS or CDPA who are also eligible for Medicaid coverage of community-based long-term care services. Medicaid recipients with immediate needs for PCS or CDPA may be exempt or excluded from enrollment in a managed long term care plan or a managed care provider or not so exempt or excluded but not yet enrolled in any such plan or provider. As soon as possible after receiving a physician's order for PCS or CDPA and a signed attestation of immediate need, but no later than twelve calendar days after receipt of such documentation, the rural social services district must conduct a PCS or CDPA assessment and determine whether the recipient is eligible for PCS or CDPA. The district must promptly notify the recipient and arrange for the provision of services, which must be provided as expeditiously as possible. If the recipient is subject to enrollment in a managed long term care plan or managed care provider, the district would be required to authorize the services and arrange for their provision until the recipient is enrolled in such managed long term care plan or provider.

Costs:

Rural social services districts would not incur initial capital costs to comply with the proposed regulations. Districts may incur administrative costs to comply with the proposed regulations. These administrative costs would be associated with districts' performance of expedited Medicaid eligibility determinations and PCA or CDPA assessments of Medicaid applicants with immediate needs for PCS or CDPA as well expedited PCS or CDPA assessments of Medicaid recipients with immediate needs for such services.

Minimizing Adverse Impact:

The proposed regulations should not have an adverse economic impact on rural social services districts. Each social services district's share of the cost of total Medicaid expenditures for PCS and CDPA is limited to the district's Medicaid "cap" amount established pursuant to State law. The proposed regulations would not require rural social services districts to incur any additional Medicaid expenditures for PCS or CDPA in excess of their Medicaid cap amounts. The revised proposed regulations would also permit districts to contract with additional registered professional nurses for the conduct of nursing assessments.

Rural Area Participation:

The Department shared the proposed regulations with rural social services districts prior to publication.

Revised Job Impact Statement

Changes made to the last published rule do not necessitate revision to the previously published JIS.

Assessment of Public Comment

The Department received comments from numerous sources. The following advocate groups commented: The Legal Aid Society, New York Legal Assistance Group, Empire Justice Center, and People Organized for Our Rights, Inc. Nina Keilin, Esq., commented, as did Aytan Bellin, Esq., of Bellin & Associates, LLC. Also commenting was the Elder Law and Special Needs Section of the New York State Bar Association and As-

semblyman Richard Gottfried, Chair of the NYS Assembly Committee on Health. Two social services districts submitted written comments: the Human Resources Administration of the City of New York and Suffolk County Department of Social Services.

1. Comment: Under the proposed regulations, expedited Medicaid eligibility determinations and expedited personal care services ("PCS") or consumer directed personal assistance ("CDPA") assessments would be performed for Medicaid applicants and recipients with an immediate need for PCS or CDPA. The individual would provide the district with a physician's order for PCS or CDPA that documented the need for assistance with toileting, transferring, or certain other activities of daily living ("ADLs"). Most commentators stated that this list of ADLs was too restrictive, omitting ADLs that are important to maintaining health and safety. Commentators suggested that the current recommended physician's order form does not enable the physician to document whether the individual requires assistance with the ADLs listed in the proposed regulations and that a revised physician's order form should be issued.

Response: The Department has revised the proposed regulations in response to the comments. As revised, the Medicaid applicant or recipient who asserts an immediate need for PCS or CDPA would provide the district with a physician's order for PCS or CDPA. The physician's order would not be required to document that the individual needs assistance with certain specified ADLs.

2. Comment: Under the proposed regulations, a Medicaid applicant or recipient asserting an immediate need for PCS or CDPA would attest to certain factors on a form required by the Department. The individual would generally have to attest that no voluntary informal caregivers are available, that no home care agency is providing assistance, that adaptive or specialized equipment or supplies are not in use, and that third party insurance or Medicare benefits are not available to pay for assistance. With respect to the availability of informal caregivers, a majority of commentators suggested that districts must consider whether such caregivers will continue to be available. With respect to whether the individual is already receiving home care services, a majority of commentators stated that this should be irrelevant to whether an immediate need exists.

Response: The Department has revised the proposed regulations in partial response to the comments and to clarify the Department's intent regarding the attestation of immediate need.

Although Medicaid applicants and recipients would still be required to attest to an immediate need for PCS or CDPA, the content of the attestation has been revised. With respect to one factor, whether home care services are being provided, the Department disagrees that this factor should not be considered. An individual who is receiving home care services provided by an agency is not in the same position as an individual to whom no assistance whatsoever is being provided.

Most significantly, it's apparent from the comments that the commentators misunderstood the purpose and effect of the attestation of immediate need. Commentators mistakenly inferred that social services districts would analyze or "look-behind" applicants' or recipients' attestations and determine whether the individual does, or does not, have an immediate need for PCS or CDPA. This is not the Department's intent. Accordingly, the Department has revised the proposed regulations to clarify its intent. Medicaid applicants and recipients who submit a physician's order and a signed attestation that conforms to the proposed regulatory requirements would automatically meet the definition of a Medicaid applicant or recipient who is in immediate need of PCS or CDPA. As such, these individuals would receive expedited Medicaid eligibility determinations and expedited PCS or CDPA assessments. Social services districts would not determine whether, in fact, an "immediate need" exists but would treat each Medicaid applicant or recipient who submits the physician's order and the signed attestation as being in "immediate need."

3. Comment: The proposed regulations permitted Medicaid applicants who are otherwise required to document resources to attest to the current value of real property and the current dollar amount of any bank accounts. If there was a material inconsistency between the information to which the applicant attested and any information "subsequently obtained," the district was to request documentation to verify the resources. Commentators stated that the meaning of information "subsequently obtained" was unclear and that the request for such documentation should not delay the Medicaid eligibility determination.

Response: The Department has revised the proposed regulations to clarify the Department's intent. The revised proposed regulations clarify that the Medicaid eligibility determination is not to be delayed should the district request that the individual verify resources. They provide that, after the determination of Medicaid eligibility, if the commissioner or district has information indicating an inconsistency between the value or dollar amount of the resources and the value or dollar amount to which the applicant attested prior to being determined eligible for Medicaid, and the inconsistency is material to Medicaid eligibility, the district shall request documentation to verify the resources.

4. Comment: The published version of the proposed regulations would require social services districts, as soon as possible after receipt of a Medicaid application, physician's order and attestation of immediate need, but not later than three calendar days after receipt of such documentation, to determine whether the applicant is a Medicaid applicant with an immediate need for PCS or CDPA and, if so, whether the applicant had submitted a complete Medicaid application. If the applicant had not submitted a complete Medicaid application, the district would have been required to notify the applicant, also within this three calendar day period, of the additional documentation that must be submitted, the date by which the applicant must provide the documentation and that the district would determine the applicant's Medicaid eligibility within seven calendar days after receipt of the documentation. Social services districts commented that, as with all calendar day time frames set forth in the proposed regulations, the three calendar days should be revised to three business days. They commented that this three calendar day requirement would be difficult to meet since applications could arrive late in the day or immediately before weekends or holidays. For example, if the Medicaid application were received on a Friday, this would afford a district only one business day to comply with this requirement.

Response: The Department has revised the proposed regulations in response to the comments. The revised proposed regulations still require districts to act as soon as possible after receipt of a Medicaid application, physician's order and signed attestation of immediate need, but would afford districts four calendar days to determine whether the applicant had submitted a complete Medicaid application and, if not, notify the applicant of the documentation to be provided and the other factors. In cases of Medicaid applications being received on a Friday, this would afford districts an additional business day, until the following Tuesday, to accomplish these tasks.

5. Comment: As proposed, the regulations would have required districts to perform PCS and CDPA assessments, notify Medicaid recipients of the PCS or CDPA eligibility determination, and arrange for services for eligible persons, as expeditiously as possible and within twelve calendar days.

The majority of commentators urged the Department to require districts to expedite the PCS and CDPA assessment process to a greater extent. Most objected that twelve calendar days was too long and could mean that Medicaid applicants could wait as many as nineteen days to receive PCS or CDPA (up to seven calendar days for the determination of Medicaid eligibility and, for Medicaid applicants who are determined eligible for Medicaid, up to twelve additional calendar days for the determination of PCS or CDPA eligibility and, if eligible, the provision of services). Commentators suggested alternatives, such as that the Department revert to permitting physicians to recommend the number of hours of services that should be authorized and permit districts to authorize services based only on the physician's order and the individual's attestation of immediate need or based only on the physician's order and the social assessment.

Social services districts, however, commented that the twelve calendar day time frame would be difficult to meet, particular in 24-hour cases requiring an independent medical review.

Response: The Department has revised the proposed regulations in response to the comments.

To address advocates' comments that the PCS and CDPA assessment process should be expedited, the proposed regulations provide for concurrent Medicaid eligibility determinations and PCS or CDPA assessments. With respect to Medicaid applicants in immediate need of PCS or CDPA, the district would assess the Medicaid applicant to determine whether the applicant, if determined eligible for Medicaid, including Medicaid coverage of community-based long-term care services, would be eligible for PCS or CDPA and, if so, the amount and duration of services that would be authorized if the applicant is found Medicaid eligible. The PCS or CDPA assessment would occur as soon as possible after receipt of a complete Medicaid application, but no later than twelve calendar days after receipt of a complete Medicaid application. No PCS or CDPA would be authorized, however, for any Medicaid applicant unless the applicant was determined eligible for Medicaid, including Medicaid coverage of community-based long-term care services. Nor would notice be provided to the individual of the results of the PCS or CDPA assessment process unless the individual is determined eligible for Medicaid, including Medicaid coverage of community-based long-term care services. If the district finds the applicant eligible for Medicaid, including Medicaid coverage of community-based long-term care services, the district would promptly provide notice to the individual of the PCS or CDPA determination and arrange for the provision of services as expeditiously as possible. Although this proposed revision could result in districts conducting PCS and CDPA assessments of Medicaid applicants who are determined ineligible for Medicaid, it is intended to expedite the provision of PCS or CDPA to those Medicaid applicants in immediate need who are, in fact, found eligible for Medicaid as well as PCS or CDPA.

With respect to Medicaid recipients in immediate need of PCS or CDPA, the Department also revised the proposed regulations to address district comments that they need more than twelve calendar days to perform all the following functions set forth in the proposed regulations: conduct PCS or CDPA assessments, notify the individual of the determination, and arrange for services for eligible individuals. As revised, the proposed regulations would provide that, within the twelve calendar days after receipt of the physician's order and signed attestation of immediate need, the district is to assess the individual and determine whether the individual is eligible for PCS or CDPA. If so, the district would then be required to promptly notify the individual of the amount and duration of services to be authorized and arrange for the provision of services, which must be provided as expeditiously as possible.

6. Comment: A commentator suggested that the proposed regulations should address PCS or CDPA recipients with an immediate need for an increase in PCS or CDPA, including institutionalized recipients who need an increase in their pre-institutional level of services to be discharged.

Response: The Department has not revised the proposed regulations in response to the comments and will address this concern in its implementation guidance to districts.

7. Comment: A social services district commented that the Department should eliminate all references to CDPA from the proposed regulations. Another commentator suggested that individuals with an immediate need for CDPA be referred as soon as possible to a fiscal intermediary to begin the process of enrolling the CDPA aide.

Response: The Department has not revised the proposed regulations in response to the district's comment. The Legislature directed the Department to establish expedited procedures for individuals with immediate needs for PCS as well as CDPA. It will consider the other comment when advising districts how best to implement the requirements.

8. Comment: Social services districts have commented that they are having difficulty obtaining nurse assessors.

Response: The Department has revised the proposed regulations to afford districts additional flexibility to obtain nurse assessors.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Long-Term Loan Agreement

I.D. No. PSC-09-16-00003-P

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

Proposed Action: The Commission is considering a petition filed by Fishers Island Water Works Corporation (Fishers Island) to borrow approximately $360,000 from Bank Rhode Island to refinance an outstanding loan.

Statutory authority: Public Service Law, section 89-f

Subject: Long-Term Loan Agreement.

Purpose: To consider Fishers Island's petition to enter into a long-term loan agreement.

Substance of proposed rule: The Public Service Commission is considering a petition by Fishers Island Water Works Corporation for approval of a loan agreement. The Company plans to use the funds to refinance outstanding indebtedness with Bank Rhode Island for an amount not to exceed $360,000. The Commission may approve, deny or modify the petition, in whole or in part, and may consider all other related matters.

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

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

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

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

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

(16-W-0063SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Stock Acquisition

I.D. No. PSC-09-16-00004-P

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

Proposed Action: The Public Service Commission is considering a Petition filed February 10, 2016 by Bristol Water-Works Corporation and Bristol Harbour Resort Management LLC for the approval of stock acquisition.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (10) and 89-h(1)

Subject: Stock Acquisition.

Purpose: To consider the acquisition of the stock of Bristol Water-Works Corporation by Bristol Harbour Resort Management LLC.

Text of proposed rule: The Public Service Commission is considering a Petition filed February 10, 2016 by Bristol Water-Works Corporation and Bristol Harbour Resort Management LLC for the approval of stock acquisition. The Company provides metered water service to 322 customers in the Bristol Harbour Village located in the Town of South Bristol, in Ontario County. The Company does not provide fire protection service. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-W-0074SP1)