RULE MAKING ACTIVITIES

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

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

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

Department of Economic Development

EMERGENCY RULE MAKING

START-UP NY Program

I.D. No. EDV-10-16-00001-E
Filing No. 205
Filing Date: 2016-02-16
Effective Date: 2016-02-16

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

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

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

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

Specific reasons underlying the finding of necessity: On June 24, 2013, Governor Andrew Cuomo signed into law the SUNY Tax-free Areas to Revitalize and Transform UPstate New York (START-UP NY) program, which offers an array of tax benefits to eligible businesses and their employees that locate in facilities affiliated with New York universities and colleges. The START-UP NY program will leverage these tax benefits to attract innovative start-ups and high tech industries to New York so as to create jobs and promote economic development.

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

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

Subject: START-UP NY Program.

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

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

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

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

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

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

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

6) The regulation describes the application process for approval of a Tax-Free Area. An eligible institution may submit a plan to the Commissioner identifying land or space to be designated as a Tax-Free Area. This

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

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

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

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

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

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

12) With respect to audits, the regulation requires businesses to provide access to DED, DTF, and DOL to all records relating to facilities located in Tax-Free Areas at a business location within the State during normal business hours. DED, DTF, and DOL are to take reasonable steps to prevent public disclosure of information pursuant to Section 87 of the Public Officers Law where the business has timely informed the appropriate officials, the records in question have been properly identified, and the request is reasonable.

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

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

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

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

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

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

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

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires May 15, 2016.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

LEGISLATIVE OBJECTIVES:

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

NEEDS AND BENEFITS:

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

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

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

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

COSTS:

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

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

III. Costs to the State government: None.

IV. Costs to local governments: None.

LOCAL GOVERNMENT MANDATES:

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

PAPERWORK:

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

DUPLICATION:

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

ALTERNATIVES:

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

FEDERAL STANDARDS:

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

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

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

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Education Department

EMERGENCY RULE MAKING

School Receivership

I.D. No. EDU-27-15-00008-E
Filing No. 208
Filing Date: 2016-02-22
Effective Date: 2016-02-22

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

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

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

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

Specific reasons underlying the finding of necessity: The purpose of the proposed rulemaking is to implement section 211-f of Education Law, as

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

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

The proposed rule was adopted by emergency action at the June 15-16, 2015 Regents meeting, effective July 1, 2015. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 8, 2015. The proposed amendment was substantially revised in response to public comment and, as revised, adopted by emergency action at the September 12-13, 2015 Regents meeting, effective September 21, 2015. A Notice of Emergency Adoption and Revised Rule Making was published in the State Register on October 7, 2015. The proposed rule was further revised to add procedures for the Commissioner's resolution of collective bargaining issues and, as revised, adopted by emergency action at the October 26-27, 2015 Regents meeting, effective October 27, 2015. A Notice of Emergency Adoption and Revised Rule Making was published in the State Register on November 10, 2015.

At the December 2015 Regents meeting, the proposed rule was readopted as an emergency action to ensure that the rule remains continuously in effect until it can be presented and take effect as a permanent rule. The Department is considering additional changes to the proposed rule and additional time is needed to review the proposed rule's provisions before presenting the rule for permanent adoption. However, the December emergency rule will expire on February 21, 2016, before the next scheduled Regents meeting on February 22-23, 2016. A lapse in the rule could disrupt the process of school receivership pursuant to Education Law section 211-f.

Emergency action at the January 11-12, 2016 Regents meeting is necessary for the preservation of the general welfare in order to ensure that the emergency rule adopted at the December 2015 Regents meeting remains continuously in effect until it can be presented for permanent adoption and take effect as a permanent rule.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at a subsequent Regents meeting, after publication of a Notice of Revised Rule Making and expiration of the 30-day public comment period for revised rule makings.

Subject: School receivership.

Purpose: To implement Education Law section 211-f, as added by part EE, subpart H of ch. 56 of the Laws of 2015.

Substance of emergency rule: The Commissioner of Education proposes to add a new section 100.19 of the Commissioner's Regulations. The proposed rule was originally adopted as an emergency action at the June 2015 Regents meeting, effective June 23, 2015 and revised and adopted as an emergency action at the September and October 2015 Regents meetings, and readopted as an emergency action at the December 2015 Regents meeting. The proposed rule has now been adopted as an emergency action at the January 11-12, 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 be presented for permanent adoption and take effect as a permanent rule. The following is a summary of the substantive provisions of the emergency rule.

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

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

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

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

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

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

§ 100.19(g), Powers and Duties of a Receiver, delineates the powers and duties of a school receiver, and the powers and duties that an independent receiver has in developing and implementing a school intervention plan. The independent receiver is required to convert the school to a community school and to submit an approvable school intervention plan to the Commissioner. The receiver (both the superintendent receiver and the independent receiver) has powers that may be exercised in the areas of

school program and curriculum development; staffing, including replacement of teachers and administrators; school budget; expansion of the school day or year; professional development for staff; conversion of the school to a charter school; and requesting changes to the collective bargaining agreement at the identified school in areas that impact implementation of the school intervention plan. This section also describes the power of the receiver (both the superintendent and the independent receiver) to supersede decisions, policies, or local school district regulations that the receiver, in his/her sole judgment, believes impedes implementation of the school intervention plan.

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-27-15-00008-EP, Issue of July 8, 2015. The emergency rule will expire April 21, 2016.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

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

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

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

4. COSTS:

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

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

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

(c) Costs to private regulated parties: None.

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

5. LOCAL GOVERNMENT MANDATES:

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

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

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

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

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

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

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

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

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

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

6. PAPERWORK:

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

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

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

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

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

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

7. DUPLICATION:

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

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small Businesses:

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

Local Government:

1. EFFECT OF RULE:

The proposed rule applies to those school districts that have:

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

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

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

2. COMPLIANCE REQUIREMENTS:

The rule is necessary to implement Education Law section 211-f by establishing criteria for the appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance. Consequently, the major mandates of the proposed rule are statutorily imposed. Major mandates of the proposed rule include: the development of a community engagement plan in a form and format and according to a timeline as prescribed by the Commissioner, the creation of a community engagement team, full cooperation of the district with the independent receiver, and the completion of quarterly reports by the independent receiver. In April 2015, Subpart H of Part EE of Chapter 56 of the Laws of 2015 created a new Education Law § 211-f. The statute designates current Priority Schools that have been in the most severe accountability status since the 2006-07 school year as "Persistently Failing Schools" (identified in the proposed regulation as "Persistently Struggling Schools" and vests the superintendent of the district with the powers of an indepen-

dent receiver. The superintendent is given an initial one-year period to use the enhanced authority of a receiver to make demonstrable improvement in student performance at the "Persistently Struggling School" or the Commissioner will direct that the school board appoint an independent receiver and submit the appointment for approval by the Commissioner. Additionally, the school will be eligible for a portion of $75 million in State aid to support and implement its turnaround efforts over a two-year period. Failing Schools (identified in the regulation as "Struggling Schools"), schools that have been Priority Schools since the 2012-13 school year, will be given two years under a "superintendent receiver" (i.e., the superintendent of schools of the school district vested with the powers a receiver would have under § 211-f) to improve student performance. Should the school fail to make demonstrable improvement in two years then the district will be required to appoint an independent receiver and submit the appointment for approval by the Commissioner. Independent receivers are appointed for up to three school years and serve under contract with the Commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

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

There are currently 17 schools districts that may potentially have one or more schools identified as Struggling or Persistently Struggling. Annual costs to implement school receivership will vary widely depending on a number of factors, including but not limited to: the size of school enrollment, the demographics of the school population and the grade configuration of the school; whether an independent receiver is assigned to a school and the district is required to convert the school to a community school; and the degree to which the school receiver chooses to use the receiver's authority to take actions such as extending the school day or school year; expanding or modifying curriculum and program offerings; replacing teachers and administrators; increasing salaries of teachers and administrators; improving hiring, induction, teacher evaluation, professional development, teacher advancement, school culture and/or organizational

structure; adding kindergarten or pre-kindergarten programs; and/or re-staffing the school. The Department estimates that on average it will cost a district approximately $50,000 per school to meet the requirements of the regulations regarding providing written annual notifications to parents of, or persons in parental relation to, students attending a struggling or a persistently struggling school; conducting at least one public meeting or hearing annually for purposes of discussing the performance of the designated school and the construct of receivership; establishing a community engagement team and implementing the provisions of the regulations regarding such teams; providing quarterly written reports to the board of education, the Commissioner and the Board of Regents; amending comprehensive school improvement plans or department approved intervention plans to meet the requirements of the regulations; and submitting information necessary to allow the Commissioner to determine whether a school is making demonstrable improvement. The Department estimates that in the event that a large high school (2,000 plus students) is placed in independent receivership, is implementing a community school program, and the independent receiver chooses to utilize all of the authority of the receiver as specified in subdivision 100.19(g), the annual costs of implementation of receivership could be in the range of $4 million to $5.5 million dollars.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

Economic feasibility is addressed in the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

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

The Department intends to take steps to provide sufficient notice of the proposed rule to ensure that school districts are made aware of the rule's requirements so they may suitably prepare for and implement this requirement. The Department will also take steps to share a variety of resources with school districts to provide guidance with the implementation process.

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement Education Law section 211-f, as added by Part EE, Subpart H of Ch. 56 of the Laws of 2015, by establishing criteria for the appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance. Consequently, the major, substantive provisions of the proposed rule are statutorily imposed and cannot be changed without further Legislative action.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item number 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the date the Notice is published in the State Register.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to those school districts that have:

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

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

There is currently one school district that has one Struggling School located in a rural area (i.e. the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. COMPLIANCE COSTS:

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

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

4. MINIMIZING ADVERSE IMPACT:

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

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

5. RURAL AREA PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act § 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five-year review period is that the proposed rule is necessary to ensure implementation of Education Law section 211-f, as added by Part EE, Subpart H of Ch. 56 of the Laws of 2015, by establishing criteria for the appointment of receivers to assist low-performing schools to make demonstrable improvement in

student performance. Consequently, the major, substantive provisions of the proposed rule are statutorily imposed and cannot be changed without further Legislative action.

The Department invites public comment on the proposed five-year review period for this rule. Comments should be sent to the agency contact listed in item number 16 of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the date the State Register publishes the Notice.

Job Impact Statement

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

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

Furthermore, an apportionment of $75 million in State funds will be available to Persistently Struggling Schools for the implementation of the Receivership process during the 2015-16 and 2016-17 school years. Since school districts are expected to use a portion of this allocation to implement strategies that may require hiring of new staff for these schools, this will result in a net gain of jobs. It is also possible that to meet the requirements of school receivership in Struggling Schools, which are not eligible for the $75 million grant, districts may choose to hire additional staff to implement the provisions of receivership.

Assessment of Public Comment

The agency received no public comment.

EMERGENCY RULE MAKING

Instruction in Cardiopulmonary Resuscitation (CPR) and Use of Automated External Defibrillators (AEDs)

I.D. No. EDU-48-15-00007-E

Filing No. 214

Filing Date: 2016-02-23

Effective Date: 2016-02-23

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

Action taken: Amendment of section 100.2(c)(11) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), (20), (52), 308(not subdivided), 804-c(2) and 804-d(not subdivided); L. 2014, ch. 417

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Regents policy to allow an exemption of a student identified as having a disability that precludes his or her ability to participate in hands-only instruction in cardiopulmonary resuscitation (CPR) and instruction in the use of Automated External Defibrillators (AEDs) from the new instruction requirement in section 100.2(c)(11) of the Commissioner's regulations, which became effective October 7, 2015.

At the November 2015 Regents meeting, the proposed amendment was discussed by the P-12 Education Committee and adopted as an emergency action by the full Board, effective November 17, 2015. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on December 2, 2015 for a 45-day public comment period. A second emergency action was proposed at the January 2016 Regents meeting to keep the rule continuously in effect until it could be presented for adoption at the February 2016 Regents meeting and take effect as a permanent rule. However, the full Board declined to vote to adopt the second emergency action and instead referred the rule back to the P-12 Committee for further discussion. The November emergency rule expired on February 14, 2016.

The proposed amendment has now been adopted as a permanent rule at the February 22-23, 2016 Regents meeting. Pursuant to SAPA § 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 will be published in the State Register. However, the instruction requirement in section 100.2(c)(11) became effective on October 7, 2015 and is now in effect for the 2015-16 school year. While most students with disabilities have the ability to complete the instruction in hands-only CPR and the use of AEDs, the Department recognizes that there may be some students who, due to the nature of their disability, will not be able to physically or cognitively perform the tasks included in such instruction (e.g., demonstrating the psychomotor (hands-on) skills to perform CPR). These students should be allowed an exemption from the requirement for instruction in CPR and the use of AEDs.

Emergency action is therefore necessary for the preservation of the general welfare in order to immediately ensure that students identified with a disability that precludes their ability to participate in hands-only CPR and the use of AEDs may continue to be exempted from the instruction requirement in the regulation.

Subject: Instruction in Cardiopulmonary Resuscitation (CPR) and Use of Automated External Defibrillators (AEDs).

Purpose: Provide limited exemption to students with disabilities from CPR/AED required instruction.

Text of emergency rule: A new subparagraph (iv) of paragraph (11) of subdivision (c) of section 100.2 is added, effective February 23, 2016, as follows:

(iv) A student identified with a disability that precludes his or her ability to participate in hands-only cardiopulmonary resuscitation and the use of an automated external defibrillator may be exempted from the instruction requirement in this paragraph if the student's individualized education program developed in accordance with section 200.4 of this Title or accommodation plan developed pursuant to section 504 of the Rehabilitation Act of 1973 states that the student is physically or cognitively unable to perform the tasks included in the instruction.

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-48-15-00007-EP, Issue of December 2, 2015. The emergency rule will expire April 22, 2016.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

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

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

Education Law § 804-c authorizes school districts to provide cardiopulmonary resuscitation (CPR) instruction as part of the health education curriculum at their own discretion. If a district chooses to include such instruction, in addition to the requirement that all teachers of health education are certified to teach health, persons providing CPR instruction must possess valid certification in the performance and teaching of CPR. School districts that choose to offer CPR instruction under § 804-c are required to provide necessary facilities, time, learning aids, and curricular resource materials to support such course study.

Education Law § 804-d provides that senior high schools in which CPR instruction is provided pursuant to Education Law § 804-c, must also include instruction regarding the correct use of Automated External Defibrillators (AEDs). Individuals providing instruction in the correct use of AEDs must possess valid certification by a nationally recognized organization or the State emergency medical services council offering certification in the operation of an AED and in its instruction.

Chapter 417 of the Laws of 2014 added Education Law § 305(52) to require the Commissioner to make a recommendation to the Board of Regents regarding a potential new mandate for required instruction in CPR and the use of AEDs in senior high schools. The law further requires the Commissioner to seek the recommendations of teachers, school administrators, educators, and others with educational expertise in such curriculum, as well as comments from parents, students, and other interested parties prior to making a recommendation to the Board of Regents.

Education Law section 3713(1) and (2) authorize the State and school districts to accept federal law making appropriations for educational purposes and authorize Commissioner to cooperate with federal agencies to implement such law.

Education Law § 4403 establishes SED and school district responsibilities regarding special education programs and services to students with disabilities. § 4403(3) authorizes Commissioner to adopt regulations as deemed in their best interests.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement Regents policy to allow an exemption of a student identified as having a disability that precludes his or her ability to participate in hands-only instruction in CPR and instruction in the use of AEDs from the instruction requirement in section 100.2(c)(11) of the Commissioner's regulations.

NEEDS AND BENEFITS:

In September 2015, the Board of Regents permanently adopted the addition of a new section 100.2(c)(11) of the Commissioner's regulations to implement Chapter 417 of the Laws of 2014, which became effective October 7, 2015. Under the new regulation, students are required to complete hands-only instruction in CPR and instruction in the use of AEDs at least once between grades 9-12 before graduation. The standards for such instruction must be based on a nationally recognized instructional program that utilizes the most current guidelines for CPR and emergency cardiovascular care issued by the American Heart Association or a substantially equivalent organization and be consistent with the requirements of the programs adopted by the American Heart Association or the American Red Cross, and must incorporate instruction designed to:

- recognize the signs of a possible cardiac arrest and to call 911;
- provide an opportunity to demonstrate the psychomotor skills necessary to perform hands-only CPR; and
- provide awareness in the use of an AED.

Most students with disabilities have the ability to complete the instruction in hands-only CPR and the use of AEDs described above. However, the Department recognizes that there may be some students who, due to the nature of their disability, will not be able to physically or cognitively perform the tasks included in such instruction (e.g., demonstrating the psychomotor (hands-on) skills to perform CPR). The proposed amendment would allow a student's Committee on Special Education (CSE) or Multidisciplinary Team (MDT) pursuant to Section 504 of the Rehabilitation Act of 1973 to exempt a student identified as having a disability that precludes his or her ability to participate in hands-only CPR and the use of AEDs from the instruction requirement in section 100.2(c)(11) of the Commissioner's regulations. The student's individualized education program (IEP) or Section 504 accommodation plan would need to indicate that such student is physically or cognitively unable to perform the tasks included in the instruction in hands-only CPR and the use of AEDs.

COSTS:

(a) Costs to State government: None.

(b) Costs to local government: The proposed amendment will not impose any significant costs beyond those imposed by federal statutes and regulations and State statutes. The determination regarding a student's ability to participate in instruction in hands-only CPR and the use of AEDs would generally be made at the CSE or Section 504 MDT meeting at which a student's IEP or accommodation plan is reviewed, and would not require a separate meeting. Any costs associated with CSE or Section 504 MDT meetings that may need to be convened in the 2015-2016 school year for the sole purpose of determining if a student should be exempt from the instruction in hands-only CPR and the use of AEDs requirement in section 100.2(c)(11) of the Commissioner's regulations are expected to be minimal and capable of being absorbed by using existing district staff and resources.

(c) Costs to private regulated parties: None.

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

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon school districts beyond those imposed by federal and State statutes and regulations. In accordance with federal and State law and regulations, the CSE is already required to meet to review a student's IEP at least annually, and would include a determination of the extent, if any, to which a student will not participate in regular class and/or extracurricular and other nonacademic activities with nondisabled peers. The determination regarding a student's ability to participate in instruction in hands-only CPR and the use of AEDs requirement would generally be made at the CSE or Section 504 MDT meeting at which a student's IEP or accommodation plan is annually reviewed, and would not require a separate meeting. For students with disabilities exiting in the 2015-16 school year, it may be necessary for the CSE or Section 504 MDT to convene a meeting for the sole purpose of determining if a student should be exempt from the instruction in CPR and the use of AEDs requirement. In accordance with the procedures in section 200.4(g)(2) of the Commissioner's regulations, a school district and the parent may also agree not to convene a meeting for the purpose of amending an IEP and instead may develop a written document to amend the IEP to identify if the student is exempt from the instruction requirement in hands-only CPR and the use of AEDs.

PAPERWORK:

The proposed amendment does not impose any additional paperwork requirements. The Department will be amending the State's mandated IEP form to include a statement to identify if a student is exempt from the instruction requirement in CPR and the use of AEDs. Therefore, there would be no additional paperwork requirements imposed since school districts must currently use the IEP form prescribed by the Commissioner.

DUPLICATION:

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

ALTERNATIVES:

There were no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no applicable Federal standards.

COMPLIANCE SCHEDULE:

It is anticipated that schools will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to general school requirements and is necessary to implement Regents policy to allow an exemption of a student identified as having a disability that precludes his or her ability to participate in hands-only instruction in cardiopulmonary resuscitation (CPR) and instruction in the use of Automated External Defibrillators (AEDs) from the instruction requirement in section 100.2(c)(11) of the Commissioner's regulations.

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

Local Governments:

EFFECT OF RULE:

The proposed amendment applies to all public schools, charter schools, and State agency operated and approved private schools in the State that have Committee on Special Education (CSE) or Section 504 multidisciplinary team (MDT) responsibilities.

COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements beyond those imposed by federal statutes and regulations and State law. In accordance with federal and State law and regulations, the CSE is already required to meet to review a student's individualized education program (IEP) at least annually, and would include a determination of the extent, if any, to which a student will not participate in regular class and/or extracurricular and other nonacademic activities with nondisabled peers. The determination regarding a student's ability to participate in instruction in hands-only CPR and the use of AEDs would generally be made at the CSE or Section 504 MDT meeting at which a student's IEP or accommodation plan is annually reviewed, and would not require a separate meeting. For students with disabilities exiting in the 2015-16 school year, it may be necessary for the CSE or Section 504 MDT to convene a meeting for the sole purpose of determining if a student should be exempt from the instruction in CPR and the use of AEDs requirement. However, in accordance with the procedures in section 200.4(g)(2) of the Commissioner's regulations, a school district and the parent may also agree not to convene a meeting for the purpose of amending an IEP and instead may develop a written document to amend the IEP

to identify if the student is exempt from the instruction requirement in hands-only CPR and the use of AEDs.

PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional service requirements on school districts, charter schools, and State agency operated and approved private schools in the State.

COMPLIANCE COSTS:

The proposed amendment will not impose any significant costs beyond those imposed by federal statutes and regulations and State statutes. The determination regarding a student's ability to participate in instruction in hands-only CPR and the use of AEDs would generally be made at the CSE or Section 504 MDT meeting at which a student's IEP or accommodation plan is reviewed, and would not require a separate meeting. Any costs associated with CSE or Section 504 MDT meetings that may need to be convened in the 2015-2016 school year for the sole purpose of determining if a student should be exempt from the instruction in hands-only CPR and the use of AEDs requirement in section 100.2(c)(11) of the Commissioner's regulations are expected to be minimal and capable of being absorbed by using existing district staff and resources.

ECONOMIC AND TECHNOLOGICAL FEASIBILTY:

The proposed amendment does not impose any additional technological requirements. Economic feasibility is addressed above under compliance costs.

MINIMIZE ADVERSE IMPACT:

The proposed amendment would implement Regents policy to allow an exemption of a student with a disability from the instruction in hands-only instruction in CPR and instruction in the use of AEDs requirement in section 100.2(c)(11) of the Commissioner's regulations. It does not impose any additional compliance requirements or significant costs and therefore would have no adverse impact on the regulated parties.

LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment. Copies were also provided for review and comment to the chief school officers of the five big city school districts and to charter schools.

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 Regents policy regarding instruction in CPR and the use of AEDs pursuant to Education Law section 305(52), as added by Chapter 417 of the Laws of 2014. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all public schools, charter schools, and State agency operated and approved private schools in the State that have Committee on Special Education (CSE) or Section 504 multidisciplinary team (MDT) responsibilities, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment does not impose any additional compliance requirements beyond those imposed by federal statutes and regulations and State law. In accordance with federal and State law and regulations, the CSE is already required to meet to review a student's individualized education program (IEP) at least annually, and would include a determination of the extent, if any, to which a student will not participate in regular class and/or extracurricular and other nonacademic activities with nondisabled peers. The determination regarding a student's ability to participate in instruction in hands-only CPR and the use of AEDs would generally be made at the CSE or Section 504 MDT meeting at which a student's IEP or accommodation plan is annually reviewed, and would not require a separate meeting. For students with disabilities exiting in the 2015-16 school year, it may be necessary for the CSE or Section 504 MDT to convene a meeting for the sole purpose of determining if a student should be exempt from the instruction in CPR and the use of AEDs requirement. However, in accordance with the procedures in section 200.4(g)(2) of the Commissioner's regulations, a school district and the parent may also agree not to convene a meeting for the purpose of amending an IEP and instead may develop a written document to amend the IEP to identify if the student is exempt from the instruction requirement in hands-only CPR and the use of AEDs.

3. COMPLIANCE COSTS:

The proposed amendment will not impose any significant costs beyond those imposed by federal statutes and regulations and State statutes. The determination regarding a student's ability to participate in instruction in hands-only CPR and the use of AEDs would generally be made at the CSE or Section 504 MDT meeting at which a student's IEP or accommodation plan is reviewed, and would not require a separate meeting. Any costs associated with CSE or Section 504 MDT meetings that may need to be convened in the 2015-2016 school year for the sole purpose of determining if a student should be exempt from the instruction in hands-only CPR and the use of AEDs requirement in section 100.2(c)(11) of the Commissioner's regulations are expected to be minimal and capable of being absorbed by using existing district staff and resources.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement Regents policy to allow an exemption of a student identified as having a disability that precludes his or her ability to participate in hands-only instruction in cardiopulmonary resuscitation (CPR) and instruction in the use of Automated External Defibrillators (AEDs) from the instruction requirement in section 100.2(c)(11) of the Commissioner's regulations. It does not impose any additional compliance requirements or significant costs upon schools located in rural areas. The determination regarding a student's ability to participate in instruction in hands-only CPR and the use of AEDs would generally be made at the CSE or Section 504 MDT meeting at which a student's IEP or accommodation plan is reviewed, and would not require a separate meeting. Any costs associated with CSE or Section 504 MDT meetings that may need to be convened in the 2015-2016 school year for the sole purpose of determining if a student should be exempt from the instruction in hands-only CPR and the use of AEDs requirement are expected to be minimal and capable of being absorbed by using existing district staff and resources. Because this policy is applicable throughout the State, it was not possible to adopt different standards for schools in rural areas.

5. RURAL AREA PARTICIPATION:

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

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 Regents policy regarding instruction in CPR and the use of AEDs pursuant to Education Law section 305(52), as added by Chapter 417 of the Laws of 2014. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment is necessary to implement Regents policy to allow an exemption of a student identified as having a disability that precludes his or her ability to participate in instruction hands-only cardiopulmonary resuscitation (CPR) and the use of Automated External Defibrillators (AEDs) from the instruction requirement in section 100.2(c)(11) of the Commissioner's regulations.

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

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Execution by Registered Professional Nurses of Non-Patient Specific Orders to Administer Tuberculosis Tests

I.D. No. EDU-10-16-00017-EP
Filing No. 216
Filing Date: 2016-02-23
Effective Date: 2016-02-23

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

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

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6527(6)(c), 6902(1) and 6909(4)(c); L. 2015, ch. 464

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Chapter 464 of the Laws of 2015, which is effective February 18, 2016. The amendment to the Education Law made by Chapter 464 of the Laws of 2015 allows registered professional nurses to administer other tests to detect or screen for tuberculosis infections, pursuant to non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner, in addition to purified protein derivative (PPD) tests that registered professional nurses currently administer pursuant to such orders. These other and newer tests may be more effective than the purified protein derivative (PPD) tests in detecting or screening for tuberculosis infections.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) section 202(1) and (5), would be the May 16-17, 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the May meeting, would be June 1, 2016, the date a Notice of Adoption would be published in the State Register. However, the provisions of Chapter 464 of the Laws of 2015 are effective February 18, 2016.

Therefore, emergency action is necessary at the February 2016 Regents meeting for preservation of the public health and general welfare in order to enable the State Education Department to immediately implement Chapter 464 of the Laws of 2015, so that registered professional nurses can administer potentially more effective tuberculosis tests to detect and screen for tuberculosis infections pursuant to non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner.

It is anticipated that the proposed amendment will be presented for permanent adoption at the May 16-17, 2016 Regents meeting, which is the first scheduled meeting after the expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

Subject: Execution by registered professional nurses of non-patient specific orders to administer tuberculosis tests.

Purpose: Authorize administration of other tests to detect/screen for tuberculosis in addition to purified protein derivative (PPD) tests.

Text of emergency/proposed rule: Section 64.7 of the Regulations of the Commissioner of Education is amended, effective February 23, 2016, as follows:

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

(a) . . .

(b) . . .

[(c) Purified protein derivative (PPD) mantoux tuberculin skin tests.

(1) Pursuant to section 6909(5) of the Education Law, a registered professional nurse shall be authorized to execute the order to administer purified derivative (PPD) mantoux tuberculin skin tests, pursuant to a non-patient specific order and protocol prescribed and ordered by a licensed physician or a certified nurse practitioner, provided the order and protocol meets the requirements of paragraph (2) of this subdivision.

(2) Order and protocol.

(i) The registered professional nurse shall either maintain or ensure the maintenance of a copy of the non-patient specific order and protocol prescribed by a licensed physician or a certified nurse practitioner, which authorizes a registered professional nurse to execute the order to administer the purified protein derivative (PPD) mantoux tuberculin skin test, in accordance with the requirements of paragraph (1) of this subdivision. The order prescribed in subparagraph (ii) of this paragraph shall incorporate a protocol that meets the requirements of subparagraph (iii) of this paragraph. Such order and protocol shall be considered a record of the patient who has received a purified protein derivative (PPD) mantoux tuberculin skin test and maintained as a record for the period of time prescribed in section 29.2(a)(3) of this Title.

(ii) The order shall authorize one or more named registered professional nurses, or registered professional nurses who are not individually named but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, to execute the order to administer purified protein derivative (PPD) mantoux tuberculin skin tests for a prescribed period of time. In instances in which the registered professional nurses are not individually named in the order, but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, such registered professional nurses shall not be authorized by such order to execute the order to administer purified protein derivative (PPD) mantoux tuberculin skin tests outside of such employment or contract. The order shall contain but shall not be limited to the following information:

(a) identification of the purified protein derivative (PPD) mantoux tuberculin skin test;

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

(c) the name and license number of the registered professional nurse(s) authorized to execute the order to administer the purified protein derivative (PPD) mantoux tuberculin skin test; or the name of the entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services with whom registered professional nurses who are not individually named are employed or under contract to execute the order to administer the prescribed purified protein derivative (PPD) mantoux tuberculin skin test;

(d) in instances in which registered professional nurses are not individually named in the order, but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, the order shall contain a statement limiting registered professional nurses to execute the order to administer purified protein derivative (PPD) mantoux tuberculin skin tests only in the course of such employment or pursuant to such contract; and

(e) the name, license number, and signature of the licensed physician or certified nurse practitioner that has issued the order.

(iii) The protocol, incorporated into the order prescribed in subparagraph (ii) of this paragraph, shall require the registered professional nurse to meet the following requirements:

(a) The registered professional nurse shall ensure that each potential recipient is assessed for untoward conditions that would preclude purified protein derivative (PPD) mantoux tuberculin skin testing and each recipient's record of the purified protein derivative (PPD) mantoux tuberculin skin test with manufacturer and lot number or a potential recipient's refusal to be tested shall be documented in accordance with section 29.2(a)(3) of this Title.

(b) The registered professional nurse shall be responsible for having emergency anaphylaxis treatment agents, related to syringes and needles available at the purified protein derivative (PPD) mantoux tuberculin skin testing site, except in an emergency as determined by the Commissioner of Health, a county commissioner of health, or a county public health director.

(c) When the recipient of the test is legally capable of consenting to the test, the registered professional nurse may execute the order to administer the purified protein derivative (PPD) mantoux tuberculin skin test only after the recipient is adequately informed in writing as prescribed in this clause and consents to the purified protein derivative (PPD) mantoux tuberculin skin test. In the case of minors or other recipients incapable of consenting to the test, the registered professional nurse may execute the order to administer the purified protein derivative (PPD) mantoux tuberculin skin test only after the person legally responsible for the recipient of the test is adequately informed in writing as prescribed in this clause and consents to the purified protein derivative (PPD) mantoux tuberculin skin test. Prior to the registered professional nurse executing the order to administer the test, the recipient of the test, or the person legally responsible for the recipient of the test in the case of minors or other recipients incapable of consenting to the test, shall be informed in writing about the potential side effects of and adverse reactions to the test,

and the need for test evaluation within 48 to 72 hours after the test is administered.

(d) The registered professional nurse shall ensure that the recipient, or other person legally responsible for the recipient when the recipient is a minor or otherwise incapable of consenting to the test, is provided with a signed certificate of purified protein derivative (PPD) mantoux tuberculin skin testing and results, with the recipient's name, date of the test, address where the test was administered, administering nurse, manufacturer and lot number and recommendations for future tests recorded thereon. With the consent of the recipient or a person legally responsible for the recipient when the recipient is a minor or otherwise incapable of consenting, the registered professional nurse shall ensure that this information is communicated to the recipient's primary health care provider if one exists.

(e) Each registered professional nurse shall ensure that a record of all persons so testing including the recipient's name, date of the test, address where the test was administered, administering nurse, test results, manufacturer, lot number and recommendations for future tests is recorded and maintained in accordance with section 29.2(a)(3) of this Title.]

(c) Tuberculosis tests.

(1) As used in this subdivision, tuberculosis tests means one or more laboratory or point of care tests approved by the federal Food and Drug Administration to detect or screen for tuberculosis infections, including, but not limited to, tuberculin skin tests (purified protein derivative [PPD] tests).

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

(3) Order and protocol.

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

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

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

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

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

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

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

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

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

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

(c) any tuberculosis test results are disclosed and any recommendations for follow up care are made in accordance with the criteria in the protocol; and

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

(e) additional requirements for tuberculin skin tests. If the non-patient specific order authorizes a tuberculin skin tests, the written protocol shall, in addition to the foregoing:

(1) require the registered professional nurse to have emergency anaphylaxis treatment agents available at the tuberculin skin testing site, except in an emergency determined by the Commissioner of Health, New York City Commissioner of the Department of Health and Mental Hygiene, a county commissioner of health, or a county public health director;

(2) require that, prior to administering the tuberculin skin tests, the potential test recipient or a person authorized pursuant to law to consent to health care for the recipient receives written information regarding the potential side effects and/or adverse reactions to the tuberculin skin tests and the appropriate course of action in the event of an adverse reaction to the test;

(3) require that, prior to administering the tuberculin skin tests, the potential test recipient or his or her authorized representative is informed of the need for a test evaluation within 48 to 72 hours after the test is administered;

(4) require that the test recipient or recipient's authorized representative receives a signed certificate of tuberculin skin testing, which shall include the results with the recipient's name, date of tests, address where the tests was administered, administering nurse, manufacturer and lot numbers for the tuberculin solution administered, as well as any recommendations for future tests; and

(5) require that the name of the manufacturer and lot number of the tuberculin solution that was administered to the recipient are documented in his or her medical record, along with the date that the tuberculin skin tests was administered and the date that the test results were evaluated.

(d) . . .

(e) . . .

(f) . . .

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire May 22, 2016.

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

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

Paragraph (c) of subdivision (6) of 6527 of the Education Law, as amended by Chapter 464 of the Laws of 2015, authorizes registered professional nurses to administer other tests to detect or screen for tuberculosis infections, pursuant to a non-patient specific order and protocol prescribed by a licensed physician in accordance with regulations of the Commissioner of Education, in addition to purified protein derivative (PPD) tests that registered professional nurses currently administer pursuant to such orders.

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

Paragraph (c) of subdivision (4) of section 6909 of the Education Law, as amended by Chapter 464 of the Laws of 2015, authorizes registered professional nurses to administer other tests to detect or screen for tuberculosis infections, pursuant to a non-patient specific order and protocol prescribed by a certified nurse practitioner in accordance with regulations of the Commissioner of Education, in addition to purified protein derivative (PPD) tests that registered professional nurses currently administer pursuant to such orders.

2. LEGISLATIVE OBJECTIVES:

Amendments to paragraph (c) of subdivision (6) of section 6527 and paragraph (c) of subdivision (4) of section 6909 of the Education Law were enacted to protect the public health in New York State by increasing access to potentially more effective newer tuberculosis tests for detecting or screening for tuberculosis infections. Paragraph (c) of subdivision (6) of section 6527 of the Education Law authorizes registered professional nurses to administer other tests to detect or screen for tuberculosis infections, pursuant to a non-patient specific order and protocol prescribed by a licensed physician in accordance with regulations of the Commissioner of Education, in addition to purified protein derivative (PPD) tests that registered professional nurses currently administer pursuant to such orders.

Paragraph (c) of subdivision (4) of section 6909 of the Education Law authorizes registered professional nurses to administer other tests to detect or screen for tuberculosis infections, pursuant to a non-patient specific order and protocol prescribed by a certified nurse practitioner in accordance with regulations of the Commissioner of Education, in addition to purified protein derivative (PPD) tests that registered professional nurses currently administer pursuant to such orders.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to establish uniform requirements for registered professional nurses to meet when executing non-patient specific orders to administer tuberculosis tests. Specifically, the proposed amendment establishes the requirements for the types of information that should be included in these written non-patient specific orders and the requirements that should be included in the written protocols for a registered professional nurse to follow when administering tuberculosis tests pursuant to a non-patient specific order prescribed by a licensed physician or a certified nurse practitioner. The proposed amendment is needed to implement the requirements of paragraph (c) of subdivision (6) of section 6527 and paragraph (c) of subdivision (4) of section 6909 of the Education Law, as amended by Chapter 464 of the Laws of 2015.

4. COSTS:

(a) Costs to State government: None.

(b) Costs to local government: None.

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

(d) Cost to the regulatory agency: None.

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

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

7. DUPLICATION:

There are no other state or federal requirements on the subject matter of this proposed amendment. Therefore, the proposed amendment does not duplicate other existing state or federal requirements, and is necessary to implement Chapter 464 of the Laws of 2015.

8. ALTERNATIVES:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 464 of the Laws of 2015. There are no viable significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

There are no relevant federal standards for authorizing registered professional nurses to execute non-patient specific orders to administer tuberculosis tests as prescribed by a licensed physician or certified nurse practitioner. 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 464 of the Laws of 2015. The proposed amendment will become effective on February 23, 2016. The proposed amendment does not impose any compliance schedules on regulated parties or local governments.

Regulatory Flexibility Analysis

The purpose of the proposed amendment is to implement Chapter 464 of the Laws of 2015, which authorizes registered professional nurses to execute non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner to administer other tests to detect or screen for tuberculosis infections, in addition to purified protein derivative (PPD) tests that registered professional nurses currently administer pursuant to such orders. These other and newer tuberculosis tests may be more effective than the purified protein derivative (PPD) tests in detecting or screening for tuberculosis infections. The proposed amendment establishes the types of information that must be included in the written non-patient specific orders and the requirements that must be set forth in the written protocols, for registered professional nurses to follow when administering tuberculosis tests.

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

The proposed amendment will apply to all New York State registered professional nurses who administer tuberculosis tests pursuant to a non-patient specific order and protocol, including registered professional nurses located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square miles or less. Of the approximately 285,000 registered professional nurses who are registered to practice in New York State, approximately 30,200 reported that their permanent address of record is in a rural county of New York State.

The proposed amendment will also apply to all New York State certified nurse practitioners who issue non-patient specific orders and protocols to authorize registered professional nurses to administer tuberculosis tests, including nurse practitioners located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square miles or less. Of the approximately 20,000 certified nurse practitioners who are registered to practice in New York State, approximately 2,500 reported that their permanent address of record is in a rural county of New York State.

Additionally, the proposed rule will apply to all New York State licensed physicians who issue non-patient specific orders and protocols to authorize registered professional nurses to administer tuberculosis tests, including licensed physicians located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square miles or less. Of the approximately 93,300 licensed physicians registered to practice in New York State, approximately 2,550 reported that their permanent address of record is in a rural county of New York State.

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

The proposed amendment to subdivision (c) of section 64.7 of the Regulations of the Commissioner of Education implements Chapter 464 of the Laws of 2015. On February 18, 2016, the effective date of Chapter 464 of the Laws of 2015, registered professional nurses will be authorized to administer, pursuant to non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner, other tests to detect or screen for tuberculosis infections, in addition to the purified protein derivative (PPD) tests registered professional nurses are currently permitted to administer pursuant to such orders. These other and newer tuberculosis tests may be more effective than the purified protein derivative (PPD) tests in detecting or screening for tuberculosis infections.

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

3. COSTS:

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

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Regulations of

the Commissioner of Education to Chapter 464 of the Laws of 2015. The statutory requirements do not make exceptions for individuals who live or work in rural areas. Thus, the Department has determined that the proposed amendment's requirements should apply to all licensed physicians, certified nurse practitioners and registered professional nurses in New York State. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

5. RURAL AREAS PARTICIPATION:

Comments on the proposed rule were solicited from statewide organizations representing all parties having an interest in the practice of certified nurse practitioners and registered professional nurses. These organizations included the State Board for Nursing and professional associations representing the nursing profession and nursing educators and the medical professions. These groups have members who live or work or provide nursing education in rural areas.

6. INITIAL REVIEW OF RULE (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 Chapter 464 of the Laws of 2015, and, therefore, the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The State Education Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16 of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment implements Chapter 464 of the Laws of 2015, which authorizes registered professional nurses to execute non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner to administer other tests to detect or screen for tuberculosis infections, in addition to purified protein derivative (PPD) tests that registered professional nurses currently administer pursuant to such orders. These other and newer tuberculosis tests may be more effective than the purified protein derivative (PPD) tests in detecting or screening for tuberculosis infections.

The proposed amendment implements specific statutory requirements. Any impact on jobs and employment opportunities created by establishing criteria for authorizing registered professional nurses to administer tuberculosis tests, in addition to the purified protein derivative (PPD) tests, pursuant to a non-patient specific written order and written protocol prescribed by a licensed physician or a certified nurse practitioner is attributable to the statutory requirement.

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

NOTICE OF ADOPTION

Instruction in Cardiopulmonary Resuscitation (CPR) and Use of Automated External Defibrillators (AEDs)

I.D. No. EDU-48-15-00007-A

Filing No. 211

Filing Date: 2016-02-23

Effective Date: 2016-03-09

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

Action taken: Amendment of section 100.2(c)(11) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), (20), (52), 308(not subdivided), 804-c(2) and 804-d(not subdivided); L. 2014, ch. 417

Subject: Instruction in Cardiopulmonary Resuscitation (CPR) and Use of Automated External Defibrillators (AEDs).

Purpose: Provide limited exemption to students with disabilities from CPR/AED required instruction.

Text or summary was published in the December 2, 2015 issue of the Register, I.D. No. EDU-48-15-00007-EP.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Licensing Examination Requirements for Dental Hygienists

I.D. No. EDU-48-15-00008-A

Filing No. 217

Filing Date: 2016-02-23

Effective Date: 2016-03-09

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

Action taken: Amendment of section 61.7 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6606(1), (2), 6608(not subdivided) and 6609(4)

Subject: Licensing Examination Requirements for Dental Hygienists.

Purpose: To address a name-change by the testing agency for Part II of the licensing exam; and remove remedial education requirements.

Text or summary was published in the December 2, 2015 issue of the Register, I.D. No. EDU-48-15-00008-P.

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

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

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

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

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

Filing No. 218

Filing Date: 2016-02-23

Effective Date: 2016-03-09

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

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 or summary was published in the December 2, 2015 issue of the Register, I.D. No. EDU-48-15-00009-EP.

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

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

Initial Review of Rule

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Voluntary Institutional Accreditation for Title IV Purposes

I.D. No. EDU-49-15-00013-A

Filing No. 213

Filing Date: 2016-02-23

Effective Date: 2016-03-09

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

Action taken: Amendment of Subpart 4-1 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 210(not subdivided), 214(not subdivided), 215(not subdivided), 305(1) and (2)

Subject: Voluntary institutional accreditation for Title IV purposes.

Purpose: To clarify existing standards and procedures that must be met by institutions of higher education seeking voluntary accreditation by the Board of Regents and the Commissioner of Education.

Text or summary was published in the December 9, 2015 issue of the Register, I.D. No. EDU-49-15-00013-P.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

New York State High School Equivalency Diploma

I.D. No. EDU-10-16-00006-P

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

Proposed Action: Amendment of sections 100.7 and 100.8 of Title 8 NYCRR.

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

Subject: New York State High School Equivalency Diploma.

Purpose: To establish the National External Diploma Program (NEDP) as a pathway to earn a NYS High School Equivalency Diploma.

Text of proposed rule: 1. Subparagraph (i) of paragraph (1) of subdivision (a) of section 100.7 of the Regulations of the Commissioner of Education is amended, effective June 1, 2016, as follows:

(i) shall be 19 years of age or over*, or 18 years of age or older in the case of a student receiving a high school equivalency diploma based on successful completion of the National External Degree Program;* or

2. Subparagraph (i) of paragraph (2) of subdivision (a) of section 100.7 of the Regulations of the Commissioner of Education is amended, effective June 1, 2016, as follows:

(2)(i) In order to receive a high school equivalency diploma, candidates shall:

(a) take a general comprehensive examination prescribed for the program, in English, and achieve a standing designated as satisfactory by the Commissioner of Education; or

(b) take a general comprehensive examination prescribed for the program in a language other than English, where available, and achieve a standing designated as satisfactory by the commissioner on such examination, except that such candidates shall receive a high school equivalency diploma with a transcript that bears an inscription indicating the language in which the general comprehensive examination was taken, and may exchange such diploma with a transcript for a diploma with a transcript not containing such inscription upon achievement of a satisfactory standing on the Reading and Writing subtest of the general comprehensive exam subsequently taken in the English language; or

(c) provide satisfactory evidence that they have successfully completed 24 semester hours or the equivalent as a recognized candidate for a college-level degree or certificate at an approved institution. Beginning with applications made on or after September 1, 2000 and before September 30, 2004, the 24 semester hours shall be distributed as follows: six semester hours or the equivalent in English language arts including writing, speaking and reading (literature); six semester hours or the equivalent in mathematics; three semester hours or the equivalent in natural sciences; three semester hours or the equivalent in social sciences; three semester hours or the equivalent in humanities; and three semester hours or the equivalent in career and technical education and/or foreign languages. Beginning with applications made on or after September 30, 2004, the 24 semester hours shall be distributed as follows: six semester hours or the equivalent in English language arts including writing, speaking and reading (literature); three semester hours or the equivalent in mathematics; three semester hours or the equivalent in natural sciences; three semester hours or the equivalent in social sciences; three semester hours or the equivalent in humanities; and six semester hours or the equivalent in any other courses within the registered degree or certificate program*; or*

(d) effective September 1, 2016 and thereafter, provide satisfactory evidence that they have successfully completed and thoroughly demonstrated the delineated competencies of the National External Diploma Program.

3. Section 100.8 of the Regulations of the Commissioner of Education is amended, effective June 1, 2016, as follows:

Boards of education specified by the commissioner may award a local high school equivalency diploma based upon experimental programs approved by the commissioner until [June 30, 2017] *August 31, 2016*, after which date such boards may no longer award a local high school equivalency diploma.

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

Data, views or arguments may be submitted to: Mark Leinung, Director Adult Education Programs and Policy, Office of Adult Career and Continuing Education Services, EBA Room 460, 89 Washington Ave., Albany, NY 12234, (518) 474-8892, email: Mark.Leinung@nysed.gov

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

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

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

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

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

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

Education Law section 3204(3) provides for required courses of study in the public schools and authorizes the State Education Department to alter the subjects of required instruction.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to examination requirements for a New York State (NYS) High School Equivalency Diploma.

NEEDS AND BENEFITS:

The purpose of the proposed rule amendment is to make the National External Diploma Program (NEDP) the third pathway (along with the Test Assessing Secondary Completion [TASC] test and the 24 College Credit program) to a NYS High School Equivalency Diploma.

The NEDP allows participants to show their proficiency in competencies that are aligned to the Common Core State Standards (CCSS) and the College and Career Readiness Standards for Adult Education. The program has the potential to benefit many more individuals in the State who are seeking a high school diploma.

The NEDP is an applied performance assessment system administered by Comprehensive Adult Student Assessment Systems (CASAS) for adults and out-of-school youth who are seeking a high school diploma. To complete the program, participants must demonstrate mastery of skills for success in postsecondary education and the workplace. The lowest age of participation in NEDP according to CASAS is 18; however participating states (and regions) may set their own minimum age requirements. Currently, the minimum age requirement in NYS is 21.

In lieu of taking traditional paper and pencil standardized exams, NEDP participants meet one-on-one with an assigned trained practitioner in order to demonstrate mastery of 70 competencies across 10 content areas via a variety of performance tasks completed at home and through in-office visits and competency progress reports. The assessment portion of the program is entirely web-based. NEDP competencies are academic and life skills acquired through life and work experiences. While the NEDP is non-traditional in many ways, it is a highly structured, criterion-referenced assessment, where participants must achieve 100% mastery across all areas. The self-paced, flexible study and assessment schedule make it ideal for adult learners, easing the burden of studying, familial and work obligations. English Language Learners also benefit from NEDP, as they may be proficient in their native language but unable to master the highly specific content knowledge (such as U.S. History) needed to succeed on a high school or HSE exam. Special needs students are also served by NEDP, as they are able to set their own pace and demonstrate incremental progress over the course of the program rather than the "all-or-nothing" option of a high stakes assessment.

Currently in NYS, NEDP does not lead to a State Equivalency Diploma under CR 100.7, but rather a Local Equivalency Diploma under CR 100.8. While NYS does not include NEDP under CR 100.7, (the regulation that confers the NYS High School Equivalency Diploma) other participating states do grant a state diploma to participants who complete the NEDP.

At the November 2015 ACCES Committee meeting, the Regents discussed the possibility of making the NEDP a third pathway to a NYS High School Equivalency Diploma by amending the Commissioner's Regulations such that the NEDP would result in a State high school equivalency diploma (as governed by Commissioner's Regulations § 100.7) rather than a local high school equivalency diploma (as governed by Commissioner's Regulations § 100.8). Such a change may result in added legitimacy for the NEDP diploma in the eyes of employers and educational institutions and a resulting increase in enrollment in the program.

The proposed amendment also lowers the age of participation in the NEDP program to 18 to allow for increased participation in the program and to decrease the potential gap between when a student leaves high school and when they can subsequently begin an NEDP program.

COSTS:

(a) Costs to State government: SED contracts with the vendor (CASAS) to provide training and technical assistance to NEDP agencies. The 2015-2016 contract expires on June 30, 2016 and has a budget of $129,325. A renewal of the contract may increase costs but since SED is currently negotiating with CASAS on the contract extension, it is not possible at this time to provide an estimate on the potential increased cost.

(b) Costs to local government: No direct costs to local government or LEAs. While the NEDP program imposes costs upon any agency that implements it, the decision whether to provide an NEDP program is at the agency's discretion.

(c) Costs to private regulated parties: The proposed amendment does not impose any direct costs on candidates for a NYS High School Equivalency Diploma. The proposed amendment merely establishes the National External Diploma Program (NEDP) as a third option (in addition to the TASC test and the 24 College Credit program) for candidates to earn a NYS High School Equivalency Diploma. Participation in the NEDP is voluntary.

(d) Costs to regulating agency for implementation and continued administration of this rule: The proposed amendment does not impose any direct costs on the State Education Department. The proposed amendment establishes the National External Diploma Program (NEDP) as a third option (in addition to the TASC test and the 24 College Credit program) for candidates to earn a NYS High School Equivalency Diploma. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing SED staff and resources.

LOCAL GOVERNMENT MANDATES:

The proposed amendment applies to individuals seeking a NYS High School Equivalency Diploma and does not impose any additional program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

PAPERWORK:

The proposed amendment does not impose any additional paperwork or recordkeeping requirements. The proposed amendment establishes the National External Diploma Program (NEDP) as a third option (in addition to the TASC test and the 24 College Credit program) for candidates to earn a NYS High School Equivalency Diploma. It is anticipated that any additional paperwork associated with the proposed amendment will be minimal and capable of being absorbed using existing SED staff and resources.

DUPLICATION:

The proposed amendment does not duplicate existing State or federal regulations.

ALTERNATIVES:

There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no related federal standards.

COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment is necessary to implement policy enacted by the Board of Regents relating to examination requirements for a New York State high school equivalency diploma. The proposed amendment establishes the National External Diploma Program (NEDP) as a third option (in addition to the TASC test and the 24 College Credit program) for candidates to earn a New York State High School Equivalency Diploma. The proposed amendment will not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The proposed amendment applies to those school districts and boards of cooperative educational services (BOCES) that choose to participate in the NEDP program. There are currently 23 agencies providing NEDP programs in New York State, of which 5 are school districts and 13 are BOCES.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any new compliance requirements but merely establishes the National External Diploma Program (NEDP) as a third option (in addition to the TASC test and the 24 College Credit program) for candidates to earn a NYS High School Equivalency Diploma. Participation in the NEDP is voluntary.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment does not impose any direct costs on local governments. While the NEDP program imposes costs upon any agency that implements it, the decision whether to provide an NEDP program is at the agency's discretion.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment will not impose any costs or new technological requirements on local governments.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy enacted by the Board of Regents. The proposed amendment does not impose any new compliance requirements or costs on local governments, but merely establishes the National External Diploma Program (NEDP) as a third option (in addition to the TASC test and the 24 College Credit program) for candidates to earn a NYS High School Equivalency Diploma. Participation in the NEDP is voluntary.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment. Copies were also provided for review and comment to the chief school officers of the five big city school districts.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to individuals who seek to obtain a New York State High School Equivalency Diploma, and school districts, BOCES, institutions of higher education, libraries, community based organization and literacy volunteer organizations that choose to participate in the NEDP program, including those residing or located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. There are currently 23 agencies providing NEDP programs in New York State and 25 sites, of which 13 sites are located in rural areas.

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

The proposed amendment does not impose any additional compliance requirements on persons in rural areas. The proposed amendment establishes the National External Diploma Program (NEDP) as a third option (in addition to the TASC test and the 24 College Credit program) for candidates to earn a New York State High School Equivalency Diploma. The proposed amendment also lowers the age of participation in the NEDP program to 18 to allow for increased participation in the program and to decrease the potential gap between when a student leaves high school and when they can subsequently begin an NEDP program.

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

3. COMPLIANCE COSTS:

The proposed amendment does not impose any costs on persons in rural areas. The proposed amendment establishes the National External Diploma Program (NEDP) as a third option (in addition to the TASC test and the 24 College Credit program) for candidates to earn a New York State High School Equivalency Diploma.

The proposed amendment does not impose any direct costs on school districts in rural areas. While the NEDP program imposes costs upon any agency that implements it, the decision whether to provide an NEDP program is at the agency's discretion.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy enacted by the Board of Regents relating to examination requirements for a high school equivalency diploma and does not impose any additional compliance requirements or costs on persons in rural areas. The proposed amendment establishes the National External Diploma Program (NEDP) as a third option (in addition to the TASC test and the 24 College Credit program) for candidates to earn a New York State High School Equivalency Diploma. Because the Regents policy upon which the proposed amendment is based applies to all persons seeking a New York State High School Equivalency diploma, it is not possible to establish differing compliance or reporting requirements for persons in rural areas.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes entities located in rural areas.

Job Impact Statement

The proposed amendment is necessary to implement policy enacted by the Board of Regents relating to examination requirements for a New York State high school equivalency diploma. The proposed amendment establishes the National External Diploma Program (NEDP) as a third option (in addition to the TASC test and the 24 College Credit program) for candidates to earn a New York State High School Equivalency Diploma.

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Citizenship Requirements for Professional Licensure and Certification in Teaching and Educational Leadership Service

I.D. No. EDU-10-16-00015-P

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

Proposed Action: Amendment of sections 59.4 and 80-1.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2), 3001(1), (3), 3003(1), 3009(1), 6504(not subdivided), 6506(1) and (2)

Subject: Citizenship requirements for professional licensure and certification in teaching and educational leadership service.

Purpose: To authorize the granting of licenses to individuals in the Title VIII professions and the certification of teachers and educational leaders to otherwise qualified aliens who are not unlawfully present in the U.S. and who meet all other licensure requirements except citizenship to become licensed or certified.

Text of proposed rule: 1. Section 59.4 of the Regulations of the Commissioner of Education is repealed and a new section 59.4 of the Regulations of the Commissioner of Education is added, effective June 1, 2016, to read as follows:

§ 59.4 Citizenship.

Notwithstanding any other provision of this Title to the contrary, no otherwise qualified applicant shall be denied a license, certificate, limited permit or registration pursuant to this Title by reason of his or her citizenship or immigration status, unless such applicant is otherwise ineligible for a professional license under 8 USC § 1621 or any other applicable federal law. Provided, however that pursuant to 8 USC § 1621(d), no otherwise qualified alien shall be precluded from obtaining a professional license under this Title if an individual is not unlawfully present in the United States, including but not limited to individuals granted Deferred Action for Childhood Arrivals relief or similar relief from deportation.

2. Section 80-1.3. of the Regulations of the Commissioner of Education is repealed and a new section 80-1.3 of the Regulations of the Commissioner of Education is added, effective June 1, 2016, to read as follows:

§ 80-1.3 Citizenship.

(a) Notwithstanding any other provision this Part to the contrary, no otherwise qualified applicant shall be denied a certificate under this Part, or registration pursuant to this Title by reason of his or her citizenship or immigration status, unless such applicant is otherwise ineligible for a professional license under 8 USC § 1621 or any other applicable federal law. Provided, however that pursuant to 8 USC § 1621(d), no otherwise qualified alien shall be precluded from obtaining a professional license under this Title if an individual is not unlawfully present in the United States, including but not limited to applicants granted Deferred Action for Childhood Arrivals relief or similar relief from deportation.

(b) The requirements of subdivision (a) of this section shall not preclude a candidate who is not a citizen of the United States from qualifying for a permit or other authorization to teach in the public schools of New York State, in accordance with specific provisions of the Education Law that authorize such teaching service by a candidate who is not a citizen of the United States, such as section 3005 of the Education Law.

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

Data, views or arguments may be submitted to: Peg Rivers, New York State Education Department, 89 Washington Avenue, Albany, New York 12234, (518) 408-1189, email: privers@nysed.gov

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

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

Regulatory Impact Statement

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 Regents to register domestic and foreign institutions in terms of State standards, and fix the value of degrees, diplomas and certificates issued by institutions of other

states or countries and presented for entrance to schools, colleges and professions in the State.

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

Section 305(1) and (2) of the Education Law authorize the Commissioner to enforce laws relating to the State educational system and execute Regents educational policies, and provides the Commissioner with general supervision over schools and authority to advise and guide school district officers in their duties and the general management of their schools.

Subdivision (1) 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 (3) of section 3001 of the Education Law establishes a citizenship requirement as a qualification for teaching in the public schools of New York State, with exceptions, and authorizes aliens to teach in the public schools pursuant to regulations of the Commissioner of Education.

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

Section 6504 and 5606 of the Education Law authorize the Board of Regents to supervise the admission to and regulation of the practices of the professions.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment to the Regulations of the Commissioner of Education carries out the objectives of the above-referenced statutes by establishing citizenship requirements for the Title VIII professions and teaching and educational leadership service.

3. NEEDS AND BENEFITS:

The amendment relates to citizenship requirements for the Title VIII professions and the certification of teachers and educational leadership in the State of New York. The purpose of the proposed amendment is to replace previous citizenship requirements as a result of recent case law on citizenship requirements for State licensure.

The amendment authorizes the granting of licenses to individuals in the Title VIII professions and the certification of teachers to otherwise qualified aliens who are not unlawfully present in the U.S. and who meet all other licensure requirements except citizenship to become licensed or certified.

4. COSTS:

(a) Cost to State government. The amendment will not impose any additional cost on State government, including the State Education Department. The State Education Department will use existing staff and resources to process applications for licenses.

(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 costs on regulated parties beyond those already imposed by statute and/or regulation.

(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 amendment will not impose any program, service, duty or responsibility on local governments.

6. PAPERWORK:

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements. Candidates seeking licensure in the Title VIII professions and certification in teaching and educational leadership are required to make written application with the State Education Department and provide all evidence of having met the requirements for the license or certificate sought, including the education and experience requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternative proposals were considered.

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

Candidates must comply with the proposed amendment on its effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendment would authorize the granting of licenses to individuals in the Title VIII professions and the certification of teachers and educational leaders to otherwise qualified aliens who are not unlawfully present in the U.S. and who meet all other licensure requirements except citizenship to become licensed or certified. The purpose of the proposed amendment is to replace previous requirements as a result of recent case law on citizenship requirements for State licensure.

The proposed amendment does not regulate small businesses or local governments. It does not impose any reporting, recordkeeping, or compliance requirements or have any adverse economic impact on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further 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 ESTIMATE OF NUMBERS OF RURAL AREAS:

The proposed amendment will affect applicants seeking a license in the Title VIII professions and candidates seeking certification as a teacher or educational leader in all parts of the State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square mile or less.

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

The proposed amendment authorizes the granting of licenses to individuals in the Title VIII professions and the certification of teachers and educational leaders to otherwise qualified aliens who are not unlawfully present in the U.S. and who meet all other licensure requirements except citizenship to become licensed or certified. The purpose of the proposed amendment is to replace previous citizenship requirements as a result of recent case law on citizenship requirements for State licensure.

3. COSTS:

The amendment will not impose costs on regulated parties, beyond those already imposed by statute or regulation.

4. MINIMIZING ADVERSE IMPACT:

The amendment establishes citizenship requirements for certification as a teacher and educational leader. The State Education Department does not believe that establishing different standards for candidates who live or work in rural areas is warranted.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from the Rural Advisory Committee. This Committee has representatives who live and/or work in rural areas.

Job Impact Statement

The proposed amendment would authorize the granting of licenses to individuals in the Title VIII professions and the certification of teachers and educational leaders to otherwise qualified aliens who are not unlawfully present in the U.S. and who meet all other licensure requirements except citizenship to become licensed or certified.

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Dental Anesthesia Certification Requirements for Licensed Dentists

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

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

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

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

Subject: Dental Anesthesia Certification Requirements for Licensed Dentists.

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

Substance of proposed rule (Full text is posted at the following State website:http://www.regents.nysed.gov/meetings/2016/2016-02/professional-practice): The Commissioner of Education proposes to amend section 61.10 of the Regulations of the Commissioner of

Education relating to the dental anesthesia certification requirements for licensed dentists under Article 133 of the Education Law. The following is a summary of the proposed rule:

Subdivision (a) of section 61.10 of the Regulations of the Commissioner of Education is amended to update New York's definitions to reflect those currently used in the profession and re-define the types of anesthesia used by dentists that are subject to certification.

Subdivision (b) of section 61.10 of the Regulations of the Commissioner of Education is amended to reflect the definitional changes made to certain methods of sedation and to add new certifications for administering parenteral conscious (moderate) sedation and for administering enteral conscious (moderate) sedation to pediatric patients aged 12 years old and younger. The certificates created under this section are: (1) general anesthesia; (2) dental parenteral conscious (moderate) sedation for patients 13 years old and older; (3) dental parenteral conscious (moderate) sedation for patients 12 years old and younger; (4) dental enteral conscious (moderate) sedation for patients 13 years old and older; and (5) dental enteral conscious (moderate) sedation for patients 12 years old and younger.

Subdivision (b) of section of 61.10 is also amended to delete outdated references to certificates issued prior to January 2001 as being valid until the end of their term and to provide a transition pathway for current holders of parenteral conscious sedation certificates and enteral conscious sedation certificates, who wish to continue to provide sedation to pediatric patients, until the end of their certificate term.

Subdivision (c) of section 61.10 of the Regulations of the Commissioner of Education is amended to eliminate redundant anesthesia certificate descriptions already set forth in subdivision (b) of section 61.10; incorporate the definitional changes set forth in subdivision (a) of section 61.10(a); amend the education requirements to at least 60 hours of coursework provided through didactic instruction and/or an anesthesia rotation for all certificates, with the exception of a general anesthesia certificate; amend the experience requirements for the parenteral conscious (moderate) sedation certificate and the enteral conscious (moderate) sedation certificate to include live clinical experiences with dental patients; include a requirement that post-doctoral education necessary for acquiring a certificate in dental parenteral conscious (moderate) sedation or dental enteral conscious (moderate) sedation be previously approved by the Department; include the requirements required to obtain a certificate to administer general anesthesia or conscious (moderate) sedation through endorsement from another jurisdiction; include the education and training requirements as well as the renewal requirements for the new certificates for parenteral conscious (moderate) sedation pediatric and for enteral conscious (moderate) sedation pediatric; add Advanced Cardiac Life Support (ACLS) to the parenteral and enteral conscious (moderate) sedation certificates for patients ages 13 years and older; add Pediatric Advanced Life Support (PALS) to the parenteral and enteral conscious (moderate) sedation certificates for patients ages 12 years old and younger and for those Oral Surgeons and Dental Anesthesiologists administering general anesthesia to children 12 years old and younger; and delete the provisions for licensed dentists who applied for certificates prior to January 1, 2002.

Subdivision (d) of section 61.10 is amended to reflect the definitional changes referenced in section 61.10(a); provide that a licensed dentist can administer conscious (moderate) sedation, deep sedation and general anesthesia to more than one patient at a time when supervising dental students or residents; provide that licensed dentists administering conscious (moderate) sedation, deep sedation and general anesthesia are responsible for pre-operative preparation for the patient; set forth specific pre-operative requirements for administering deep sedation and general anesthesia and separate pre-operative requirements for administering conscious (moderate) sedation; eliminate the existing requirements for monitoring during the administration of general anesthesia, deep sedation and moderate sedation, and set forth new monitoring requirements for the administration of those types of sedation; delete existing reference to dietary instructions and oral or written instructions since they would now be included in the pre-operative instructions; include an exception for a requirement for the recording of blood pressure records on patients who are being administered conscious (moderate) sedation using an enteral route; include a provision that dentists maintain proof of completing the twelve hours of education in sedation/anesthesia as required for the new provision for renewal of their certificate to administer conscious (moderate) parenteral sedation or deep sedation or general anesthesia; include a provision setting forth the overall responsibility of the dentist administering general anesthesia, deep sedation and conscious (moderate) sedation; and include guidelines for reporting mortality or irreversible morbidity to the Department.

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

Subdivision (1) of section 6506 of the Education Law authorizes the Board of Regents to supervise the admission to the practice of the professions and to promulgate rules to carry out such supervision.

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

Section 6601 of the Education Law defines the practice of dentistry.

Subdivision (2) of section 6605-a of the Education Law authorizes the Commissioner of Education to promulgate regulations establishing standards and procedures for the issuance of dental anesthesia certificates, and practice standards and safeguards for the use of conscious sedation, deep sedation or general anesthesia.

2. LEGISLATIVE OBJECTIVES:

The proposed amendments carries out the legislative intent of the aforementioned statutes that the Board of Regents and the Department regulate the practice of dentistry and, as directed by subdivision (2) of section 6605-a of the Education Law, establish standards and procedures for the issuance of dental anesthesia certificates, as well as practice standards and safeguards for the use of conscious sedation, deep sedation or general anesthesia.

Chapter 615 of the Laws of 1999, amended section 6605-a of the Education Law to require licensed dentists to obtain a dental anesthesia certificate in order to employ conscious sedation or deep sedation in the course of their professional practices at locations other than general hospitals, such as dental offices, regardless of the route of administration. Prior to Chapter 615 of the Laws of 1999, the law required such certification only when conscious sedation or deep sedation was obtained parenterally (e.g., intravenously), despite the fact that these levels of sedation could be achieved through other routes of administration (e.g., gastrointestinally). Although, at that time, dental anesthesia administered in a dental office was considered to be a safe and cost effective procedure, the intent of Chapter 615 of the Laws of 1999 was to ensure that licensed dentists using conscious or deep sedation, regardless of the delivery route, be fully trained and certified in the use and administration of dental anesthesia in order to enhance the protection of the public. In 2001, the Board of Regents amended section 61.10 of the Regulations of the Commissioner of Education to implement Chapter 615 of the Laws of 1999 by establishing educational and training requirements for licensed dentists to be certified to employ conscious sedation, deep sedation, or general anesthesia in the practice of dentistry at any location other than a general hospital, and to establish practice requirements for the use of conscious sedation, deep sedation, or general anesthesia by such licensed dentists.

Subsequently, there were changes in the practice of dental anesthesia administration. In 2007, the American Dental Association (ADA) revised several dental anesthesia related definitions. One of these revisions was the replacement of the term "conscious sedation" with the term "moderate sedation."

The proposed amendment to section 61.10 of the Regulations of the Commissioner of Education conforms the regulation to the current practice of dental anesthesia administration. Amendments to subdivision (a) of this section also update New York's definitions to reflect those currently used in the profession. It further re-defines the levels of sedation and the routes of administration, as well as defines the terms "continual/continually", "continuous/continuously", patent, time-oriented anesthesia record and adds the American Society of Anesthesiologists (ASA) Patient Physical Status Classifications administration and, overall, improves the protection of the public.

Proposed amendments to subdivision (b) of section 61.10 of the Regulations of the Commissioner of Education reflect the definitional changes made to certain methods of sedation and add new certifications for administering parenteral conscious (moderate) sedation and for administering enteral conscious (moderate) sedation to pediatric patients aged 12 years old and younger.

Additional amendments to subdivision (b) of section of 61.10 delete outdated references to certificates issued prior to January 2001 as being valid until the end of their term and provide for the grandfathering in of current holders of parenteral conscious sedation certificates and enteral

conscious sedation certificates, who wish to continue to provide sedation to pediatric patients, until the end of their certificate term.

The proposed amendments to subdivision (c) of section 61.10 of the Regulations of the Commissioner of Education would eliminate redundant anesthesia certificate descriptions already set forth in subdivision (b) of section 61.10; incorporate the definitional changes set forth in subdivision (a) of section 61.10; amend the education requirements to at least 60 hours of coursework provided through didactic instruction and/or an anesthesia rotation for all certificates, with the exception of a general anesthesia certificate; amend the experience requirements for the parenteral conscious (moderate) sedation certificate and the enteral conscious (moderate) sedation certificate to include live clinical experiences with dental patients; include a requirement that post-doctoral education necessary for acquiring a certificate in dental parenteral conscious (moderate) sedation or dental enteral conscious (moderate) sedation be previously approved by the Department; include the requirements required to obtain a certificate to administer general anesthesia or conscious (moderate) sedation through endorsement from another jurisdiction; include the education and training requirements as well as the renewal requirements for the new certificates for parenteral conscious (moderate) sedation pediatric and for enteral conscious (moderate) sedation pediatric; add Advanced Cardiac Life Support (ACLS) to the parenteral and enteral conscious (moderate) sedation certificates for patients ages 13 years and older; add Pediatric Advanced Life Support (PALS) to the parenteral and enteral conscious (moderate) sedation certificates for patients ages 12 years old and younger and for those Oral Surgeons and Dental Anesthesiologists administering general anesthesia to children 12 years old and younger; and delete the provisions for licensed dentists who applied for certificates prior to January 1, 2002.

Additionally, the proposed amendments to subdivision (d) of section 61.10 reflect the definitional changes referenced in subdivision (a) of section 61.10; provide that a licensed dentist can administer conscious (moderate) sedation, deep sedation and general anesthesia to more than one patient at a time when supervising dental students or residents; provide that licensed dentists administering conscious (moderate) sedation, deep sedation and general anesthesia are responsible for pre-operative preparation for the patient; set forth specific pre-operative requirements for administering deep sedation and general anesthesia and separate pre-operative requirements for administering conscious (moderate) sedation; eliminate the existing requirements for monitoring during the administration of general anesthesia, deep sedation and moderate sedation, and set forth new monitoring requirements for the administration of those types of sedation; delete existing reference to dietary instructions and oral or written instructions since they would now be included in the pre-operative instructions; include an exception for a requirement for the recording of blood pressure records on patients who are being administered conscious (moderate) sedation using an enteral route; include a provision that dentists maintain proof of completing the twelve hours of education in sedation/anesthesia as required for the new provision for renewal of their certificate to administer conscious (moderate) parenteral sedation or deep sedation or general anesthesia; include a provision setting forth the overall responsibility of the dentist administering general anesthesia, deep sedation and conscious (moderate) sedation; and include guidelines for reporting mortality or irreversible morbidity to the Department.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to conform section 61.10 of the Regulations of the Commissioner of Education to the current practice of dental anesthesia administration and improve the protection of the public by: (1) strengthening the rigor of the educational and training requirements for dental anesthesia certificates; and (2) strengthening the practice requirements relating to the use of anesthesia by certificate holders.

The proposed amendment to 61.10 of the Regulations of the Commissioner of Education will re-define the types of anesthesia used by dentists that are subject to certification by conforming the regulation's definitions to those currently used in the profession. In addition, the proposed amendment adds new certifications for administration of parenteral conscious (moderate) sedation and enteral conscious (moderate) sedation to include a requirement for separate certifications for the administration of those types of anesthesia to pediatric patients aged 12 years old and younger. The certificates created under this section are: (1) general anesthesia; (2) dental parenteral conscious (moderate) sedation for patients 13 years old and older; (3) dental parenteral conscious (moderate) sedation for patients 12 years old and younger; (4) dental enteral conscious (moderate) sedation for patients 13 years old and older; and (5) dental enteral conscious (moderate) sedation for patients 12 years old and younger.

The proposed amendment strengthens the rigor of the established educational and training requirements for licensed dentists to obtain anesthesia certification in enteral or parenteral conscious (moderate) sedation in the practice of dentistry at any location other than a general hospital. Specifically, the amendment increases the education requirements from 18 to 60 hours for dental enteral conscious (moderate) sedation. Additionally, a licensed dentist applying for a certificate to administer enteral conscious (moderate) sedation to patients 13 years and older, will be required to possess a current Advanced Cardiac Life Support certificate. Those licensed dentists administering conscious (moderate) sedation or general anesthesia to pediatric patients 12 years old and younger will be required to possess a current Pediatric Advanced Life Support certificate in addition to the Advanced Cardiac Life Support certificate.

In addition, the proposed amendment establishes a pathway for dentists, who have practiced outside of New York State, to obtain a dental anesthesia certificate in this State through endorsement. The proposed amendment further sets forth new practice and monitoring requirements, as well as revised reporting requirements for morbidity or mortality during the administration of dental conscious (moderate) sedation.

4. COSTS:

The proposed amendment conforms section 61.10 of the Regulations of the Commissioner of Education to the current practice of dental anesthesia administration and improves the protection of the public by: (1) strengthening the rigor of the educational and training requirements for dental anesthesia certificates; and (2) strengthening the practice requirements relating to the use of anesthesia by certificate holders, which is consistent with the intent of section 6605-a of the Education Law.

(a) Costs to State government: There are no additional costs to State government.

(b) Costs to local government: There are no additional costs to local government.

(c) Costs to private regulated parties: The proposed amendment will increase educational preparation costs to meet the certification requirements for the certificates in dental parenteral conscious (moderate) sedation for patients 12 years old and younger and dental enteral conscious (moderate) sedation for patients 12 years old and younger because these are new certificates. The proposed amendment will also increase educational preparation costs to meet the certification requirements for the certificate in the dental enteral conscious (moderate) sedation for patients 13 years old and older because of the increase in the required didactic coursework hours.

However, upon contacting faculty in educational based institutions currently offering programs, it has been determined that the candidates will not be subjected to an increase in cost of the program, other than for courses in Advanced Cardiac Life Support (ACLS) or Pediatric Cardiac Life Support (PALS) because the additional coursework and hours are incorporated into the candidates specialty or residency program.

Licensed dentists who employ conscious (moderate) sedation using an enteral route with or without inhalation agents will be required to have current documentation of course completion in ACLS and PALS (for those treating patients 12 years old or younger). The previous requirement was that the enteral certificate holders only have completed a course in Basic Life Support (BLS) at a cost of approximately $65. The cost of the training for ACLS and PALS is approximately $200 each, which covers a two-year period.

(d) Costs to the regulatory agency: There may be additional costs to the State Education Department associated with processing the two additional certificates. It is anticipated that such costs will not be significant and can be absorbed using existing staff and resources.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment prescribes requirements that a licensed dentist must meet to be certified in the use of anesthesia and practice requirements relating to such use. It does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment requires the licensed dentist to maintain a time-oriented anesthesia record for each patient based on the level of anesthesia administered including the administration of conscious (moderate) sedation, deep sedation, or general anesthesia.

The dentist will also be responsible for maintaining records documenting completion of the appropriate life support training and other training necessary to maintain certification.

The proposed amendment requires a certificate holder to report morbidity or mortality occurring within 48 hours following, or otherwise related to the administration of anesthesia to the State Education Department within 30 days of the occurrence and the proposed amendment outlines what must be included in such a report.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no viable significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

Since there are no applicable Federal standards for the certification of qualified dentists in the use of conscious (moderate) sedation, deep seda-

tion, or general anesthesia, 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 regulation to the current practice of dental anesthesia administration and will become effective January 1, 2017. It is anticipated that affected parties will be able to comply with the proposed amendments by the effective date. The proposed amendment also provides a transition pathway for current holders of parenteral conscious sedation certificates and enteral conscious sedation certificates, who wish to continue to provide sedation to pediatric patients until the end of their certificate term.

Regulatory Flexibility Analysis

Chapter 615 of the Laws of 1999, amended section 6605-a of the Education Law to require licensed dentists to obtain a dental anesthesia certificate in order to employ conscious sedation or deep sedation in the course of their professional practices at locations other than general hospitals, such as dental offices, regardless of the route of administration. In 2001, the Board of Regents amended section 61.10 of the Regulations of the Commissioner of Education to implement Chapter 615 of the Laws of 1999 by establishing educational and training requirements for licensed dentists to be certified to employ conscious sedation, deep sedation, or general anesthesia in the practice of dentistry at any location other than a general hospital, and to establish practice requirements for the use of conscious sedation, deep sedation, or general anesthesia by such licensed dentists.

Subsequently, there were changes in the practice of dental anesthesia administration. In 2007, the American Dental Association (ADA) revised several dental anesthesia related definitions. One of these revisions was the replacement of the term "conscious sedation" with the term "moderate sedation."

The proposed amendment to section 61.10 of the Regulations of the Commissioner of Education conforms the regulation to the current practice of dental anesthesia administration and improves the protection of the public. The proposed amendments to this section also update New York's definitions to reflect those currently used in the profession. It further redefines the levels of sedation and the routes of administration, as well as defines the terms "continual/continually", "continuous/continuously", patent, time-oriented anesthesia record and adds the American Society of Anesthesiologists (ASA) Patient Physical Status Classifications.

The proposed amendment re-defines the types of anesthesia used by dentists that are subject to certification, reflects the definitional changes made to certain methods of sedation and adds new certifications for administering parenteral conscious (moderate) sedation and for administering enteral conscious (moderate) sedation to pediatric patients aged 12 years old and younger.

The proposed amendment establishes the following certificates: (1) general anesthesia; (2) dental parenteral conscious (moderate) sedation for patients 13 years old and older; (3) dental parenteral conscious (moderate) sedation for patients 12 years old and younger; (4) dental enteral conscious (moderate) sedation for patients 13 years old and older; and (5) dental enteral conscious (moderate) sedation for patients 12 years old and younger.

In addition, the proposed amendment establishes a pathway for dentists, who have practiced outside of New York State, to obtain dental anesthesia certification in this State through endorsement, with requirements to ensure the protection of New Yorkers. It also deletes outdated references to certificates issued prior to January 2001 and provides a transition pathway for current holders of parenteral and enteral sedation certificates to continue providing sedation to pediatric patients, until the end of their certificate term.

The proposed amendment revises the educational and training requirements for licensed dentists to be certified to employ conscious (moderate) sedation, deep sedation, or general anesthesia in the practice of dentistry and requirements for the use of such anesthesia by the certificate holders. Additionally, the proposed amendment imposes revised practice requirements, as well as revised reporting requirements of morbidity and mortality.

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment will apply to licensed dentists seeking to obtain a dental anesthesia certification in order to employ conscious (moderate) sedation or deep sedation in the course of their professional practices at locations other than general hospitals, such as dental offices, regardless of the route of administration, including those located in the 44 counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

Chapter 615 of the Laws of 1999, amended section 6605-a of the Education Law to require licensed dentists to obtain a dental anesthesia certificate in order to employ conscious sedation or deep sedation in the course of their professional practices at locations other than general hospitals, such as dental offices, regardless of the route of administration. In 2001, the Board of Regents amended section 61.10 of the Regulations of the Commissioner of Education to implement Chapter 615 of the Laws of 1999 by establishing educational and training requirements for licensed dentists to be certified to employ conscious sedation, deep sedation, or general anesthesia in the practice of dentistry at any location other than a general hospital, and to establish practice requirements for the use of conscious sedation, deep sedation, or general anesthesia by such licensed dentists. Subsequently, there were changes in the practice of dental anesthesia administration. In 2007, the American Dental Association (ADA) revised several dental anesthesia related definitions. One of these revisions was the replacement of the term "conscious sedation" with the term "moderate sedation."

The proposed amendment to section 61.10 of the Regulations of the Commissioner of Education conforms the regulation to the current practice of dental anesthesia administration and improves the protection of the public. The proposed amendments to this section also update New York's definitions to reflect those currently used in the profession. It further redefines the levels of sedation and the routes of administration, as well as defines the terms "continual/continually", "continuous/continuously", patent, time-oriented anesthesia record and adds the American Society of Anesthesiologists (ASA) Patient Physical Status Classifications.

The proposed amendment re-defines the types of anesthesia used by dentists that are subject to certification, reflects the definitional changes made to certain methods of sedation and adds new certifications for administering parenteral conscious (moderate) sedation and for administering enteral conscious (moderate) sedation to pediatric patients aged 12 years old and younger.

The proposed amendment establishes the following certificates: (1) general anesthesia; (2) dental parenteral conscious (moderate) sedation for patients 13 years old and older; (3) dental parenteral conscious (moderate) sedation for patients 12 years old and younger; (4) dental enteral conscious (moderate) sedation for patients 13 years old and older; and (5) dental enteral conscious (moderate) sedation for patients 12 years old and younger.

In addition, the proposed amendment establishes a pathway for dentists, who have practiced outside of New York State, to obtain dental anesthesia certification in this State through endorsement, with requirements to ensure the protection of New Yorkers. It also deletes outdated references to certificates issued prior to January 2001 and provides a transition pathway for current holders of parenteral and enteral sedation certificates to continue providing sedation to pediatric patients, until the end of their certificate term.

The proposed amendment revises the educational and training requirements for licensed dentists to be certified to employ conscious (moderate) sedation, deep sedation, or general anesthesia in the practice of dentistry and requirements for the use of such anesthesia by the certificate holders. Additionally, the proposed amendment imposes revised practice requirements, as well as revised reporting requirements of morbidity and mortality.

The proposed amendment requires licensed dentists to maintain a time-oriented anesthesia record for each patient based on the level of anesthesia administered including conscious (moderate) sedation, deep sedation, or general anesthesia. The dentist will also be responsible for maintaining records documenting completion of the appropriate life support training and other training necessary to maintain certification. The amendment requires a certificate holder to report morbidity or mortality occurring within 48 hours following, or otherwise related to the administration of anesthesia to the State Education Department within 30 days of the occurrence and the regulations outlines what is to be included in that report.

Beyond these requirements which apply state-wide, the proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements, or professional services requirements, on rural entities, other than those imposed throughout the State.

3. COSTS:

The proposed amendment will increase educational preparation costs to meet the certification requirements for the certificates in dental parenteral conscious (moderate) sedation for patients 12 years old and younger and dental enteral conscious (moderate) sedation for patients 12 years old and

younger because these are new certificates. The proposed amendment will also increase educational preparation costs to meet the certification requirements for the certificate in dental enteral conscious (moderate) sedation for patients 13 years old and older because of the increase in the required didactic coursework hours.

However, upon contacting faculty in educational based institutions currently offering programs, it has been determined that the candidates will not be subjected to an increase in cost of the program, other than for courses in Advanced Cardiac Life Support (ACLS) or Pediatric Cardiac Life Support (PALS) because the additional coursework and hours will be incorporated into the candidates specialty or residency program.

Licensed dentists who employ conscious (moderate) sedation using an enteral route with or without inhalation agents will be required to have current documentation of course completion in ACLS and PALS (for those treating patients 12 years old and younger). The previous requirement was that the enteral certificate holders only have completed a course in Basic Life Support (BLS) at a cost of approximately $65. The cost of the training for ACLS and PALS is approximately $200 each, which covers a two-year period.

There may be additional costs to the State Education Department associated with processing the two additional certificates. It is anticipated that such costs will not be significant and can be absorbed using existing staff and resources.

4. MINIMIZING ADVERSE IMPACT:

Section 6605-a of the Education Law requires licensed dentists to be certified by the State Education Department to employ conscious sedation, deep sedation, or general anesthesia in the course of their professional practices at locations other than general hospitals. The statute makes no exception for individuals who live in rural areas. Thus, the Department has determined that the proposed amendment's requirements should apply to all individuals regardless of their geographic location to ensure uniform standards of practice and public protection throughout the State. Because of the nature of the proposed amendment, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from statewide organizations representing all parties having an interest in the practice of dentistry. These organizations included the State Board for Dentistry, educational institutions that offer programs leading to dental anesthesia certification, the New York State Dental Association, and representatives for Pediatric Dentists. These groups, which have members who live, work or provide dental services in rural areas, have been provided notice of the proposed rule making and opportunity to comment on the proposed amendment.

Job Impact Statement

Chapter 615 of the Laws of 1999, amended section 6605-a of the Education Law to require licensed dentists to obtain a dental anesthesia certificate in order to employ conscious sedation or deep sedation in the course of their professional practices at locations other than general hospitals, such as dental offices, regardless of the route of administration. In 2001, the Board of Regents amended section 61.10 of the Regulations of the Commissioner of Education to implement Chapter 615 of the Laws of 1999 by establishing educational and training requirements for licensed dentists to be certified to employ conscious sedation, deep sedation, or general anesthesia in the practice of dentistry at any location other than a general hospital, and to establish practice requirements for the use of conscious sedation, deep sedation, or general anesthesia by such licensed dentists.

Subsequently, there were changes in the practice of dental anesthesia administration. In 2007, the American Dental Association (ADA) revised several dental anesthesia related definitions. One of these revisions was the replacement of the term "conscious sedation" with the term "moderate sedation."

The proposed amendment to section 61.10 of the Regulations of the Commissioner of Education conforms the regulation to the current practice of dental anesthesia administration and improves the protection of the public. The proposed amendments to this section also update New York's definitions to reflect those currently used in the profession. It further redefines the levels of sedation and the routes of administration, as well as defines the terms "continual/continually", "continuous/continuously", patent, time-oriented anesthesia record and adds the American Society of Anesthesiologists (ASA) Patient Physical Status Classifications.

The proposed amendment re-defines the types of anesthesia used by dentists that are subject to certification, reflects the definitional changes made to certain methods of sedation and adds new certifications for administering parenteral conscious (moderate) sedation and for administering enteral conscious (moderate) sedation to pediatric patients aged 12 years old and younger.

The proposed amendment establishes the following certificates: (1) general anesthesia; (2) dental parenteral conscious (moderate) sedation for patients 13 years old and older; (3) dental parenteral conscious (moderate) sedation for patients 12 years old and younger; (4) dental enteral conscious (moderate) sedation for patients 13 years old and older; and (5) dental enteral conscious (moderate) sedation for patients 12 years old and younger.

In addition, the proposed amendment establishes a pathway for dentists, who have practiced outside of New York State, to obtain dental anesthesia certification in this State through endorsement, with requirements to ensure the protection of New Yorkers. It also deletes outdated references to certificates issued prior to January 2001 and provides a transition pathway for current holders of parenteral and enteral sedation certificates to continue providing sedation to pediatric patients, until the end of their certificate term.

The proposed amendment revises the educational and training requirements for licensed dentists to be certified to employ conscious (moderate) sedation, deep sedation, or general anesthesia in the practice of dentistry and requirements for the use of such anesthesia by the certificate holders. Additionally, the proposed amendment imposes revised practice requirements, as well as revised reporting requirements of morbidity and mortality.

The proposed amendment which updates definitions, adds new certifications, deletes outdated references, and revises educational, training and practice requirements to conform the regulation to the current practice of dental anesthesia administration, will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed amendment that it will either not affect job and employment opportunities, or have only a positive impact, 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.

State Board of Elections

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Disclosure of Independent Expenditures

I.D. No. SBE-10-16-00003-P

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

Proposed Action: Amendment of section 6200.10 of Title 9 NYCRR.

Statutory authority: Election Law, section 14-107(7)

Subject: Disclosure of Independent Expenditures.

Purpose: To conform 9 NYCRR 6200.10 to reflect amendment to Election Law 14-107 made by chapter 56 of the Laws of 2015.

Substance of proposed rule (Full text is posted at the following State website:http://www.elections.ny.gov): The proposed rulemaking amends Part 6200.10 to Subtitle V of Title 9 of the NYCRR to conform to the requirements of section 14-107 of the Election Law as amended in 2015 by Chapter 56 of the Laws of 2015.

Text of proposed rule and any required statements and analyses may be obtained from: Brian L. Quail, Esq., New York State Board of Elections, 40 North Pearl Street, Suite 5, Albany, New York 12207, (518) 474-2063, email: brian.quail@elections.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: Election Law 14-107 requires the New York State Board of Elections to provide for reporting of independent expenditures, and this requires rules for implementation. Election Law 14-107(7) expressly authorizes the New York State Board of Elections to promulgate such rules and regulations.

2. Legislative objectives: The legislative objective furthered by the regulation is to provide the system of independent expenditure reporting that increases transparency in the election process. Specifically this regulation makes amendments to conform to amendment to Election Law 14-107 enacted by Chapter 56 of the Laws of 2015 which increased certain reporting and exceptions.

3. Needs and benefits: The regulation amends the independent expenditure reporting requirements of the Election Law and is required to implement Chapter 56 of the Laws of 2015.

4. Costs:
a. This regulatory amendment does not increase costs to regulated parties as the regulation reflects only existing statutory obligations. There is a cost to the time and effort required by regulated political committees to register and file reports.
b. There is no new agency or state costs created by this rulemaking.
c. This assessment of cost is based on the nature of the regulation.
d. This regulatory amendment does not create new costs as the reporting obligations are in Election Law 14-107.
5. Local government mandates: There are no additional responsibilities imposed by this rule upon any county, city, town, village, school district, fire district or other special district.
6. Paperwork: This proposed rule imposes no new reporting or regulatory filing requirements not provided for by statute, but statutory compliance requires registering as a political committee if engaging in independent expenditure activity and filing appropriate reports.
7. Duplication: There is no jurisdictional duplication created by this rulemaking.
8. Alternatives: This rulemaking amends the existing regulations to conform to the requirements of Election Law 14-107 as amended by Chapter 56 of the Laws of 2015. There are no known alternatives, but public comment will be accepted.
9. Federal standards: Not applicable.
10. Compliance schedule: The rule provides no new compliance schedules not already expressly provided for by section 14-107 of the Election Law and will go into effect upon publication of the Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

1. Effect of rule: There is no impact on local government due to this rule. This rule will have a minimal impact on small business. Should a small business engage in independent expenditures, the existing statute and regulation would require the committee to register and report activity to the State Board of Elections. This rule reflects a statutory amendment to Election Law 14-107 in 2015 which further defines reportable independent expenditures and exceptions.
2. Compliance requirements: If a small business engaged in independent expenditures, they are required under existing law to register with the State Board of Elections as a political committee and to comply with the provisions of Article 14 of the Election Law, as applicable. This rule has no impact on local governments.
3. Professional services: A small business that engages in independent expenditures may acquire accounting services to maintain and report activity to comply with the existing reporting requirements. This rule making, conforming the statute to the regulatory text, does not significantly change any such potential need.
4. Compliance costs: It is unclear what the compliance costs are for regulated business or industry to comply with this rule. This rule making, conforming the statute to the regulatory text, does not significantly change any such potential need. Nothing in this rule mandates any entity to engage in the activities triggering filing requirements.
5. Economic and technological feasibility: Our assessment of the economic and technological feasibility of compliance with this rule, as with the existing rule, is that a small business would need a computer to make required disclosures.
6. Minimizing adverse impact: The rule requires no mitigation of impacts on small businesses as it regulates independent expenditures and reporting by those entities which choose to engage in those activities on an equal basis. The rules does not require engaging in such activities. The rules has no impact on local governments.
7. Small business and local government participation: The State Board of Elections has solicited and will continue to solicit public comment. This would include comments that may suggest alternatives to minimize the impact on small businesses that choose to make independent expenditures regulated by Article 14 of the Election Law.
8. (IF APPLICABLE) For rules that either establish or modify a violation or penalties associated with a violation: Not applicable.
9. (IF APPLICABLE): Initial review of the rule, pursuant to SAPA § 207: not applicable.

Rural Area Flexibility Analysis

Under SAPA 202-bb(4)(a), when a rule does not impose an adverse economic impact on rural areas and the agency finds it would not impose reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas, the agency may file a Statement in Lieu of. This rule has statewide application, amending the rules for independent expenditure reporting as provided by Election Law section 14-107. The proposed rule does not create any new reporting, recordkeeping or other routine compliance requirements as they are already expressly required by law. Accordingly, this rule has no adverse impacts on any area.

Job Impact Statement

1. Nature of impact: This rule should have minimal or no impact on jobs as it amends existing independent disclosure requirements by political committees. Prior to this rule, which amends specific reporting requirements to reflect amendments to Election Law § 14-107 in 2015, committees already had obligations to register and disclose expenditure activity with the State Board of Elections.
2. Categories and numbers affected: This rule will impact committees which engage in independent expenditure activity. This rules will not create employment opportunities.
3. Regions of adverse impact: This rules has a statewide applicability, and has no disproportionate of adverse impact on jobs or employment opportunities in any region.
4. Minimizing adverse impact: The State Board of Elections has not taken any measures to minimize adverse impact on existing jobs or promote the development of new employment opportunities because the State Board of Elections has determined this rule would have not have an adverse impact on jobs.
5. (IF APPLICABLE) Self-employment opportunities: Not applicable.
6. (IF APPLICABLE) Initial review of the rule, pursuant to SAPA § 207: Not applicable.

Department of Environmental Conservation

NOTICE OF ADOPTION

Sanitary Condition of Shellfish Lands

I.D. No. ENV-44-15-00001-A
Filing No. 212
Filing Date: 2016-02-23
Effective Date: 2016-03-09

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

Action taken: Amendment of Part 41 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0307 and 13-0319

Subject: Sanitary Condition of Shellfish Lands.

Purpose: To reclassify shellfish lands to prohibit the harvest of shellfish.

Text or summary was published in the November 4, 2015 issue of the Register, I.D. No. ENV-44-15-00001-EP.

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

Text of rule and any required statements and analyses may be obtained from: Matt Richards, NYS Department of Environmental Conservation, 205 N. Belle Meade Rd., Suite 1, East Setauket, NY 11733, (631) 444-0491, email: matt.richards@dec.ny.gov

Additional matter required by statute: This action is subject to SEQR as an Unlisted action and a Short EAF was completed. The Department has determined that an EIS need not be prepared and has issued a negative declaration. The EAF and negative declaration are on file with the department.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Environmental Remediation - Brownfield Cleanup Program

I.D. No. ENV-23-15-00008-RP

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

Proposed Action: Amendment of Part 375 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, art. 27, title 14; section 3-0301(2)(a) and (m)

Subject: Environmental Remediation - Brownfield Cleanup Program.

Purpose: To amend the Environmental Remediation Program regulations pertaining to the Brownfield Cleanup Program.

Text of revised rule: 6 NYCRR PART 375 is amended to read as follows:

(Existing Table of Contents remains unchanged.)

Subpart 375-1 General Remedial Program Requirements

Existing subdivision 375-1.2(b) is amended to read as follows:

(b) "Brownfield site" means any real property[, the redevelopment or reuse of which may be complicated by the presence or potential presence of] *where* a contaminant *is present at levels exceeding the soil cleanup objectives or other health-based or environmental standards, criteria or guidance adopted by the Department that are applicable based on the reasonably anticipated use of the property, in accordance with applicable regulations.* Such term shall not include real property identified in subdivision 375-3.3(b).

(Existing subdivision 375-1.2(c) through section 375-1.12 remain unchanged.)

(Existing Subpart 375-2 remains unchanged)

Subpart 375-3 Brownfield Cleanup Program

(Existing section 375-3.1 remains unchanged.)

Existing subdivisions 375-3.2(a) through 375-3.2(j) are renumbered 375-3.2(b) through (k).

A new subdivision 375-3.2(a) is adopted to read as follows:

(a) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty seven of the environmental conservation law and section twenty-one of the tax law only, a project that is developed for residential use or mixed residential use that must include affordable residential rental units and/or affordable home ownership units.

(1) Affordable residential rental projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which defines (i) a percentage of the residential rental units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum percentage of the area median income based on the occupants' households annual gross income.

(2) Affordable home ownership projects under this subdivision must be subject to a federal, state, or local government housing agency's affordable housing program, or a local government's regulatory agreement or legally binding restriction, which sets affordable units aside for home owners at a defined maximum percentage of the area median income.

(3) "Area median income" means, for purposes of this subdivision, the area median income for the primary metropolitan statistical area, or for the county if located outside a metropolitan statistical area, as determined by the United States department of housing and urban development, or its successor, for a family of four, as adjusted for family size.

A new subdivision 375-3.2(l) is adopted to read as follows:

(l) "Underutilized" means, as of the date of application, real property on which no more than fifty percent of the permissible floor area of the building or buildings is certified by the applicant to have been used under the applicable base zoning for at least three years prior to the application, which zoning has been in effect for at least three years; and

(1) the proposed use is at least seventy-five percent for industrial uses; or

(2) at which:

(i) the proposed use is at least seventy-five percent for commercial or commercial and industrial uses;

(ii) the proposed development could not take place without substantial government assistance, as certified by the municipality in which the site is located; and

(iii) one or more of the following conditions exists, as certified by the applicant:

(a) property tax payments have been in arrears for at least five years immediately prior to the application;

(b) a building is presently condemned, or presently exhibits documented structural deficiencies, as certified by a professional engineer, which present a public health or safety hazard; or

(c) there are no structures.

''Substantial government assistance'' shall mean a substantial loan, grant, land purchase subsidy, land purchase cost exemption or waiver, or tax credit, from a governmental entity.

(Existing subdivision 375-3.3(a) remains unchanged.)

Existing paragraph 375-3.3(a)(1) is repealed.

[(1) A brownfield site has two elements:

(i) there must be confirmed contamination on the property or a reasonable basis to believe that contamination is likely to be present on the property; and

(ii) there must be a reasonable basis to believe that the contamination or potential presence of contamination may be complicating the development, use or re-use of the property.]

Existing paragraphs 375-3.3(a)(2) through 375-3.3(a)(4) are renumbered 375-3.3(a)(1) through 375-3.3(a)(3).

(Existing subdivision 375-3.3(b) through section 375-3.11 remain unchanged.)

(Existing Subparts 375-4 through 375-6 remain unchanged.)

Revised rule compared with proposed rule: Substantial revisions were made in section 375-3.2(a) and (l).

Text of revised proposed rule and any required statements and analyses may be obtained from Michael Ryan, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7011, (518) 402-9706, email: derweb@dec.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.

Additional matter required by statute: Negative Declaration, Short Environmental Assessment Form, and Coastal Assessment Form have been completed for this proposed rule making.

Revised Regulatory Impact Statement

1. Statutory Authority

In 2003, the New York State (State) Legislature created the Brownfield Cleanup Program (BCP) to promote environmental and public health as well as the economic vitality of the State through the cleanup and redevelopment of brownfields. The BCP offers parties two separate categories of refundable tax credits for the cost of (1) site cleanup and (2) redevelopment, the latter described as tangible property tax credits.

The Legislature amended the BCP law in April 2015. Part BB of Chapter 56 of the Laws of 2015 amended and added new language to Environmental Conservation Law (ECL) Article 27, Title 14 (BCP) and Section 21 of the Tax Law. Some of these amendments provided new requirements for sites in New York City to qualify for tangible property tax credits. These requirements provide that, in order to qualify for tangible property tax credits, New York City sites need to be in an environmental zone, "upside down," "underutilized," or constitute an "affordable housing project."

While the Legislature defined the environmental zone and "upside down" requirements, ECL § 27-1405(29) and (30) of the BCP law directs the New York State Department of Environmental Conservation (DEC) to define the terms "affordable housing project" and "underutilized" by regulation. DEC published proposed regulations regarding the "underutilized" and "affordable housing project" definitions in the State Register on June 10, 2015. Proposal of these regulations resulted in the amendments to the BCP law becoming effective on July 1, 2015. DEC also proposed to replace the prior regulatory definition of "brownfield site" to comport with the statutory definition found in ECL § 27-1405(2), as amended by Part BB of Chapter 56 of the Laws of 2015.

In this revised proposed rulemaking, DEC does not propose to revise the text of the "brownfield site" definition and only makes one minor technical change to the "affordable housing project" definition. The substantial revisions to the Express Terms are found in the definition of "underutilized." DEC proposes these revisions in response to comments received during the public comment period and the public hearing, which to a large extent urged DEC to expand the definition of underutilized properties that would qualify for the benefit of tangible property tax credits. The revisions to the definition consider the realities of redevelopment by allowing for mixed use development (up to twenty-five percent residential or restricted residential) while focusing on incentivizing redevelopment for industrial and commercial uses within New York City. The City of New York made clear that their primary focus was to promote the redevelopment of underutilized sites for industrial uses. The changes to the definition removed the requirement for substantial government assistance for development where the proposed use was going to be seventy-five percent or more for industrial uses. Additionally, DEC has lessened the time period from five to three years that a property has to be underutilized relative to applicable zoning, and DEC expanded the eligibility criteria for "underutilized" properties to include properties that are vacant with no structures on the site. All of these changes were made after consultation with the business community and the City of New York.

Finally, DEC recognizes that many of the 2015 amendments to the BCP law require the agency to propose additional regulatory changes which will apply state-wide. Following the finalization of this rule making, DEC will undertake another rule making in order to make the required additional changes to the regulations.

2. Legislative Objectives

ECL § 27-1403 states the objectives of the BCP, including the advancement of "the policy of the state of New York to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well-being," finding that, "it is appropriate to adopt this act to encourage persons to voluntarily remediate brownfield sites for reuse and redevelopment."

The 2015 amendments to the BCP reflect an intent to reduce the amount

of tangible property tax credits available to applicants for brownfield sites in high-value real estate markets while further incentivizing development on brownfields where certain project criteria are met. These amendments also clarify the definition of "brownfield site" such that DEC-identified standards may be used to determine program eligibility for sites. The amendments restricting the availability of BCP tangible property tax credits apply only to sites in New York City and preclude credits unless the sites are determined to be "upside down," in an environmental zone, "underutilized," or used for an "affordable housing project." For sites that are eligible for tangible property tax credits anywhere in the State, these credits may be increased for projects "in an environmental zone," "within a designated brownfield opportunity area," "developed as affordable housing," "used primarily for manufacturing activities," or "remediated to Track 1."

3. Needs and Benefits

The revised proposed rule making is mandatory and required by statute.

This rule making would amend Part 375 to add to new definitions to 375-3.2, ''affordable housing project'' and ''underutilized,'' and revise the existing definition of ''brownfield site'' as specified in statute. Part BB of Chapter 56 of the Laws of 2015 amended and added new language to Environmental Conservation Law (ECL) Article 27, Title 14 (Brownfield Cleanup Program, BCP) and certain other laws. As required by ECL § 27-1405(29) and (30), DEC must define the terms "affordable housing project" and "underutilized" by regulation. On June 10, 2015, DEC published proposed regulations to define "affordable housing project," and "underutilized," as well as revise "brownfield site;" and the 2015 amendments to the BCP law became effective on July 1, 2015.

The 2015 amendments to the BCP law address the large differences in the potential state tax liability between New York City BCP sites and those in the rest of the State. The primary driver for the regional imbalance within the BCP is attributed to high development costs for some downstate projects, which were reflected in excessive tangible property tax credits. Limiting the eligibility of New York City sites for redevelopment credits to specific affordable housing projects and underutilized properties through criteria established by regulation should help to target funds and projects in New York City areas with the most need. The substantial revisions to the proposed "underutilized definition" were made in response to comments and after consultation with New York City. Importantly, the revisions to the underutilized definition fulfills the City of New York's stated goal to promote industrial redevelopment, while maintaining a fair and balanced approach to restrict the availability of tangible property tax credits to the sites with the most need. Finally, to ensure that tangible property tax credits are only afforded to sites with actual contamination rather than potential contamination, the amended definition of "brownfield site" clarifies DEC's use of an environmental standards-based approach to site eligibility determinations.

4. Costs

a. Costs to Regulated Parties

Since all costs incurred at a site prior to its acceptance to the BCP are ineligible for tax credits, applicants would incur credit-ineligible costs for performing site investigation work prior to the acceptance of a site in order to meet the amended definition of "brownfield site." Nearly all applicants currently conduct this work, or are required to do so by DEC in the context of the review of their application as set forth at 6 NYCRR 375-3.3(a)(4)(ii), under the original definition. However, following the implementation of the amended statute, every applicant would be required to provide investigatory information sufficient to satisfy DEC's environmental quality standards prior to acceptance into the BCP.

New York City applicants may incur costs to establish the required criteria for tangible property tax credits, including costs involved with obtaining a certification that a site would not be developed without substantial government assistance as described in the definition of "underutilized." Should New York City applicants meet the required criteria for tangible property tax credits, the costs that are incurred in the application process would be fully or partially offset through tax credits. There may be similar costs to applicants across the rest of the State attempting to increase tax credits through a certification of an affordable housing project.

b. Costs to DEC, State and Local Governments

DEC, State and local governments would not incur additional costs due to the issuance of the revised proposed regulations. DEC costs for BCP application review are ongoing and any changes to DEC's application review process due to revised proposed regulations are expected to be de minimis.

5. Local Government Mandates

This is not a mandate on local governments. Local governments have no additional compliance obligations as compared to other subject entities. Also, no additional monitoring, recordkeeping, reporting, or other requirements would be imposed on local governments under this rule making. To the extent that New York City certifications are required for projects to meet the definitions of underutilized or affordable housing, these certification programs are in place or are developed and implemented at the discretion of the local government. The revised proposed rulemaking also responded to a request by New York City to limit instances where it needed to certify to applications received for "underutilized" properties.

6. Paperwork

The 2015 amendments to the BCP require environmental investigation data to be submitted with BCP application materials in order to prove status as a "brownfield site." Applications for New York City sites seeking tangible property tax credits would need to also include documentation of the proposed eligibility criteria for such credits. The additional information has been added to the application form that is required for entry into the BCP.

7. Duplication

The revised proposed rule making does not duplicate, overlap, or conflict with any other State or federal requirements.

8. Alternatives

DEC was directed by the legislature to propose definitions for "affordable housing project" and "underutilized" in order for the amendments in Part BB of Chapter 56 of Laws of 2015 relative to the BCP to become effective. While conforming the definition of "brownfield site" in the regulations to the law is not statutorily dictated, failure to do so would result in confusion between the statute and existing DEC BCP regulations with potential legal action.

Because of the statutory mandate to define "affordable housing project" and "underutilized" and the need to conform the statutory definition of "brownfield site" to the regulatory definition, there are no other alternatives for this revised proposed rule making.

9. Federal Standards

The revised proposed regulations would not exceed any minimum federal standards.

10. Compliance Schedule

As applicants have had a proposed definition for underutilized since June 2015, and DEC is revising the definition to make it less stringent (which includes an additional 30 calendar day public comment period), applicants to the BCP should be able to comply with the regulations upon issuance.

Revised Regulatory Flexibility Analysis

1. Effect of Rule

The revised proposed rule would add or update definitions of the following terms: "brownfield site," "underutilized," and "affordable housing project." These definitions would only affect eligible parties that voluntarily elect to participate in the Brownfield Cleanup Program (BCP). The rule does not impose any mandate to participate. It is unknown how many small businesses or local governments would want to participate in the BCP and thus be affected by the rule.

2. Compliance Requirements

Since the BCP is a voluntary program and the revised proposed rule would only be adding or amending definitions, it would not impose any additional compliance requirements. Thus, no small business or local government would be required to undertake reporting, recordkeeping, or other affirmative acts in order to comply with the revised proposed rule. New York City has volunteered to issue certifications that a property requires "substantial government assistance" described in the definition of "underutilized." Additionally, New York City already enters into regulatory agreements with developers of affordable housing projects.

3. Professional Services

Since the BCP is a voluntary program and the revised proposed rule would only add or amend definitions, it would not impose any requirements for professional services. Thus, no small business or local government would require professional services in order to comply with the revised proposed rule. The New York State Department of Environmental Conservation (DEC) will continue to post information on its website to explain recent changes in the law and to provide information about the revised proposed rule.

4. Compliance Costs

Since all costs incurred at a site prior to its acceptance to the BCP are ineligible for tax credits, applicants would incur credit-ineligible costs for performing site investigation work prior to the acceptance of a site in order to meet the amended definition of "brownfield site." Nearly all applicants currently conduct this work, or are required to do so by DEC in the context of the review of their application as set forth at 6 NYCRR 375-3.3(a)(4)(ii), under the original definition. Following the implementation of the amended statute, every applicant would be required to provide investigatory information sufficient to satisfy DEC's environmental quality standards prior to acceptance into the BCP.

New York City applicants may incur costs to establish the required criteria for tangible property tax credits or costs involved with obtaining a certification that a site would not be developed without substantial government assistance as described in the definition of "underutilized." Should

New York City applicants meet the required criteria for tangible property tax credits, the costs that are incurred in the application process would be fully or partially offset through tax credits. There may be similar costs to applicants across the rest of the State attempting to increase tax credits through a certification of an affordable housing project.

5. Economic and Technological Feasibility

It is economically and technologically feasible for a small business or local government to comply with the revised proposed rule. There are financial incentives and liability protections for applicants, including small businesses and local governments, to participate in the BCP.

6. Minimizing Adverse Impact

The rule would have no adverse economic impact on small businesses and local governments.

7. Small Business and Local Government Participation

DEC continues to post relevant information on its website to assist applicants, some of which may be small businesses or local governments, in understanding the requirements of the BCP. A public hearing on the proposed rule was held during the public comment period in New York City on July 29, 2015. Based on comments received, DEC made substantive revisions to the "underutilized" definition; one minor technical change to the "affordable housing project" definition; and no changes to the "brownfield site" definition. This revised proposed rule making will also include a 30 calendar day public comment period, and information about how to submit comments on the revised proposed rule will be posted on DEC's website, along with the revised Express Terms and supporting rule making documents. DEC also maintains a listserv to which persons/entities, including small businesses and local governments, may subscribe so that they can receive information about new developments regarding the BCP.

8. Cure Period or Other Opportunity for Ameliorative Action

The rule would only add two new definitions and revise an existing definition to the BCP. Thus, no cure period is needed.

Revised Rural Area Flexibility Analysis

Changes made to the Express Terms published with the Notice of Proposed Rule Making do not require revisions to the Rural Area Flexibility Analysis that was previously published in the June 10, 2015 issue of the State Register.

Revised Job Impact Statement

Changes made to the Express Terms published with the Notice of Proposed Rule Making do not require revisions to the Job Impact Exemption Statement that was previously published in the June 10, 2015 issue of the State Register.

Assessment of Public Comment

This assessment summarizes and responds to the comments received on the proposed regulations for the amendment of 6 NYCRR Subparts 375-1 and 375-3. On June 10, 2015, the New York State Department of Environmental Conservation (DEC) released for public comment proposed regulations to define "affordable housing project," "underutilized," and "brownfield site," under the Brownfield Cleanup Program (BCP). The statutory authority for such regulations is governed under Article 27, Title 14 of the Environmental Conservation Law (ECL). A public hearing was held on these definitions on July 29, 2015 and the comment period ended on August 5, 2015. Comments were received, both in writing and at the public hearing, from eleven separate entities.

DEC received comments from business organizations, the City of New York, the New York State private environmental bar, private environmental consultants, and individuals. During preparation of the revised rule making, DEC incorporated suggestions made by the public based on the comments received. Comments from eleven entities were received, eight of which raised multiple issues with the "underutilized" definition as proposed; one pointed out a minor change needed to the "affordable housing" definition; and two commenters provided comments related to development issues which were not relevant to the proposed rule making.

Based on the comments received on the "underutilized" definition, substantive changes were made to this definition and the revised definition will be subject to an additional 30-day public comment period. A minor change was identified by one commenter, and it will be made to the "affordable housing project" definition which corrects a reference to "tenant" that should have read "home owner." No change was made to the "brownfield site" definition so it remains as proposed on June 10, 2015.

All documents submitted to DEC are available to the public, subject to exceptions in the Freedom of Information Law.

The comments on the "underutilized" definition were primarily focused on broadening the definition, while others questioned the need for or applicability of certain requirements identified as necessary to establish that a property meets this definition. Regarding these requirements, a major issue was the need to meet all identified conditions at a site in order to meet the definition. Broad statements about the inability of some current BCP sites to meet the definition were also made by several commenters; however, only a few cited examples. Some commenters suggested using existing definitions of underutilized from outside New York or from various NYC laws or regulations in place of the DEC proposal.

During the development of the statute, the Executive Branch and Legislature evaluated the use of existing definitions of "underutilized" and did not come to the conclusion that any of those definitions were appropriate for eligibility for the tangible property tax credits (TPCs) associated with the BCP. In developing the regulatory definition, DEC reviewed other state and city laws, as well as other states' definitions, but these were also determined not to provide an objective and workable definition in the context of the BCP. In many circumstances, the definitions in other laws are subjective and often irrelevant for purposes of redevelopment of contaminated property.

The proposed definition of underutilized focused on industrial development, as requested by the City of New York during DEC's pre-publication outreach. Notably, the proposed definition was criticized by many commenters as eliminating the potential for "mixed use" developments to meet the underutilized definition. DEC has modified the definition in this revised rule making to address this issue by specifically allowing commercial use with some residential component subject to certain conditions. While these conditions retain elements that were also identified as problematic by some commenters, the new proposed definition does not require a project to meet all of these conditions as originally proposed, but to meet one or more of three conditions: (1) taxes in arrears; (2) building condemnation or structural deficiencies; or (3) a new condition, that there are no structures on the site. These conditions can also now be certified by the Applicant, or for '(2)' by a structural engineer, rather than the municipality.

Another area of concern noted by several commenters was the need for several certifications of various site conditions by the municipality (NYC) citing possible delays or other issues in obtaining these certifications. As noted above, the municipal certification has for the most part been shifted to the Applicant (or an engineer hired by the Applicant) allowing the Applicant to have control over these certifications, which was a concern expressed by multiple commenters. Only the municipal certification of the need for substantial government assistance has been retained in the new proposed definition.

Regarding the concern that currently-accepted BCP sites would not meet the definition of underutilized, only three actual examples were provided for DEC's evaluation. One commenter identified the Whole Foods site in the Gowanus Canal area of Brooklyn as an example of a site that would not be eligible for TPCs. However, since this site is in an EnZone, it would be eligible for credits as one of the avenues stated in statute. Another commenter offered two sites as examples of sites which would not be eligible for TPCs, one of which appears to meet the "upside down" test (another means provided by legislature to be eligible for TPC), and the other which DEC could not identify as a BCP site. Consequently, because the legislature provided multiple avenues for eligibility, DEC's revised proposed definition of underutilized does not unreasonably restrict eligibility; rather is strikes the right balance and advances the legislature's objectives.

It was clearly the intent of the Legislature to limit eligibility for TPCs in New York City under the amendments to the BCP. Additionally, the City of New York expressed a desire to incentivize industrial and manufacturing development or underutilized brownfield sites in the City. The new proposed definition was developed to further those goals while responding to substantive comments. It should be noted that any site meeting the definition of a "brownfield" remains eligible to participate in the site preparation tax credits and release of liability offered by the BCP, and, once additional regulations are adopted, the newly created BCP-EZ program. Only sites seeking the TPCs would be subject to the underutilized definition, if not otherwise eligible under one of the other gateways.

Department of Financial Services

EMERGENCY RULE MAKING

Business Conduct of Mortgage Loan Servicers

I.D. No. DFS-10-16-00004-E
Filing No. 209
Filing Date: 2016-02-22
Effective Date: 2016-02-22

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

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

Statutory authority: Banking Law, art. 12-D

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

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

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

Subject: Business conduct of mortgage loan servicers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire May 21, 2016.

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

Regulatory Impact Statement

1. Statutory Authority.

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

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

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

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

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

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

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

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

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

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

The power of the Superintendent to require regulated entities to appear

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

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

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

2. Legislative Objectives.

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

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

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

Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, addresses the first component of the mortgage servicing statute by setting standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as setting financial responsibility standards for mortgage loan servicers.

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

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

3. Needs and Benefits.

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

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

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

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

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

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

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

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

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

4. Costs.

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

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

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

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

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

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

5. Local Government Mandates.

None.

6. Paperwork.

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

7. Duplication.

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

8. Alternatives.

The Mortgage Lending Reform Law required the registration of mortgage loan servicers and empowered the Superintendent to prescribe rules and regulations to guide the business of mortgage servicing. The purpose of the regulation is to carry out this statutory mandate to register mortgage loan servicers and regulate the manner in which they conduct business. The Department circulated a proposed draft of Part 419 and received comments from and met with industry and consumer groups. The current Part 419 reflects the input received. The alternative to these regulations is to do nothing or to wait for the newly created federal bureau of consumer protection to promulgate national rules, which could take years, may not happen at all or may not address all the practices covered by the rule. Thus, neither of those alternatives would effectuate the intent of the legislature to address the current foreclosure crisis, help at-risk homeowners vis-à-vis their loan servicers and ensure that mortgage loan servicers engage in fair and appropriate servicing practices.

9. Federal Standards.

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

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

10. Compliance Schedule.

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

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

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

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

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

3. Professional Services:

None.

4. Compliance Costs:

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

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

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

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

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impacts:

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

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

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

Types and Estimated Numbers:

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

Compliance Requirements:

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

The provisions of the Mortgage Lending Reform Law of 2008 requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2010, sets forth the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

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

Costs:

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

Minimizing Adverse Impacts:

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

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

Rural Area Participation:

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

Job Impact Statement

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

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

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

Department of Health

NOTICE OF ADOPTION

Statewide Health Information Network for New York (SHIN-NY)

I.D. No. HLT-44-15-00020-A

Filing No. 219

Filing Date: 2016-02-23

Effective Date: 2016-03-09

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

Action taken: Addition of Part 300 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 201, 206(1), (18-a), (b), 2800, 2803, 2816, 3600, 3612, 4000, 4010, 4400, 4403, 4700 and 4712

Subject: Statewide Health Information Network for New York (SHIN-NY).

Purpose: To establish the Statewide Health Information Network for NY (SHIN-NY).

Substance of final rule: Public Health Law § 206(18-a)(d) gives the Department broad authority to promulgate regulations, consistent with

federal law and policies, that govern the Statewide Health Information Network for New York (SHIN NY).

This regulation makes clear that, consistent with 42 USC § 17938, Qualified entities (QEs) may, without patient authorization, make patient information available among SHIN-NY participants or other entities otherwise serving the patient so long as the QEs enter into and adhere to participation agreements that comply with federal requirements under HIPAA and 42 CFR Part 2 for business associates and qualified service organizations. This regulation specifies consent requirements to access patient information made available through the QEs. This regulation incorporates legal requirements related to disclosure of patient information without consent, as well as laws that specifically authorize disclosure of patient information for health care purposes, including public health and health oversight purposes, without the type of written, signed authorization that contains all of the elements that would be required for a health care provider to get permission to disclose patient information to a third party for purposes other than health care.

In order to participate in the SHIN-NY, regional health information organizations will need to be certified as QEs by the Department and satisfy certification requirements on an ongoing basis under the procedures established by this regulation.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 300.2 and 300.3(a).

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

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

Changes made to the last published rule do not necessitate revision to the previously published summary of the RIS, RFA, RAFA and JIS.

Assessment of Public Comment

Comment: One commenter recommended that there be greater transparency in how SHIN-NY policy guidance is developed and that the Department should publish qualified entity performance data.

Response: The regulation will continue the statewide collaboration process. Additionally, the Department intends to publish information on the performance of the SHIN-NY, qualified entities, participant adoption, and usage.

Comment: One commenter recommended that the Department recognize a state designated entity in the regulation.

Response: Although the regulation does not mention a state designated entity, the regulation does not preclude the Department from designating one in the future.

Comment: Two commenters expressed concern that the regulation does not require the Department to carry out specific activities to establish the SHIN NY or issue SHIN NY policy guidance.

Response: Section 300.2 of the proposed regulation stated that the Department "may" carry out activities to establish the SHIN-NY, and section 300.3 of the proposed regulation stated that the Department "may" establish SHIN NY policy guidance. The final regulation changes "may" to "shall" in both 300.2 and 300.3 to clarify that the Department will carry out activities to establish the SHIN NY and issue policy guidance. The SHIN NY policy guidance under section 300.3(b) of the regulation is posted on the Department's website at this link: http://www.health.ny.gov/technology/regulations/shin-ny/.

Comment: Multiple commenters stated that qualified entities should be required to train providers and educate the public about the SHIN-NY and, specifically, minor consent information in the SHIN-NY.

Response: The Department recognizes the need for qualified entities to train their participants on the functionality of the SHIN-NY, SHIN-NY policies, and requirements to ensure privacy and confidentiality of patient information. The SHIN-NY policy guidance specifies appropriate training and education procedures.

Comment: One commenter was concerned that the regulation would allow a previous consent, given through the Medicaid enrollment process, to serve as prior consent under section 300.5(c)(1) of the regulation, thereby allowing Medicaid managed care health plans to access data via the SHIN-NY.

Response: The Access NY Health Care health insurance application form (DOH-4220all) includes conditions for receiving public welfare benefits under Title XIX of the Social Security Act (Grants to States for Medical Assistance Programs). The Department is currently evaluating whether this would serve as prior consent under section 300.5(c)(1).

Comment: Some commenters stated that the proposed regulation should require that qualified entities withhold information from the SHIN NY unless a patient consents to upload information to the SHIN-NY.

Response: Under section 300.5(a) of the regulation, qualified entity participants "may, but shall not be required to, provide patients the option to withhold patient information, including minor consent patient information, from the SHIN NY." Thus, providers will be able to offer the option for patients to withhold patient information as necessary and appropriate.

Comment: Some commenters suggested that the Department should include a section on patient rights.

Response: Although the regulation does not have a specific section labeled "patient rights," section 300.4(a)(8) requires qualified entities to provide patients with access to patient information and section 300.4(a)(9) requires qualified entities to provide an accounting of access by qualified entity participants. The regulation also incorporates by reference patient rights in federal and state law.

Comment: Some commenters suggested that the regulations do not go far enough to restrict access to information derived from minor consented services.

Response: Qualified entities and the SHIN-NY policy committee, through the statewide collaboration process, have identified technical and policy solutions that will allow those providing minor consented services to access patient data based on a minor's consent. SHIN-NY policies also ensure that minor consented services are kept confidential, through the implementation of technology and education of providers who might access data from an encounter when a patient receives minor consented services. Section 300.5(a) allows qualified entity participants to provide patients receiving minor consented services the option to withhold patient information from the SHIN-NY. Also, a qualified entity participant may not may not disclose minor consent patient information to a parent or guardian without the minor's authorization.

Comment: One commenter suggested that the SHIN-NY consent model is burdensome and decreases participation in the SHIN-NY.

Response: The SHIN-NY consent model has been structured in a way to adhere to all relevant federal and state laws about data sharing, including regulations that govern the sharing of data from alcohol and substance abuse treatment facilities, at 42 CFR Part 2. The Substance Abuse and Mental Health Services Administration (SAMHSA) proposed rule that would amend 42 CFR Part 2 (81 Fed. Reg. 6988-7024, February 9, 2016) may allow implementation of a less burdensome consent model in the future.

Comment: Multiple commenters cited the need to segment or segregate data as a means to control what data may be accessed by qualified entity participants.

Response: Section 300.5(a) allows qualified entity (QE) participants to provide patients the option to withhold patient information from the SHIN-NY. If implemented by a QE participant, this would allow a patient to request that some or all of their information not be available on the SHIN-NY.

Comment: Some commenters suggested that public health authorities should not be able to access patient data without consent.

Response: HIPAA allows public health authorities and others responsible for ensuring public health and safety to have access to protected health information in order to carry out their public health mission. See 42 USC § 1320d-7(b). The HIPAA Privacy Rule also permits covered entities to disclose protected health information to public health authorities without a written authorization for public health activities authorized by law. Therefore, the regulation and the SHIN-NY policy guidance allow public health access for public health activities authorized by law.

Comment: Some commenters stated that the proposed regulation contains an overly broad authorization of disclosure to a health care provider without patient consent in an emergency.

Response: "Break the Glass," or emergency access to patient information, is a significant component of the SHIN-NY and current patient consent model. Requirements outlined for audit in section 6.1 of the privacy and security SHIN-NY policy guidance under section 300.3(b)(1) of the regulation provide for the maintenance of audit logs. In the case of "break the glass" access, the audit logs contain information on the type of patient information accessed and the nature of the emergency as attested by the practitioner.

Comment: Some commenters suggested there was ambiguity in the requirement of notice for community-wide consent under section 300.5(b)(1)(i)(b) of the regulation and that it should be clarified to describe exactly what the notice should consist of.

Response: The Department intends that patients who sign a community-wide consent form have the opportunity to receive a notification if the patient chooses to receive one. The Department emphasizes that qualified entities have the flexibility to determine the form and manner in which that notice is provided.

Comment: One commenter suggested that some providers who provide sensitive services and minor consented services should be exempt from the requirement to connect their facilities given that data segmentation is not widely available.

Response: Section 300.6(b) of the regulation gives the Commissioner the ability to waive requirements under extenuating circumstances. Sec-

tion 300.5(a) of the regulation allows, but does not require, health care facilities subject to the regulation to limit the release of health information at the request of the patient. The Department recognizes that some providers may not have technology available through their electronic health record to support providing patients with the option to withhold patient information, and it may be too expensive to implement this. Providers in this situation could request a waiver under section 300.6(b).

Comment: One commenter recommended that the exemption in section 300.6(b) of the regulation should specifically exempt long-term/post-acute care facilities from the requirement to connect to the SHIN-NY.

Response: All health care facilities under Public Health Law § 18(1)(c) that use a certified electronic health record under the federal HITECH Act are required to connect to the SHIN-NY, including long term/post-acute care facilities. Such facilities may apply for a waiver under section 300.6(b).

Comment: One commenter appreciated that the Department is encouraging non-regulated entities to participate in the SHIN-NY and encourages the Department to align data contribution requirements with other Department programs such as the Delivery System Reform Incentive Payment (DSRIP) program.

Response: The true value of the SHIN-NY will not be achieved until all providers are connected to the network. The Department is working to align data contribution requirements with multiple programs across the Department.

Division of Human Rights

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Discrimination Based on Relationship or Association

I.D. No. HRT-10-16-00019-P

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

Proposed Action: Addition of section 466.14 to Title 9 NYCRR.

Statutory authority: Executive Law, section 295.5

Subject: Discrimination based on relationship or association.

Purpose: To clarify it is unlawful to discriminate because of relationship or association with members of a protected class.

Text of proposed rule: A new Section 466.14 is added to read as follows:

466.14 Discrimination based on an individual's relationship or association with members of a protected class.

(a) Statutory Authority. Pursuant to N.Y. Executive Law § 295.5, it is a power and a duty of the Division to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of the N.Y. Executive Law, article 15 (Human Rights Law).

(b) The Human Rights Law Section 297.1 permits "[a]ny person claiming to be aggrieved by an unlawful discriminatory practice" to file a verified complaint.

(c)(1) Where the term "unlawful discriminatory practice" is used in the Human Rights Law, it shall be construed to prohibit discrimination against an individual because of that individual's known relationship or association with a member or members of a protected category covered under the relevant provisions of the Human Rights Law.

(2) To prove a claim of discrimination based on a known relationship or association, complainants must establish they are aggrieved by an unlawful discriminatory practice by showing they have been be subjected to an adverse action as specified in relevant provisions of the Human Rights Law because of their known relationship or association with a member or members of a protected category covered under the relevant provisions of the Human Rights Law.

Text of proposed rule and any required statements and analyses may be obtained from: Edith Allen, Administrative Aide, Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458, (718) 741-8398, email: eallen@dhr.ny.gov

Data, views or arguments may be submitted to: Caroline Downey, General Counsel, Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458, (718) 741-8402, email: cdowney@dhr.ny.gov

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

Regulatory Impact Statement

Statutory authority: Pursuant to Executive Law, section 295.5, it is a power and a duty of the Division to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of the Executive Law, article 15 (Human Rights Law).

Legislative objectives: To clarify that it is an unlawful discriminatory practice under the Human Rights Law to discriminate against individuals because of their relationship or association with members of a protected class.

Needs and benefits: There is long-standing precedent supporting anti-discrimination protection under the Human Rights Law (HRL) to individuals who are discriminated against because of their association with members of a protected class. For example, in Dunn v. Fishbein, 123 AD2d 659 (2nd Dept. 1986), where a landlord denied an apartment to two roommates, one white and one black, the court held that in order to have standing under the HRL, the prospective tenants "must show that they have suffered an injury and that they fall within a zone of interest which the statute protects." Id at 660. In reversing the lower court's dismissal, the Court stated that a jury could find that the refusal to rent to the roommates was motivated by racial bias and that the fact that one of the roommates was white was irrelevant.

This is similar to protection that has been found under Title VII of the Civil Rights Act of 1964. In 2011, the Supreme Court of the United States unanimously held that a person who has been retaliated against by his employer because of his relationship with another person has standing as a "person aggrieved" under Title VII. In Thompson v. North American Stainless, LP, 562 U.S. 170 (2011), the plaintiff filed a retaliation claim, alleging he was terminated because his fiancée, who worked for same employer, filed a sex discrimination charge with the Equal Employment Opportunity Commission. The Supreme Court held the plaintiff had standing to sue as a person aggrieved under Title VII, which permits "a civil action [to] be brought. . . by the person claiming to be aggrieved" 42 USC § 2000e-5(f)(1). The Supreme Court found that this provision incorporates a "zone of interest" test and thus "enable[s] suit by any plaintiff with an interest arguably sought to be protected by the statute." The HRL similarly provides that "[a]ny person claiming to be aggrieved by an unlawful discriminatory practice may. . . sign and file with the division a verified complaint." § 297(1). The "zone of interest" analysis applied by the Supreme Court in Title VII cases is equally applicable to claims brought pursuant to the HRL, permitting association discrimination claims for all bases covered under the HRL.

Over a quarter century after Title VII, the Americans with Disabilities Act (ADA) was enacted. This law specifically prohibits discrimination "because of the known disability of an individual with whom the qualified individual is known to have a relationship or association" 42 USC § 12112(b)(4). While this provision recognizes the law as it has developed with respect to association, it clearly does not diminish the association protections found in Title VII, nor can it have impact on the well-developed law concerning association protections of the HRL. Even though the disability discrimination protections of the HRL long predate the ADA, some lower courts have dismissed claims alleging discrimination based on association with a person with a disability under the HRL because the HRL lacks the explicit association language found in the ADA. This regulation will clarify this specific situation, and make it clear to all New Yorkers that they have the right to rent or buy residential property, land or commercial space, to gain and retain employment, and to patronize all public accommodations regardless of the race, color, creed, national origin, sexual orientation, gender identity, disability or other protected characteristic of their family members, associates or clients.

It is important that all New Yorkers know, for example, that a mother seeking housing may not be denied an apartment because of the race or disability of her child. A renter may not be evicted or denied equal terms because of the race, creed, national origin, sexual orientation or gender identity of the renter's friends who visit the apartment. An individual who provides services to persons in need may not be discriminated against because of the creed or national origin of his or her clients, with regard to renting a residential apartment, or renting office space for providing those services. A medical practice providing health care services specializing in HIV/AIDS-related medical conditions cannot be denied commercial space, or given unequal terms or condition of a lease, because of the nature of the clients' disabilities. These regulations will apply to areas protected under the HRL, including housing, public accommodations, employment, access to educational institutions and credit.

Costs:

a. costs to regulated parties for the implementation of and continuing compliance with the rule: No new costs are anticipated for regulated parties. The implementation of this rule clarifies the practice and policy of the State Division of Human Rights with regard to complaints of discrimination based on association.

b. costs to the agency, the state and local governments for the implementation and continuation of the rule: It is anticipated that any costs to the State Division of Human Rights due to increased filings because of increased awareness of the protections described, and for continued

implementation of the rule, will be minimal and capable of being absorbed within existing Division staff and resources. No new costs are anticipated for state and local governments.

c. the information, including the source(s) of such information and the methodology upon which the cost analysis is based: The State Division of Human Rights has historically received and processed complaints alleging discrimination based on association.

Local government mandates: None.

Paperwork: None.

Duplication: This proposed rule does not duplicate existing state requirements. The proposed rule duplicates existing federal requirements pursuant to federal anti-discrimination statutes.

Alternatives: No significant alternatives were considered.

Federal standards: Federal law protects discrimination based on relationship or association.

Compliance schedule: This regulation does not impose any new compliance requirements or create new penalties for non-compliance.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. The proposed rule clarifies the Division's existing practice and policy with regard to complaints under the Human Rights Law that allege discrimination against individuals because of their relationship or association with members of a protected class and does not impose any new requirements.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. The proposed rule clarifies the Division's existing practice and policy with regard to complaints under the Human Rights Law that allege discrimination against individuals because of their relationship or association with members of a protected class and does not impose any new requirements.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. The proposed rule will have a positive impact on jobs and employment opportunities because it prohibits discrimination in employment against individuals because of their relationship or association with members of a protected class.

Office of Mental Health

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Directors of Mental Hygiene Facilities As Representative Payees

I.D. No. OMH-10-16-00005-P

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

Proposed Action: Addition of Part 522 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 29.23, 33.07 and 43.03; 20 CFR section 404.2040(d)

Subject: Directors of Mental Hygiene Facilities as Representative Payees.

Purpose: Implement provisions of Mental Hygiene Law section 33.07(e) regarding the management and protection of patient funds.

Text of proposed rule: A new Part 522 is added to Title 14 NYCRR to read as follows:

PART 522

DIRECTORS OF MENTAL HYGIENE FACILITIES AS REPRESENTATIVE PAYEES

§ 522.1 Background and intent.

(a) The Social Security Administration is a Federal government agency that administers two major benefit programs. The largest of these programs is the Retirement, Survivors, and Disability Insurance program (Social Security). The other is the Supplemental Security Income (SSI) program.

(b) The Social Security program protects employees and their families from a loss of earnings because of retirement, death, or disability. Social Security benefits are based on the earnings of an employee who has paid into the system by paying Federal Insurance Contributions Act tax for a specified period of time. An employee, or his or her family, can receive Social Security benefits based on retirement, disability, or death.

(c) The SSI program is a federal income maintenance program for aged, blind, and disabled persons with little or no income or resources. To receive SSI payments, a person must be age 65 or older, blind or disabled and must have limited income and resources.

(d) The Veterans Administration is a Federal government agency that administers benefit programs for veterans.

(e) The Social Security Administration Representative Payee Payment Program and the Veterans Administration provide assistance to persons who are unable to manage their federal benefits, permitting payment of the benefits to designated fiduciaries, referred to as "representative payees" by the SSA and as "fiduciaries" by the Veterans Administration, who receive and manage payments on behalf of beneficiaries. Other state and federal benefit programs may approve similar arrangements to assist beneficiaries who are not capable of handling their own benefits.

(f) In some cases, facility directors who serve as representative payees may receive lump sum retroactive benefits on behalf of a beneficiary; in other cases, facility directors may learn about a windfall payment due to an individual who is receiving services from the facility. In both situations, the payments may, in combination with other resources of the individual, render the individual ineligible for government benefits on which the individual relies or plans to rely upon discharge from the facility. In these cases, a Medicaid exception trust or similar device may provide a mechanism to preserve the assets for the benefit of the individual without rendering the individual ineligible for the needed benefits.

(g) The purpose of this regulation is to implement the provisions of Mental Hygiene Law Section 33.07(e) regarding the management and protection of monthly benefits and retroactive awards received by facility directors in the capacity of representative payee; the use of Medicaid exception trusts, including special needs trusts and similar devices; notice to qualified persons as defined by Mental Hygiene Law 33.16 regarding the intent of a facility director to apply to be an individual's representative payee; and the appropriate establishment and maintenance of a discharge account for future needs of individuals for whom directors serve as fiduciaries.

§ 522.2 Applicability.

This Part shall apply to all facilities operated or licensed by the Office of Mental Health.

§ 522.3 Legal base.

(a) Section 7.09 of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

(b) Section 29.23 of the Mental Hygiene Law authorizes directors of facilities operated by the Office of Mental Health to receive or obtain funds or certain personal property due or belonging to individuals receiving services from their facilities up to an amount or value not exceeding twenty-five thousand dollars, and to seek to place, to the extent permissible by law, funds in excess of the appropriate eligibility level for government benefits into a Medicaid exception trust, including a special needs trust or similar device, after the needs of the individual have been met. The statute also mandates the director to seek to establish such a trust when the director receives a windfall payment on behalf of an individual which, in combination with other funds held on behalf of such person, would cause the individual to become ineligible for government benefits.

(c) Section 33.07 of the Mental Hygiene Law requires the Commissioner of the Office of Mental Health to promulgate regulations regarding the management and protection of funds received by facility directors as representative payees for individuals receiving services from their facilities. The statute also mandates the director of a facility operated by the Office of Mental Health to seek to establish a Medicaid exception trust, including a special needs trust or similar device, when the director receives a lump sum retroactive benefit, as defined in the statute, in his or her capacity as representative payee on behalf of an individual which, in combination with other funds held on behalf of such person, would cause the individual to become ineligible for government benefits.

(d) 20 C.F.R. Section 404.2040(d) provides that representative payees may not be required to use benefit payments to satisfy a debt of the beneficiary, if the debt arose prior to the first month for which payments are certified to a payee. If the debt arose prior to this time, a payee may satisfy it only if the current and reasonably foreseeable needs of the beneficiary are met.

(e) Section 43.03 of the Mental Hygiene Law recognizes that although

the Commissioner of the Office of Mental Health is authorized to reduce or waive fees in cases of inability to pay or other reason, the patient, and any fiduciary or representative payee holding assets for him or her, or on his or her behalf are jointly and severally liable for the fees for services rendered to the patient.

§ 522.4 Definitions. For purposes of this Part:

(a) Beneficiary means an individual who is receiving Social Security or other federal benefits.

(b) Discharge Account means an account established for the benefit of an individual to facilitate his or her discharge from a facility into a less restrictive environment (e.g., for a security deposit on an apartment or utilities, the purchase of home furnishings).

(c) Facility means "facility" as defined in Mental Hygiene Law Section 1.03(6).

(d) Facility director means the executive director of a State-operated psychiatric center or the executive director of a facility licensed by the Office of Mental Health.

(e) Fiduciary means a person or entity who is authorized to hold money and property in trust for another individual and who has a legal duty to manage and use those assets in the best interests of the individual.

(f) Lump sum retroactive benefit means a lump sum retroactive payment of a federal or state benefit that exceeds the expected monthly recurring amount for a reason other than a delay in processing an application, changing a representative payee or similar administrative delay.

(g) Medicaid exception trust means a trust that contains the assets of the beneficiary and meets the criteria set forth in 42 U.S.C. Section 1396p(d)(4) and N.Y. Social Services Law Section 366.2(b)(2)(iii) such that both the principal and income of such trust is considered exempt for purposes of determining the beneficiary's eligibility for Medicaid and/or Supplemental Security Income.

(h) Office means the New York State Office of Mental Health.

(i) Qualified Person means a qualified person as defined in Mental Hygiene Law Section 33.16.

(j) Representative payee means an individual or organization appointed by the Social Security Administration to receive and manage the Social Security or SSI benefits of another person or, for purposes of this regulation, any individual or organization appointed by a federal or state benefit program to receive and manage the benefits of another person as a fiduciary.

(k) Similar device means an individual or pooled discretionary trust, funded pursuant to an agreement authorized by Mental Hygiene Law Section 43.03(b) by the Office of Mental Health or a fiduciary holding assets for the beneficiary, which maintains the beneficiary's eligibility for government benefits and, upon the beneficiary's death, provides for the remainder interest to be paid to the State for the unpaid cost of care and maintenance provided by the Office during the beneficiary's lifetime.

(l) Social Security Benefits means benefits paid as retirement, survivors, and disability insurance pursuant to Title II of the Social Security Act.

(m) SSI Benefits means Supplemental Security Income (SSI) benefits paid by the Social Security Administration under Title XVI of the Social Security Act for aged, blind, and disabled persons with little or no income or resources.

(n) Treatment team means the interdisciplinary team comprised of clinical staff that is responsible for developing and implementing a treatment plan for a patient or resident.

(o) Windfall payment means a one-time payment to a patient in a facility operated by the Office, such as a gift, an inheritance, lottery winnings, or court-ordered judgment or settlement.

§ 522.5 Determination of need for representative payee.

(a) When a question is raised as to whether a beneficiary is capable of managing his or her benefits, the treatment team or, in the case of a facility licensed by the Office, staff assigned to the beneficiary shall meet to determine whether a physician should examine the beneficiary and assess the beneficiary's capacity to manage or direct the management of benefits in his or her own best interest. This meeting shall be documented in the beneficiary's clinical or other appropriate record.

(b) In the event that the beneficiary has been referred for examination, a physician shall conduct the examination and notify the facility director regarding the physician's determination as to whether the beneficiary is capable of managing or directing the management of benefits in his or her own best interest.

(c) A facility director shall not apply to serve as fiduciary or representative payee for a beneficiary who is receiving services from a facility and does not already have a representative payee unless:

(1) a physician determines that the beneficiary is not capable of managing or directing the management of benefits in his or her own best interest, which determination shall be documented in the beneficiary's clinical or other appropriate record; and

(2) notice of the facility director's intent has been provided pursuant to Section 522.6(a) of this Part or, if notice has not been provided, the reason for not providing notice is documented in the beneficiary's clinical or other appropriate record.

§ 522.6 Notice to qualified persons of intent and application for representative payee status.

(a) Whenever a facility director intends to apply to be a fiduciary or representative payee of a beneficiary who is receiving services from the facility, the facility director shall give written notice to qualified persons, including the beneficiary, of the facility director's intent to make such application in a manner consistent with federal and state laws governing the confidentiality of individually identifying health information.

(1) The notice shall be provided at least five business days before the facility director applies to become fiduciary or representative payee.

(2) If the beneficiary would lose any benefits because of a delay in the facility director's application to become fiduciary or representative payee, the facility director may proceed with the application without prior notice or without the lapse of five business days. In such instances, the facility director shall provide the notice as soon as practicable after making the application or within the maximum time which is practicable between the notice and the application.

(3) A facility director shall not be required to provide notice pursuant to this section if the treating practitioner, as defined in Section 33.16 of the Mental Hygiene Law, determines that notice to a particular qualified person, including the beneficiary, would be clinically contraindicated or the beneficiary objects to such notice.

(4) The notice shall be deemed to have been provided if hand delivered or mailed by first class mail to the last known address of the recipient(s) of the notice.

(5) The notice to beneficiaries shall include information that the Mental Hygiene Legal Service is available to advise patients or facility residents regarding the application process.

(b) When a facility director submits an application to the Social Security Administration or other federal or state agency to serve as a beneficiary's representative payee, he or she shall provide written notice of the application in a manner consistent with federal and state laws governing the confidentiality of individually identifying health information, to:

(1) the existing representative payee, if any; and

(2) in the case of facilities operated by the Office, the Mental Hygiene Legal Service of the judicial department in which the facility is located.

(c) During the application process or following the appointment of a facility director as a beneficiary's representative payee, the facility shall ensure that the beneficiary is apprised of his or her right at any time to request to be his or her own payee, or to request a change in representative payee. Such request shall be directed to the Social Security Administration or whichever federal or state program made the appointment.

§ 522.7 Required policies and procedures.

(a) Any facility director who serves or may serve as representative payee for beneficiaries receiving services from such facility shall establish policies and procedures which address the management and use of funds paid to the director as representative payee, consistent with the fiduciary responsibilities of a representative payee pursuant to the governing requirements of Social Security or other federal law and the comparable duty under State law. At a minimum, such policies and procedures shall include provisions for:

(1) establishment and maintenance of beneficiary accounts (in interest bearing accounts where practicable) with individual patient accounting to segregate balances and permit the application of interest earned, if any, on a pro-rated basis;

(2) internal controls that keep the beneficiary accounts and funds secure, prevent identity theft, provide specific authorization for check signatories, and document receipts and disbursements;

(3) the use of petty cash, including requirements for documenting expenditures by receipts and the reconciliation of cash provided;

(4) the opportunity for beneficiaries, or someone authorized to act on their behalf, to review deposits to and disbursements from their accounts at least quarterly; and

(5) designation of an appropriate staff member to act as a liaison between the facility director and the beneficiary.

(b) For facilities operated by the Office, such policies and procedures shall also include provisions requiring the facility to consider:

(1) the establishment of an appropriate Discharge Account if funds are available from accumulated Social Security or other federal benefits and/or other resources or income of the beneficiary; provided, however,

that such Discharge Account, in addition to other resources held by the beneficiary, shall not exceed the monetary limits necessary to maintain his or her eligibility for government benefits in the community; and

(2) the use of a Medicaid exception trust or similar device where legally mandated or deemed necessary and appropriate by the Office of Mental Health. To determine whether and/or what type of Medicaid exception trust or similar device may be necessary and appropriate, the following factors shall be considered along with any other factors relevant to the particular beneficiary's circumstances:

(i) the beneficiary's current and future needs, including a burial fund;

(ii) the amount of the resources to be placed in trust;

(iii) the beneficiary's age, current diagnosis and functional capacity (including capacity to manage his or her funds);

(iv) the beneficiary's prognosis for discharge into the community;

(v) the beneficiary's need for government benefit eligibility in the community;

(vi) the availability and willingness of a family member, friend, guardian or other appropriate individual to serve as trustee of such a trust or as a liaison to such a trust;

(vii) the impact of anticipated costs to establish and maintain the trust and guardianship, if any, on the amount of trust resources that will be available to the beneficiary;

(viii) the eligibility of the beneficiary to establish a trust; and

(ix) the availability of a pooled community trust in which beneficiary is eligible to participate.

Text of proposed rule and any required statements and analyses may be obtained from: Sue Watson, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: regs@omh.ny.gov

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

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

Regulatory Impact Statement

1. Statutory Authority: Section 7.09 of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

Section 29.23 of the Mental Hygiene Law authorizes directors of facilities operated by the Office of Mental Health to receive or obtain funds or certain personal property due or belonging to individuals receiving services from their facilities up to an amount or value not exceeding twenty-five thousand dollars, and to seek to place, to the extent permissible by law, funds in excess of the appropriate eligibility level for government benefits into a Medicaid exception trust, including a special needs trust or similar device, after the needs of the individual have been met. The statute also mandates the director to seek to establish such a trust when the director receives a windfall payment on behalf of an individual which, in combination with other funds held on behalf of such person, would cause the individual to become ineligible for government benefits.

Section 33.07 of the Mental Hygiene Law requires the Commissioner of the Office of Mental Health to promulgate regulations regarding the management and protection of funds received by facility directors as representative payees for individuals receiving services from their facilities. The statute also mandates the director of a facility operated by the Office of Mental Health to seek to establish a Medicaid exception trust, including a special needs trust or similar device, when the director receives a lump sum retroactive benefit in his or her capacity as representative payee on behalf of an individual which, in combination with other funds held on behalf of such person, would cause the individual to become ineligible for government benefits.

20 C.F.R. Section 404.2040(d) provides that representative payees may not be required to use benefit payments to satisfy a debt of the beneficiary if the debt arose prior to the first month for which payments are certified to a payee. If the debt arose prior to this time, a payee may satisfy it only if the current and reasonably foreseeable needs of the beneficiary are met.

Section 43.03 of the Mental Hygiene Law recognizes that although the Commissioner of the Office of Mental Health is authorized to reduce or waive fees in cases of inability to pay or other reason, the patient, and any fiduciary or representative payee holding assets for him or her or on his or her behalf, are jointly and severally liable for the fees for services rendered to the patient.

2. Legislative Objectives: Article 7 of the Mental Hygiene Law reflects the Commissioner's authority to establish regulations regarding mental health programs and charges the Office of Mental Health with the responsibility for ensuring that persons with mental illness receive high quality care and treatment. Article 33 of the Mental Hygiene Law establishes basic rights of persons diagnosed with mental illness. This regulatory amendment furthers the legislative objectives embodied in Mental Hygiene Law Section 33.07(e) with respect to the management of patient funds.

3. Needs and Benefits: This proposal establishes a new 14 NYCRR Part 522 – Director of Mental Hygiene Facilities as Representative Payees. This new Part 522 implements the requirements of Mental Hygiene Law Section 33.07(e) that mandates each office within the Department of Mental Hygiene (Office of Mental Health, Office for People with Developmental Disabilities and Office for Alcohol and Substance Abuse Services) to promulgate regulations regarding the management and protection of patient funds. The proposal provides for the proper management and protection of monthly benefits and retroactive awards received by facility directors in the capacity of representative payee. It requires that qualified persons, as defined in Mental Hygiene Law Section 33.16, receive notice regarding the intent of a facility director to apply to be an individual's representative payee, and requires facilities operated by the Office of Mental Health to ensure that there are policies and procedures in place to address the use of Medicaid exception trusts, including special needs trusts or similar devices, in appropriate circumstances. The proposal further assures the appropriate establishment and maintenance of a discharge account for future needs of individuals for whom directors serve as fiduciaries.

It is important to note that this proposed regulation was shared with Mental Hygiene Legal Service (MHLS), Families Together, National Alliance on Mental Illness, Mental Health Association of New York State, New York Association of Psychiatric Rehabilitation Services, and Disability Rights New York (DRNY) for their review and input. Two of the organizations (MHLS and DRNY) provided feedback, and many of their suggestions have been included in this proposal.

4. Costs:

(a) Costs to Local Government: The regulatory amendment will not result in any additional costs to local government.

(b) Costs to State: The regulatory amendment will not result in any additional costs to State government.

(c) Costs to Regulated Parties: The regulatory amendment will not result in any additional costs to regulated parties.

5. Local Government Mandates: The regulatory amendment will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: The regulatory amendment will not result in a substantial increase in paperwork requirements of facilities covered by the regulation.

7. Duplication: The regulatory amendment does not duplicate existing State or federal requirements.

8. Alternatives: The only potential alternative would be inaction. As that would be contrary to statute, that alternative was not considered.

9. Federal Standards: The regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: The regulatory amendment would become effective immediately upon adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments has not been submitted with this notice. The proposed regulatory amendments are intended to provide for the proper management and protection of monthly benefits and retroactive awards received by facility directors in the capacity of representative payee. The amendments serve to implement the requirements of Mental Hygiene Law Section 33.07(e) with respect to the promulgation of regulations regarding the management and protection of funds of persons receiving services in facilities operated or licensed by the Office of Mental Health. The proposed regulatory amendments will not impose any adverse economic impact on small businesses or local governments; therefore a Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis has not been submitted with this notice. The proposed regulatory amendments are intended to provide for the proper management and protection of monthly benefits and retroactive awards received by facility directors in the capacity of representative payee. The amendments serve to implement the requirements of Mental Hygiene Law Section 33.07(e) with respect to the promulgation of regulations regarding the management and protection of funds of persons receiving services in facilities operated or licensed by the Office of Mental Health. The proposed rule will not impose any adverse economic impact on rural areas; therefore, a Rural Area Flexibility Analysis is not submitted with this notice.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because it is evident from the subject matter that there will be no adverse impact on

jobs and employment opportunities as a result of these amendments. The proposed regulatory amendments are intended to provide for the proper management and protection of monthly benefits and retroactive awards received by facility directors in the capacity of representative payee. The amendments serve to implement the requirements of Mental Hygiene Law Section 33.07(e) with respect to the promulgation of regulations regarding the management and protection of funds of persons receiving services in facilities operated or licensed by the Office of Mental Health.

Public Service Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Safety of Water Supply

I.D. No. PSC-10-16-00016-EP
Filing Date: 2016-02-23
Effective Date: 2016-02-23

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

Proposed Action: The Commission, on February 23, 2016, adopted an order directing the Corbin Hill Water Corp. to comply with the recommendations of the Orange County Department of Health.

Statutory authority: Public Service Law, sections 89-b and 89-c(2)

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

Specific reasons underlying the finding of necessity: The Corbin Hill Water Corp. failed to respond to and comply with the recommendations of the Orange County Department of Health's (OCDOH) recommendations regarding the replacement of the Company's uranium filters. Given the potential for contamination of the water supply by radio nucleotides, and the Company's failure to acknowledge the OCDOH's concerns, the Public Service Commission determined that immediate action was needed to compel the Company's compliance.

Subject: Safety of water supply.

Purpose: To ensure safe water supply through compliance with county Department of Health recommendations.

Substance of emergency/proposed rule: The Public Service Commission (Commission) ordered that the Corbin Hill Water Corp. comply with the recommendations of the Orange County Department of Health by replacing a uranium filter that is reaching the end of its useful life and reconfiguring the remaining filters. In addition, the Commission required the Company to report on its efforts to connect to the Town of Highlands' water system and complete the metering of all ratepayers.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire May 22, 2016.

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(16-W-0079EP1)

NOTICE OF ADOPTION

Determining Revenue Requirement and Rate Design

I.D. No. PSC-15-15-00008-A
Filing Date: 2016-02-23
Effective Date: 2016-02-23

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

Action taken: On 2/23/16, the PSC adopted an order determining revenue requirement and rate design for Jamestown Board of Public Utilities (Jamestown Electric).

Statutory authority: Public Service Law, section 66(12)

Subject: Determining revenue requirement and rate design.

Purpose: To determine revenue requirement and rate design for Jamestown Electric.

Substance of final rule: The Commission, on February 23, 2016, adopted an order determining revenue requirement and rate design and directed Jamestown Board of Public Utilities to file a cancellation supplement and further tariff revisions establishing the approved rates, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(15-E-0184SA1)

NOTICE OF ADOPTION

Amendments to the UBP of ESCOs

I.D. No. PSC-32-15-00009-A
Filing Date: 2016-02-23
Effective Date: 2016-02-23

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

Action taken: On 2/23/16, the PSC adopted an order approving amendments to the Uniform Business Practices (UBP) of energy service companies (ESCOs).

Statutory authority: Public Service Law, sections 5(1), 65(1), (2), (3), 66(1), (2), (3), (5), (8), (9) and (12)

Subject: Amendments to the UBP of ESCOs.

Purpose: To approve amendments to the UBP of ESCOs.

Substance of final rule: The Commission, on February 23, 2016, adopted an order approving amendments to the Uniform Business Practices of energy service companies, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(15-M-0127SA1)

NOTICE OF ADOPTION

Revocation of Eligibility for Violations of the UBP

I.D. No. PSC-35-15-00016-A
Filing Date: 2016-02-23
Effective Date: 2016-02-23

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

Action taken: On 2/23/16, the PSC adopted an order revoking the eligibility of Engineered Energy Solutions, LLC (Engineered Energy Solutions) to operate in New York State for violations of the Uniform Business Practices (UBP).

Statutory authority: Public Service Law, sections 4 and 66

Subject: Revocation of eligibility for violations of the UBP.

Purpose: To revoke the eligibility of Engineered Energy Solutions for violations of the UBP.

Substance of final rule: The Commission, on February 23, 2016, adopted an order revoking the eligibility of Engineered Energy Solutions, LLC to operate in New York State for violations of the Uniform Business Practices, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(15-M-0263SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Propose Revisions to the Dynamic Load Management Programs

I.D. No. PSC-10-16-00007-P

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

Proposed Action: The Commission is considering a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to effectuate the revisions to the Dynamic Load Management Programs in compliance with the Commission's June 18, 2015 Order in Case 14-E-0423, et al.

Statutory authority: Public Service Law, sections 65 and 66

Subject: To propose revisions to the Dynamic Load Management Programs.

Purpose: To consider revisions to the Dynamic Load Management Programs.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) in compliance with Commission's "Order Adopting Dynamic Load Management Filings with Modifications" issued June 18, 2015 in Case 14-E-0423, et al. The tariff filing proposes modifications to three distribution-level demand response programs (Direct Load Contract Program, Commercial System Relief Program and the Distribution Load Relief Program). The proposed tariff amendments have an effective date of June 1, 2016. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(15-E-0189SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Propose Revisions to the Dynamic Load Management Programs

I.D. No. PSC-10-16-00008-P

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

Proposed Action: The Commission is considering a tariff filing by Central Hudson Gas and Electric Corporation to effectuate the revisions to the Dynamic Load Management Programs in compliance with the Commission's June 18, 2015 Order in Case 14-E-0423, et al.

Statutory authority: Public Service Law, sections 65 and 66

Subject: To propose revisions to the Dynamic Load Management Programs.

Purpose: To consider revisions to the Dynamic Load Management Programs.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Central Hudson Gas & Electric Corporation (Central Hudson) in compliance with Commission's "Order Adopting Dynamic Load Management Filings with Modifications" issued June 18, 2015 in Case 14-E-0423, et al. The tariff filing proposes modifications to Central Hudson's two distribution-level demand response programs (Direct Load Contract Program, Commercial System Relief Program). The proposed tariff amendments have an effective date of June 1, 2016. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(15-E-0186SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Propose Revisions to the Dynamic Load Management Programs

I.D. No. PSC-10-16-00009-P

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

Proposed Action: The Commission is considering a tariff filing by Rochester Gas and Electric Corporation to effectuate the revisions to the Dynamic Load Management Programs in compliance with the Commission's June 18, 2015 Order in Case 14-E-0423, et al.

Statutory authority: Public Service Law, sections 65 and 66

Subject: To propose revisions to the Dynamic Load Management Programs.

Purpose: To consider revisions to the Dynamic Load Management Programs.

Substance of proposed rule: The Public Service Commission is consider-

ing whether to approve, modify or reject, in whole or in part, a tariff filing by Rochester Gas and Electric Corporation (RG&E) in compliance with Commission's "Order Adopting Dynamic Load Management Filings with Modifications" issued June 18, 2015 in Case 14-E-0423, et al. The tariff filing proposes modifications to three distribution-level demand response programs (Direct Load Contract Program, Commercial System Relief Program and the Distribution Load Relief Program). The proposed tariff amendments have an effective date of June 1, 2016. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(15-E-0190SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Stock Acquisition

I.D. No. PSC-10-16-00010-P

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

Proposed Action: The Public Service Commission is considering a Petition for authority to transfer all Whistle Tree Development Corporation stock from Mr. Guy Chirico to Scribners Catskill Lodge, LLC.

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 Whistle Tree Development Corporation by Scribners Catskill Lodge, LLC.

Text of proposed rule: The Public Service Commission is considering a Petition filed February 11, 2016 by Guy W. Chirico, Whistle Tree Development Corporation (WTC), a water works corporation, and Scribners Catskill Lodge, LLC (Scribners) for the approval of the transfer of all outstanding shares of WTC from Mr. Chirico to Scribners. WTC provides flat rate water service to 30 customers in the Village and Town of Hunter located in Green County. WTC 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-0078SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition to Issue and Sell Unsecured Debt Obligations

I.D. No. PSC-10-16-00011-P

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

Proposed Action: The Commission is considering a petition filed by Consolidated Edison Company of New York, Inc. (Con Edison) requesting permission to issue and sell unsecured debt obligations.

Statutory authority: Public Service Law, section 69

Subject: Petition to issue and sell unsecured debt obligations.

Purpose: To consider Con Edison's request to issue and sell unsecured debt obligations.

Substance of proposed rule: On January 15, 2016, Consolidated Edison Company of New York, Inc. (the Company) submitted a petition requesting Commission approval to issue and sell unsecured debt obligations of the Company having a maturity of more than one year. The requested approval would permit the Company (i) to issue and sell not to exceed $5.2 billion aggregate principal amount of unsecured debt obligations of the Company having a maturity of more than one year for purposes of reimbursement of the Company's treasury for moneys expended for capital purposes through September 30, 2015; (ii) to enter into or continue one or more revolving credit agreements and to issue and sell not to exceed $2.25 billion aggregate principal amount at any time outstanding of unsecured debt obligations having a maturity of more than one year pursuant to such agreement(s), such issuance and sale to be for purposes of reimbursement of the Company's treasury for moneys expended for capital purposes through September 30, 2015; and (iii) to issue and sell unsecured debt obligations having a maturity of more than one year for the purposes of refunding in advance of maturity outstanding debt securities of the Company. The Commission may approve, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-M-0020SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Revise the Method of Calculating Capacity Charges for Customers Billed Under Rider M — Day-Ahead Hourly Pricing (Rider M)

I.D. No. PSC-10-16-00012-P

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

Proposed Action: The Commission is considering a proposal by Consolidated Edison Company of New York, Inc. to revise its electric tariff schedule, P.S.C. No. 10 — Electricity pursuant to Commission Order in Case 13-E-0030, et al. issued February 21, 2014.

Statutory authority: Public Service Law, sections 39, 47 and 66(12)

Subject: To revise the method of calculating capacity charges for customers billed under Rider M — Day-Ahead Hourly Pricing (Rider M).

Purpose: To consider tariff changes that revise the method of calculating capacity charges for customers billed under Rider M.

Substance of proposed rule: The Public Service Commission (Commission) is considering modifications proposed by Consolidated Edison

Company of New York, Inc. (Con Edison) to P.S.C. No. 10 – Electricity. Con Edison proposes to revise its method of calculating capacity charges for customers billed under Rider M — Day-Ahead Hourly Pricing with bills having a "from" date on or after June 1, 2016 pursuant to Commission Order in Case 13-E-0030, et al. issued February 21, 2014. The modifications also clarify how capacity costs are assessed to non-Rider M customers billed under either time-of-day rates or Special Provision D of Service Classification 9. The proposed amendments have an effective date of May 23, 2016. The Commission may adopt, modify, or reject, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-E-0086SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Propose Revisions to the Dynamic Load Management Programs

I.D. No. PSC-10-16-00013-P

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

Proposed Action: The Commission is considering a tariff filing by New York State Electric & Gas Corporation to effectuate the revisions to the Dynamic Load Management Programs in compliance with the Commission's June 18, 2015 Order in Case 14-E-0423, et al.

Statutory authority: Public Service Law, sections 65 and 66

Subject: To propose revisions to the Dynamic Load Management Programs.

Purpose: To consider revisions to the Dynamic Load Management Programs.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by New York State Electric & Gas Corporation (NYSEG) in compliance with Commission's "Order Adopting Dynamic Load Management Filings with Modifications" issued June 18, 2015 in Case 14-E-0423, et al. The tariff filing proposes modifications to three distribution-level demand response programs (Direct Load Contract Program, Commercial System Relief Program and the Distribution Load Relief Program). The proposed tariff amendments have an effective date of June 1, 2016. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(15-E-0188SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Propose Revisions to the Dynamic Load Management Programs

I.D. No. PSC-10-16-00014-P

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

Proposed Action: The Commission is considering a tariff filing by Orange and Rockland Utilities, Inc. to effectuate the revisions to the Dynamic Load Management Programs in compliance with the Commission's June 18, 2015 Order in Case 14-E-0423, et al.

Statutory authority: Public Service Law, sections 65 and 66

Subject: To propose revisions to the Dynamic Load Management Programs.

Purpose: To consider revisions to the Dynamic Load Management Programs.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Orange and Rockland Utilities, Inc. (O&R) in compliance with Commission's "Order Adopting Dynamic Load Management Filings with Modifications" issued June 18, 2015 in Case 14-E-0423, et al. The tariff filing proposes modifications to three distribution-level demand response programs (Direct Load Contract Program, Commercial System Relief Program and the Distribution Load Relief Program). The proposed tariff amendments have an effective date of June 1, 2016. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(15-E-0191SP2)

Department of State

NOTICE OF ADOPTION

Financial Reporting and Other Requirements for Cemeteries Subject to Not-For-Profit Corporation Law Article 15

I.D. No. DOS-49-15-00003-A

Filing No. 207

Filing Date: 2016-02-17

Effective Date: 2016-03-09

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

Action taken: Amendment of sections 200.1, 200.3, 200.4, 200.5 and 200.6; and addition of sections 200.7 and 201.20 to Title 19 NYCRR.

Statutory authority: Executive Law, section 91; Not-For-Profit Corporation Law, sections 1501 and 1504(c)

Subject: Financial reporting and other requirements for cemeteries subject to Not-For-Profit Corporation Law article 15.

Purpose: To reduce the financial reporting burden and expense on cemeteries and ensure that timely and accurate information is provided.

Text or summary was published in the December 9, 2015 issue of the Register, I.D. No. DOS-49-15-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Antonio Milillo, Dept. of State, Office of General Counsel, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-6740, email: antonio.milillo@dos.ny.gov

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Unlawful Discriminatory Practice by Brokers and Salespersons

I.D. No. DOS-10-16-00020-P

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

Proposed Action: Amendment of section 175.17 of Title 19 NYCRR.

Statutory authority: Executive Law, section 91; Real Property Law, section 442(k)(1)

Subject: Unlawful discriminatory practice by brokers and salespersons.

Purpose: To discourage invidious discrimination in making housing accommodations available to the public.

Text of proposed rule: Section 175.17 of Part 175 of Title 19 of the New York Codes, Rules and Regulations is amended to read as follows:

175.17 Prohibitions in relation to solicitation *and unlawful discriminatory practice*.

(a)*(1)* No broker or salesperson shall induce or attempt to induce an owner to sell or lease any residential property or to list same for sale or lease by making any representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion [or], national origin*, age, sex, sexual orientation, disability, gender identity, military status, familial status or any other protected category under any federal, state or local law applicable to the activities of real estate licensees in New York State*.

([b]*2*)

([1]*i*) No licensed real estate broker or salesperson shall solicit the sale, lease or the listing for sale or lease of residential property after such licensee has received written notice from an owner thereof that such owner or owners do not desire to sell, lease or list such property.

([2]*ii*) Notice provided under the provisions of this subdivision to a real estate broker shall constitute notice to all associate brokers and salespersons who are employed by the real estate broker.

([c]*3*)

([1]*i*) No licensed real estate broker or salesperson shall solicit the sale, lease or the listing for sale or lease of residential property from owner of residential property located in a designated cease-and-desist zone if such owner has filed a cease-and-desist notice with the Department of State indicating that such owner or owners do not desire to sell, lease or list their residential property and do not desire to be solicited to sell, lease or list their residential property.

([2]*ii*) The following geographic areas are designated as cease-and-desist zones, and, unless sooner redesignated, the designation for the following cease-and-desist zones shall expire on the following dates:

Zone
Expiration Date
County of Bronx
August 1, 2014

Within the County of Bronx as follows:

All that area of land in the County of Bronx, City of New York, otherwise known as Community Districts 10, 11 and 12 and bounded and described as follows: Beginning at a point at the intersection of Bronx County and Westchester County boundary and Long Island Sound; thence southerly along Long Island Sound while including City Island to East River; thence westerly along East River to Westchester Creek; thence northerly, northwesterly and northeasterly along Westchester Creek to East Tremont Avenue; thence southwesterly, northwesterly and westerly along East Tremont Avenue to Bronx River Parkway; thence northerly and northeasterly along Bronx River Parkway to East 233rd Street; thence westerly along East 233rd Street to Van Cortlandt Park East; thence northerly along Van Cortlandt Park East to the boundary of Westchester County and Bronx County; thence easterly along the boundary of Westchester County and Bronx County to Long Island Sound and the point of beginning.

Zone
Expiration Date
County of Queens
August 1, 2014

Within the County of Queens as follows:

All that area of land in the County of Queens, City of New York, otherwise known as Bayside, Bellerose, Queens Village, Rockaways, South Ozone Park, Woodhaven and Whitestone bounded and described as follows:

Bayside: Located in northern Queens. Francis Lewis Boulevard to the west, 233rd Street to the east, Grand Central Parkway to the south and Cross Island Parkway to the north and bounded by the geographical boundaries of the following zip codes: 11361, 11359, 11360, and 11364.

Bellerose: Little Neck Parkway to the east, Grand Central Parkway to the west, the Credmoor State Hospital grounds to the north and Braddock and Jamaica Avenues to the south and bounded by the geographical boundary of the zip code 11426.

Queens Village: Nassau County and Belmont Park to the east, Cambria Heights and St. Albans to the south. Hollis to the west, and Bellerose and Holliswood to the north and bounded by the geographical boundaries of the following zip codes: 11427, 11428 and 11429.

Rockaways: Located in southern Queens. 11 miles long peninsula with Jamaica Bay to the north, the Atlantic Ocean to the south and Nassau County to the east and bounded by the geographical boundaries of the following zip codes: 11690, 11691, 11692, 11693, 11694, 11695 and 11697.

South Ozone Park: Van Wyck Expressway to the east, Aqueduct Race Track to the west, Liberty Avenue to the north and Conduit Avenue and Belt Parkway to the south and bounded by the geographical boundaries of the zip code 11420.

Woodhaven: Forest Park and Park Lane South to the north, Richmond Hill to the east, Ozone Park and Atlantic Avenue to the south and borough of Brooklyn to the west and bounded by the geographical boundaries of the zip code 11421.

Whitestone: Located in northern Queens between the East River to the north and 25th Avenue to the south, Whitestone Bridge to the west and the Throgs Neck Bridge to the east and bounded by the geographical boundaries of the zip code 11357.

Cease and Desist Zone
(Mill Basin/Brooklyn)
Zone
Expiration Date
County of Kings (Brooklyn)
November 30, 2012

Within the County of Kings as follows:

All that area of land in the County of Kings, City of New York, otherwise known as the communities of Mill Basin, Mill Island, Bergen Beach, Futurama, Marine Park and Madison Marine, bounded and described as follows: Beginning at a point at the intersection of Flatlands Avenue and the northern prolongation of Paerdegat Basin, thence southwesterly along Flatlands Avenue to Avenue N; thence westerly along Avenue N to Nostrand Avenue; thence southerly along Nostrand Avenue to Kings Highway; thence southwesterly along Kings Highway to Ocean Avenue; thence southerly along Ocean Avenue to Shore Parkway; thence northeasterly, southeasterly, northerly, northeasterly and northerly along Shore Parkway to Paerdegat Basin; thence northwesterly along Paerdegat Basin and the northern prolongation of Paerdegat Basin; thence northwesterly along Paerdegat Basin and northern prolongation of Paerdegat Basin to Flatlands Avenue and the point of beginning.

([3]*iii*) The names and addresses of owners who have filed a cease-and-desist notice with the Department of State shall be compiled according to the street address for each cease-and-desist zone. Following the first compilation of a list, the list shall be revised and updated annually on or before December 31st. Individual lists shall be identified by geographic area and year.

([4]*iv*) A copy of each cease-and-desist list shall be available for inspection at the following offices of the Department of State:

Department of State
Division of Licensing Services
80 South Swan Street, 10th Floor
Albany, New York 12231-0001

Department of State
Division of Licensing Services
State Office Building Annex
164 Hawley Street
Binghamton, New York 13901-4053

Department of State
Division of Licensing Services
65 Court Street
Buffalo, New York 14202-3471
Department of State

Division of Licensing Services
Hughes State Office Building
Syracuse, New York 13202-1428

Department of State
Division of Licensing Services
State Office Building
Veterans Memorial Highway
Hauppauge, New York 11788-5501

Department of State
Division of Licensing Services
114 Old Country Road
Mineola, New York 11501-4459

Department of State
Division of Licensing Services
123 William Street
New York, New York 10038-3804

([5]*v*) The cost of each list complied pursuant to this subdivision shall be $10 and shall be available upon written request to the following address:

Department of State
Division of Licensing Services
123 William Street
New York, New York 10038-3804

([6]*vi*) The original cease-and-desist notice shall be filed with the Department of State's Division of Licensing Services at 123 William Street, New York, New York 10038-3804, and shall be available for public inspection and copying upon written request and appointment.

([7]*vii*) For the purposes of Real Property Law, section 441-c, it shall not be a demonstration of untrustworthiness or incompetence for a licensee to solicit an owner who had filed a cease-and-desist notice with the Department of State if the owner's name and address do not appear on the current cease-and-desist list compiled by the Department of State pursuant to [paragraph (3) of this subdivision] *subparagraph (iii) of this paragraph*.

([d]*4*)

([1]*i*) For the purposes of this [section]*subdivision*, solicitation shall mean an attempt to purchase or rent or an attempt to obtain a listing of property for sale, for rent or for purchase. Solicitation shall include but not be limited to use of the telephone, mails, delivery services, personal contact or otherwise causing any solicitation, oral or written, direct or by agent:

([i]*a*) to be delivered or presented to the owner or anyone else at the owner's home address;

([ii]*b*) to be left for the owner or anyone else at the owner's home address; or

([iii]*c*) to be placed on any vehicle, structure or object located on the owner's premises.

([2]*ii*) Solicitation shall not include classified advertising in regularly printed periodicals that are not primarily real estate related; advertisements placed in public view if they are not otherwise in violation of this [section]*subdivision*; or radio and television advertisements.

([e]*5*) For the purposes of this [section]*subdivision*, residential property shall mean one-, two- or three-family houses, including a cooperative apartment or condominium.

(b) No real estate broker or salesperson shall engage in an unlawful discriminatory practice, as proscribed by any federal, state or local law applicable to the activities of real estate licensees in New York State. A finding by any federal, state or local agency or court of competent jurisdiction that a real estate broker or salesperson has engaged in unlawful discriminatory practice in the performance of licensed real estate activities shall be presumptive evidence of untrustworthiness and will subject such licensee to discipline, including a proceeding for revocation. Nothing herein shall limit or restrict the Department from otherwise exercising its authority pursuant to section 441-c of the Real Property Law.

Text of proposed rule and any required statements and analyses may be obtained from: David A. Mossberg, NYS Department of State, 123 William Street, 20th Fl., New York, NY 10038, (212) 407-2063, email: david.mossberg@dos.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory authority:

New York Executive Law § 91 authorizes the Secretary of State to: "adopt and promulgate such rules which shall regulate and control the exercise of the powers of the department of state." New York Real Property Law (RPL) § 442(k)(1) authorizes the State Real Estate Board "to promulgate rules or regulations affecting brokers and sales persons."

2. Legislative objectives:

Article 12-A of the Executive Law was enacted, inter alia, to provide for the regulation and licensure of real estate brokers and salespersons in order to ensure competent and trustworthy delivery of real estate brokerage services to the public. As a matter of law and public policy, it is unlawful to deny or otherwise withhold a housing accommodation based on race, creed, color, national origin, sexual orientation, military status, sex, age, disability, gender identity, marital status, or familial status, and any other protected category under applicable federal, state or local law. A real estate broker or salesperson who engages in such an act or facilitates its commission is subject to discipline by the Department for this conduct. The State Real Estate Board, empowered to issue regulations affecting brokers and salespersons to safeguard the interests of the public, finds that such discrimination in the availability and provision of housing is so injurious to the public welfare as to warrant explicit regulatory guidance and notice of severe sanction against an offending licensee.

3. Needs and benefits:

The rulemaking provides clear guidance to brokers and salespersons that the Department of State will take vigorous action to revoke the license of, or otherwise discipline, a real estate broker or salesperson who has engaged in acts of discrimination in the housing market. It also clarifies that the holdings of other administrative agencies or courts finding such unlawful activity will constitute presumptive evidence of untrustworthiness, and will not be a bar to a parallel or subsequent Departmental disciplinary proceeding.

4. Costs:

a. Costs to regulated parties:

The Department does not anticipate any additional costs to implement the rule.

b. Costs to the Department of State, the State, and local governments:

The Department does not anticipate any additional costs to implement the rule.

5. Local government mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

The rule does not impose any paperwork requirement on licensees.

7. Duplication:

The Department currently possesses authority to discipline brokers and salesperson for untrustworthy conduct. This rulemaking, without diminishing such broad authority, underscores the serious and corrosive nature of discrimination in the housing market and serves as notice to the licensees that they must avoid engaging in such conduct.

8. Alternatives:

The Department considered not proposing the instant rulemaking. However, it was determined that this rule is needed to provide clear guidance to brokers and salespersons.

9. Federal standards:

The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule:

Immediate upon adoption.

Regulatory Flexibility Analysis

1. Effect of rule:

The rulemaking provides clear guidance to brokers and salespersons that the Department of State will take vigorous action to revoke the license of, or otherwise discipline, a real estate broker or salesperson who has engaged in acts of unlawful discrimination in the housing market. It also clarifies that the findings of other administrative agencies or courts leading to a determination that such unlawful action has taken place will constitute presumptive evidence of untrustworthiness in a Departmental disciplinary proceeding. The regulation should help small businesses avoid unlawful activity. The rule does not have a direct impact on local governments.

2. Compliance requirements:

The rule does not impose any reporting, record keeping or other compliance requirement on real estate licensees or local governments.

3. Professional services:

The rule does not impose any compliance requirements on real estate licensees or local governments.

4. Compliance costs:
The rule does not impose any compliance costs on real estate licensees or local governments.
5. Economic and technologic feasibility:
The rule does not impose any new technology requirements on applicants or local governments.
6. Minimizing adverse impact:
The rule will not adversely impact small businesses or local governments.
7. Small business participation:
The members of the Department's Real Estate Board, many of whom operate small businesses, participated in the development of this rulemaking. In addition, the formal public comment period commencing upon publication of this Notice of Proposed Rule Making will provide further opportunity for participation in the rule making process.

Rural Area Flexibility Analysis
1. Types and estimated numbers of rural areas:
The rule will apply to real estate brokers and salespersons licensed pursuant to Article 12-A of the Real Property Law. Real estate brokerage businesses operate in rural areas throughout the state.
2. Reporting, recordkeeping and other compliance requirements; and professional services:
The Department does not anticipate that any reporting or recordkeeping will be required in order to comply with this rule.
3. Costs:
The Department does not anticipate any additional costs to implement the rule.
4. Minimizing adverse impact:
This rule does not adversely impact any rural area.
5. Rural area participation:
Comments will be received and entertained during the public comment period associated with this Notice of Proposed Rulemaking.

Job Impact Statement
1. Nature of impact:
The rulemaking will provide clear guidance to brokers and salespersons that the Department of State will take vigorous action to revoke the license of, or otherwise discipline, a real estate broker or salesperson who has engaged in acts of discrimination in the housing market. It will have no significant impact on jobs.
2. Categories and numbers affected:
There are approximately 55,124 brokers and 67,534 salespersons who would be subject to this rulemaking.
3. Regions of adverse impact:
The proposed rulemaking will not have any disproportionate regional adverse impact on jobs or employment opportunities.
4. Minimizing adverse impact:
This rule does not significantly impact jobs.

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-49-15-00004-A
Filing No. 206
Filing Date: 2016-02-17
Effective Date: 2016-02-17

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period January 1, 2016 through March 31, 2016.

Text or summary was published in the December 9, 2015 issue of the Register, I.D. No. TAF-49-15-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.ny.gov

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-10-16-00002-P

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

Proposed Action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period April 1, 2016 through June 30, 2016.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lxxxii) to read as follows:

	Motor Fuel			Diesel Motor Fuel		
	Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(lxxxi) January - March 2016	14.2	22.2	39.2	16.0	24.0	39.25
(lxxxii) April - June 2016	*13.7*	*21.7*	*38.7*	*14.9*	*22.9*	*38.15*

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.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, 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.