RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Asian Long Horned Beetle (ALB)

I.D. No. AAM-10-17-00004-A
Filing No. 299
Filing Date: 2017-05-02
Effective Date: 2017-05-17

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

Action taken: Repeal of section 139.2(a); addition of new section 139.2(a); and amendment of section 139.2(b) of Title 1 NYCRR.

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

Subject: Asian Long Horned Beetle (ALB).

Purpose: To lift the ALB quarantine in eastern Queens since the insect has no longer been detected there. To make technical changes.

Text or summary was published in the March 8, 2017 issue of the Register, I.D. No. AAM-10-17-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Christopher Logue, Director, Division of Plant Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2087, email: christopher.logue@agriculture.ny.gov

Assessment of Public Comment
The agency received no public comment.

Office of Alcoholism and Substance Abuse Services

NOTICE OF ADOPTION

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

I.D. No. ASA-52-16-00013-A
Filing No. 297
Filing Date: 2017-05-01
Effective Date: 2017-05-17

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

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

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

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

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

Text or summary was published in the December 28, 2016 issue of the Register, I.D. No. ASA-52-16-00013-P.

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

Revised rule making(s) were previously published in the State Register on March 22, 2017.

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

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 no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment
The agency received no public comment.

Department of Economic Development

EMERGENCY RULE MAKING

START-UP NY Program

I.D. No. EDV-20-17-00003-E
Filing No. 295
Filing Date: 2017-04-28
Effective Date: 2017-04-28

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 (Full text is posted at the following State website: https://startup.ny.gov/university-and-college-resources): 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 process for approval of Tax-Free Areas. 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 and agree to submit an annual report in such form as the Commissioner shall require; (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 any time 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 on or before March 15 of each 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. Information contained in businesses' annual reports may be made public by the Commissioner.

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 July 26, 2017.

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, NY 12207, (518) 292-5122, email: Phillip.Harmonick@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

LEGISLATIVE OBJECTIVES:

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

NEEDS AND BENEFITS:

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

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

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

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

COSTS:

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

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

III. Costs to the State government: None.

IV. Costs to local governments: None.

LOCAL GOVERNMENT MANDATES:

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

PAPERWORK:

The rule establishes application and eligibility requirements for Tax-Free NY Areas proposed by universities and colleges, and participating

businesses. These regulations establish paperwork burdens that include materials to be submitted as part of applications, documents that must be submitted to maintain eligibility, and information that must be retained for auditing purposes.

DUPLICATION:

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

ALTERNATIVES:

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

FEDERAL STANDARDS:

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

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

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

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Education Department

EMERGENCY RULE MAKING

Continuing Education Requirements for Veterinarians and Veterinary Technicians

I.D. No. EDU-04-17-00005-E
Filing No. 296
Filing Date: 2017-05-01
Effective Date: 2017-05-01

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

Action taken: Amendment of section 62.8 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a) and 6704-a; L. 2016, ch. 398

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

Specific reasons underlying the finding of necessity: The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement Chapter 398 of the Laws of 2016, which amends subdivision (2) of section 6704-a of the Education Law, and took effect on February 2, 2017. Currently, during each three-year registration period, an applicant for registration as a veterinarian must complete at least 45 hours of continuing education, acceptable to the Department, a maximum of 22 ½ hours of which may be self-instructional coursework. Self-instructional coursework is presently defined as structured study, provided by a Department approved sponsor, that is based on audio, audio-visual, written, online, and/or other media, and does not include live instruction, transmitted in person or otherwise, during which the student may communicate and interact with the instructor and other students. Chapter 398 amends subdivision (2) of section 6704-a of the Education Law, by revising the above-referenced self-instructional coursework definition to include free spaying and neutering and other veterinary services in conjunction with a municipality, duly incorporated not-for-profit society for the prevention of cruelty to animals, duly incorporated humane society, or duly incorporated animal protection association or persons who would otherwise be eligible under paragraph (a) of subdivision three of section one hundred seventeen-a of the Agriculture and Markets Law, provided that such services be administered at practices, facilities and properties that are appropriately equipped and staffed to provide such services.

Chapter 398 further amends subdivision (2) of section 6704-a of the Education Law by permitting the Department to offset up to three hours of the requisite number of hours of continuing education by the number of free spaying and neutering services rendered by an applicant, at a rate of one-half of one hour of continuing education for each hour of free spaying and neutering services, provided that a veterinarian shall be required to provide follow-up service for any post-operative complications related to the surgery that arise within twenty-four hours of performing the surgery, and shall also be required to complete the core triennial continuing education requirements established by the Department.

Chapter 398 encourages continuing education that also benefits the communities the veterinarians serve by allowing veterinarians to use the triennial registration period to perform community services that would reduce the animal shelter overcrowding that leads to euthanasia, as well as the economic burden for municipalities experiencing growing budget shortfalls.

The proposed amendment was adopted as an emergency action at the January 9-10, 2017 Regents meeting and became effective on February 2, 2017. However, since the publication of a Notice of Proposed Rule Making in the State Register on January 25, 2017 and a Notice of Emergency Adoption on February 15, 2017, the Department received multiple comments from one public commenter on the proposed amendment. The Department is reviewing this public comment to determine whether additional amendments are needed before the final adoption of a permanent rule. In the interim, a second emergency adoption is necessary to ensure the emergency rule adopted at the January 2017 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule or until the effective date of a revised rule's adoption as a permanent rule.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for adoption, after expiration of the

required 45-day comment period provided for in State Administrative Procedure Act (SAPA) sections 202(1) and (5), and a determination by the Department as to whether additional amendments are needed before final adoption of a permanent rule, would be the May 8-9, 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment (if no revisions are made to the proposed amendment), if adopted at the May 2017 meeting would be May 24, 2017, the date a Notice of Adoption would be published in the State Register. If the Department determines that further revisions are needed based on the public comment received, it is anticipated that the proposed rule will be presented for adoption as a permanent rule at the July 17-18, 2017 meeting of the Board of Regents, with an effective date of August 2, 2017. However, the January 2017 emergency rule will expire on April 30, 2017.

Therefore, emergency action is necessary at the April 2017 Regents meeting for the preservation of the public health and general welfare in order to enable the State Education Department to immediately establish the requirements to implement Chapter 398 of the Laws of 2016, so that applicants for registration as veterinarians have the ability satisfy up to three hours of their required triennial 45 hours of continuing education, as long as it meets specified statutory requirements, by providing free spaying and neutering services and other veterinary services, which will encourage such applicants to consider participating in continuing education that also benefits the communities the veterinarians serve by allowing veterinarians to use the triennial registration period to perform community services that would reduce the animal shelter overcrowding that leads to euthanasia, as well as the economic burden for municipalities experiencing growing budget shortfalls.

Subject: Continuing education requirements for veterinarians and veterinary technicians.

Purpose: Provides that veterinarians may provide free spaying and neutering services as part of their continuing education requirements.

Text of emergency rule: 1. Paragraph (3) of subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education is amended, as follows:

(3) Self-instructional coursework means structured study, provided by a sponsor approved pursuant to subdivision (i) of this section, that is based on audio, audio-visual, written, on-line, and/or other media, and does not include live instruction, transmitted in person or otherwise, during which the student may communicate and interact with the instructor and other students *and may include free spaying and neutering and other veterinary services in conjunction with a municipality, duly incorporated not-for-profit society for the prevention of cruelty to animals, duly incorporated humane society, or duly incorporated animal protection association or persons who would otherwise be eligible under paragraph (a) of subdivision three of section one hundred seventeen-a of the agriculture and markets law, provided that such services be administered at practices, facilities and properties that are appropriately equipped and staffed to provide such services*.

2. Paragraph (4) of subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education is added, as follows:

(4) Other veterinary services means follow-up service(s) for any post-operative complications related to any free spaying or neutering surgery, as defined in paragraph (3) of this subdivision, that arise within twenty-four hours of performing any such surgery.

3. Paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education is amended, as follows:

(1) General Requirement.

(i) During each three-year registration period, meaning a registration period of a three years' duration, an applicant for registration as a veterinarian shall complete at least 45 hours of continuing education, acceptable to the department, as defined in paragraph (2) of this subdivision, a maximum of 22 1/2 hours of which may be self-instructional coursework acceptable by the department. *Furthermore, for an applicant for registration as a veterinarian, the department may offset up to three hours of the requisite number of hours of continuing education required, pursuant to subdivision (2) of section 6704-a of the education law, by the number of free spaying and neutering services rendered by such an applicant, at a rate of one-half of one hour of continuing education for each hour of free spaying and neutering services, provided that such services satisfy the requirements of subparagraph (i) of paragraph (a) of subdivision (2) of section 6704-a of the Education Law, that the veterinarian shall be required to provide follow-up service for any post-operative complications related to the surgery that arise within twenty-four hours of performing the surgery, and shall also be required to complete the core requirements established by the department. Any such hours shall be considered part of the maximum of 22 1/2 hours of self-instructional coursework, which an applicant may complete, per each three-year registration period, to satisfy the 45 hours of continuing education requirement. Such veterinarians are otherwise required to complete the core requirements for veterinary continuing education established by the department as described in this section.*

(ii) During each three-year registration period, meaning a registration period of three years' duration, an applicant for registration as a veterinary technician shall complete 24 hours of continuing education, acceptable to the department, as defined in paragraph (2) of this subdivision, a maximum of 12 hours of which may be self-instructional coursework acceptable to the department. [Any licensed veterinarian or veterinary technician whose first registration date following January 1, 2011 occurs less than three years from that date, but on or after January 1, 2012, shall complete continuing education hours on a prorated basis at the rate of 1 1/4 hours per month, in the case of a veterinarian, and 40 minutes per month, in the case of a veterinary technician, for the period beginning January 1, 2012 up to the first registration date thereafter. Such continuing education shall be completed during the period beginning January 1, 2010 and ending before the first day of the new registration period.]

[(ii)]*(iii)* During each triennial registration period, at least two hours of the required continuing education credits shall focus on the use, misuse, documentation, safeguarding and prescribing of controlled substances.

[(iii)]*(iv)* Proration. Unless otherwise prescribed in this section, during each registration period of less than three years' duration, an applicant for registration shall complete acceptable continuing education, as defined in paragraph (2) of this subdivision and within the limits prescribed in such paragraph, on a prorated basis at a rate of 1 1/4 hours in the case of a veterinarian and 40 minutes per month in the case of a veterinary technician.

4. Subdivision (g) of section 62.8 of the Regulations of the Commissioner of Education is amended, as follows:

(g) Licensee records.

(1) Each licensee subject to the requirements of this section shall maintain, or ensure access by the department to, a record of completed continuing education, which includes: the title of the course if a course, the type of educational activity if other than a course of learning, the subject of the continuing education course or activity, the number of hours of continuing education completed, the sponsor's name and any identifying number (if applicable), attendance verification if a course, verification of participation if another educational activity, and the date and location of the continuing education. Such records shall be retained for at least six years from the date of completion of the continuing education and shall be made available for review by the department in the administration of the requirements of this section. A sponsor's failure to satisfy its obligations under subdivision (i) of this section shall not relieve a licensee of his or her obligation to provide evidence of participation in a continuing education activity for which credit is claimed.

(2) Each applicant for registration as a veterinarian seeking to offset up to three hours of the required number of hours of continuing education, pursuant to subdivision (2) of section 6704-a of the education law, by the number of free spaying and neutering services rendered by such an applicant, shall maintain, on a form prescribed by the department, and ensure access by the department to, a record of all the free spaying and neutering services provided by the applicant, as well as any follow-up services for any post-operative complications related to any free spaying or neutering surgery, as defined in paragraph (3) of subdivision (a) of this section, that arise within twenty-four hours of performing any such surgery. Such records shall be retained for at least six years from the date of completion of the continuing education and shall be made available for review by the department in the administration of the requirements of this section.

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-04-17-00005-P, Issue of January 25, 2017. The emergency rule will expire June 29, 2017.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

Section 6704-a of the Education Law establishes the mandatory triennial continuing education requirements for veterinarians.

Subdivision (b) of section 6704-a of the Education Law, as amended by Chapter 398 of the Laws of 2016, allows veterinarians to satisfy a portion of their mandatory triennial continuing education requirements by performing free spaying and neutering services and other veterinary services in conjunction with a municipality, SPCA, humane society or animal protection association.

2. LEGISLATIVE OBJECTIVES:

The proposed rule carries out the intent of the aforementioned statutes that the Department shall supervise the regulation of the practice of the professions for the benefit of the public. The proposed rule will conform the Regulations of the Commissioner to Chapter 398 of the Laws of 2016 which amends subdivision (2) of section 6704-a of the Education Law, effective February 2, 2017, to allow veterinarians to satisfy a portion of their mandatory triennial continuing education requirements by performing free spaying and neutering services and other veterinary services in conjunction with a municipality, SPCA, humane society or animal protection association. Chapter 398 encourages continuing education that also benefits the communities the veterinarians serve by allowing veterinarians to use the triennial registration period requirements to perform community services that would reduce the animal shelter overcrowding that leads to euthanasia, as well as the economic burden for municipalities experiencing growing budget shortfalls.

Specifically, the proposed amendment provides that, for an applicant for registration as a veterinarian, the Department may offset up to three hours of the requisite number of hours of continuing education by the number of free spaying and neutering services rendered by an applicant, at a rate of one-half of one hour of continuing education for each hour of free spaying and neutering services, provided that a veterinarian shall be required to provide follow-up service for any post-operative complications related to the free spaying and neutering surgery that arise within twenty-four hours of performing the surgery, and shall also be required to complete the core continuing education requirements established by the Department. The proposed amendment further provides that any such services shall be considered part of the maximum of 22 ½ hours of self-instructional coursework, which an applicant may complete, per each three-year registration period, to satisfy the 45 hours of continuing education requirement.

The proposed amendment moves the general continuing education requirement provisions for applicants for registration as veterinary technicians to a new subparagraph (ii) of paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education. The proposed amendment of subparagraphs (ii) and (iii) of paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education reflects the renumbering of these subparagraphs as subparagraphs (iii) and (vi), respectively.

The proposed amendment to subdivision (g) of section 62.8 of the Regulations of the Commissioner of Education adds a requirement that an applicant for registration as a licensed veterinarian seeking to satisfy a portion of his or her continuing education requirements by providing free spaying and neutering services shall maintain, on a form prescribed by the Department, and ensure access by the Department to, a record of all the free spaying and neutering services provided by the applicant, as well as any follow-up services for any post-operative complications related to any free spaying or neutering surgery that arise within twenty-four hours of performing any such surgery. Such records shall be retained for at least six years from the date of completion of the continuing education and shall be made available for review by the Department in the administration of the requirements of this section. The proposed amendment also separates subdivision (g) of section 62.8 of the Regulations of the Commissioner of Education into paragraphs (1) and (2).

Finally, the proposed amendment would also repeal certain regulatory provisions relating to the proration of the required continuing education requirements for veterinarians and veterinary technicians which were applicable during the initial implementation process of the continuing education requirements for these two veterinary medicine professions, as those provisions no longer have any application.

3. NEEDS AND BENEFITS:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Chapter 398 of the Laws of 2016. The purpose of the proposed rule is to permit veterinarians to satisfy a portion of their mandatory triennial continuing education requirements by providing free spaying and neutering services and other veterinary services, as long as they satisfy other requirements, in order to encourage continuing education that also benefits the communities the veterinarians serve by allowing veterinarians to use the triennial registration period requirements to perform community services that would reduce the animal shelter overcrowding that leads to euthanasia, as well as the economic burden for municipalities experiencing growing budget shortfalls.

4. COSTS:

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

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

(c) Costs to private regulated parties: The proposed rule does not impose any additional costs on regulated parties beyond those imposed by statute.

(d) Costs to the regulatory agency: The proposed rule does not impose any additional costs on the Department beyond those imposed by statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule implements amendments to Article 135 of the Education Law, as added by Chapter 398 of the Laws of 2016, to allow veterinarians to satisfy a portion of their mandatory triennial continuing education requirements by performing free spaying and neutering services in conjunction with a municipality, SPCA, humane society or animal protection association. It does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment to subdivision (g) of section 62.8 of the Regulations of the Commissioner of Education adds a requirement that an applicant for registration as a licensed veterinarian seeking to satisfy a portion of his or her continuing education requirements by providing free spaying and neutering services shall maintain, on a form prescribed by the Department, and ensure access by the Department to, a record of all the free spaying and neutering services provided by the applicant, as well as any follow-up services for any post-operative complications related to any free spaying or neutering surgery that arise within twenty-four hours of performing any such surgery. Such records shall be retained for at least six years from the date of completion of the continuing education and shall be made available for review by the Department in the administration of the requirements of this section.

7. DUPLICATION:

There are no other state or federal requirements on the subject matter of this proposed rule. Therefore, the proposed rule does not duplicate other existing state or federal requirements, and is necessary to implement Chapter 398 of the Laws of 2016.

8. ALTERNATIVES:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Chapter 398 of the Laws of 2016. There are no significant alternatives to the proposed rule and none were considered.

9. FEDERAL STANDARDS:

Since, there are no applicable federal standards for continuing education for licensed veterinarians. The proposed rule does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 398 of the Laws of 2016. The proposed amendment will become effective May 1, 2017. It is anticipated that regulated parties will be able to comply with the proposed amendments by the effective date.

Regulatory Flexibility Analysis

The proposed rule implements the requirements of Chapter 398 of the Laws of 2016, which, effective February 2, 2017, amends subdivision (2) of section 6704-a of the Education Law to provide veterinarians with the option of satisfying a portion of their mandatory triennial continuing education requirements by providing free spaying and neutering services and other veterinary services, as long as they meet other specified requirements. The proposed rule does not impose any new reporting, recordkeeping, or other compliance requirements or costs, or have an adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the proposed rule that it will not adversely affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed rule will apply to all licensed veterinarians, who voluntarily seek to satisfy a portion of their mandatory triennial continuing education requirements by providing free spaying and neutering services and other veterinary services, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the approximately 6,527 licensed veterinarians who are registered to practice in New York State, approximately 1,452 reported their permanent address of record is in a rural county of the State.

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

As required by Chapter 398 of the Laws of 2016, which will become effective February 2, 2017, the proposed rule provides veterinarians with the option of satisfying a portion of their mandatory triennial continuing education requirements by performing free spaying and neutering services and other veterinary services in conjunction with a municipality, duly incorporated not-for-profit society for the prevention of cruelty to animals, duly incorporated humane society, or duly incorporated animal protection association or persons who would otherwise be eligible under paragraph (a) of subdivision three of section one hundred seventeen-a of the Agriculture and Markets Law, provided that such services be administered at practices, facilities and properties that are appropriately equipped and staffed to provide such services. The proposed amendment to section 62.8 of the Regulations of the Commissioner of Education implements the requirements of Chapter 398 for permitting licensed veterinarians to satisfy a portion of their mandatory triennial continuing education requirements by performing free spaying and neutering services and other veterinary services, as long as they satisfy other specified requirements.

The proposed amendment of paragraph (3) of subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education amends the definition of self-instructional coursework to include the provision of free spaying and neutering and other veterinary services, as long as they satisfy other specified requirements, including, but not limited to, providing such services in conjunction with a municipality, duly incorporated not-for-profit society for the prevention of cruelty to animals, duly incorporated humane society, or duly incorporated animal protection association.

The proposed addition of paragraph (4) to subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education defines other veterinary services as follow-up service(s) for any post-operative complications related to any free spaying or neutering surgery, as defined in paragraph (3) of subdivision (a), that arise within twenty-four hours of performing any such surgery.

The proposed amendment of subparagraph (i) of paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education provides that, for an applicant for registration as a veterinarian, the Department may offset up to three hours of the requisite number of hours of continuing education by the number of free spaying and neutering services rendered by an applicant, at a rate of one-half of one hour of continuing education for each hour of free spaying and neutering services, provided that a veterinarian shall be required to provide follow-up service for any post-operative complications related to the surgery that arise within twenty-four hours of performing the surgery, and shall also be required to complete the core requirements established by the Department. The proposed amendment further provides that any such services shall be considered part of the maximum of 22 ½ hours of self-instructional coursework, which an applicant may complete, per each three-year registration period, to satisfy the 45 hours of continuing education requirement. The proposed amendment moves the general continuing education requirement provisions for applicants for registration as veterinary technicians to a new subparagraph (ii) of paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education. The proposed amendment would also repeal certain regulatory provisions relating to the proration of the required continuing education requirements for veterinarians and veterinary technicians which were applicable during the initial implementation process of the continuing education requirements for these two veterinary medicine professions, as those provisions no longer have any application.

The proposed amendment of subparagraphs (ii) and (iii) of paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education reflects the renumbering of these subparagraphs as subparagraphs (iii) and (vi), respectively.

The proposed amendment to subdivision (g) of section 62.8 of the Regulations of the Commissioner of Education adds a requirement that an applicant for registration as a licensed veterinarian seeking to satisfy a portion of his or her continuing education requirements by providing free spaying and neutering services shall maintain, on a form prescribed by the Department, and ensure access by the Department to, a record of all the free spaying and neutering services provided by the applicant, as well as any follow-up services for any post-operative complications related to any free spaying or neutering surgery that arise within twenty-four hours of performing any such surgery. Such records shall be retained for at least six years from the date of completion of the continuing education and shall be made available for review by the Department in the administration of the requirements of this section. The proposed amendment also separates subdivision (g) of section 62.8 of the Regulations of the Commissioner of Education into paragraphs (1) and (2).

The proposed rule will not require any licensed veterinarian to provide free spaying and neutering and other veterinary services to satisfy a portion of his or her mandatory triennial continuing education requirements. The proposed rule will not impose any reporting, recordkeeping or other compliance requirements on licensed veterinarians in rural areas, unless they seek to satisfy a portion of their mandatory triennial continuing education requirements by providing free spaying and neutering and other veterinary services. Such licensed veterinarians will have recordkeeping obligations related to any of the aforementioned services that they provided to satisfy a portion of their continuing education requirements. Additionally, such licensed veterinarians will be required to both retain any such records for at least six years from the date of completion of the continuing education and make them available for review by the Department upon request.

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

3. COSTS:

The proposed rule does not impose any additional costs on individuals or entities within rural areas.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to conform the Commissioner's Regulations with Education Law section 6704-a, as amended by Chapter 398 of the Laws of 2016, which allows veterinarians to satisfy a portion of their mandatory triennial continuing education requirements by performing free spaying and neutering services and other veterinary services in conjunction with a municipality, SPCA, humane society or animal protection association. The statutory requirements do not make exceptions for individuals who live or work in rural areas. Thus, the State Education Department has determined that the proposed rule's requirements should apply to all veterinarians seeking to satisfy a portion of their continuing education requirements by providing the aforementioned services, regardless of their geographic location, to help ensure consistency and continuing competency across the State. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

The State Board for Veterinary Medicine was consulted and provided input in the development of the proposed rule and their proposed comments were considered in its development. This Board has members who live and work and/or provide veterinary services in rural areas.

6. INITITIAL 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 the third calendar year. The justification for the five year review period is that the proposed rule is necessary to implement the statutory requirements of Chapter 398 of the Laws of 2016, and, therefore, the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

Currently, during each three-year registration period, an applicant for registration as a veterinarian must complete at least 45 hours of continuing education, acceptable to the Department, a maximum of 22½ hours of which may be self-instructional coursework. Self-instructional coursework is presently defined as structured study, provided by a Department approved sponsor, that is based on audio, audio-visual, written, on-line, and/or other media, and does not include live instruction, transmitted in person or otherwise, during which the student may communicate and interact with the instructor and other students.

Chapter 398 of the Laws of 2016, which takes effect February 2, 2017, amends subdivision (2) of section 6704-a of the Education Law, by revising the above-referenced self-instructional coursework definition to include free spaying and neutering and other veterinary services in conjunction with a municipality, duly incorporated not-for-profit society for the prevention of cruelty to animals, duly incorporated humane society, or duly incorporated animal protection association or persons who would otherwise be eligible under paragraph (a) of subdivision three of section one hundred seventeen-a of the Agriculture and Markets Law, provided that such services be administered at practices, facilities and properties that are appropriately equipped and staffed to provide such services. Chapter 398 encourages continuing education that also benefits the communities the veterinarians serve by allowing veterinarians to use the triennial registration period to perform community services that would reduce the animal shelter overcrowding that leads to euthanasia, as well as the economic burden for municipalities experiencing growing budget shortfalls.

Chapter 398 further amends subdivision (2) of section 6704-a of the Education Law by permitting the Department to offset up to three hours of the requisite number of hours of continuing education by the number of free spaying and neutering services rendered by an applicant, at a rate of one-half of one hour of continuing education for each hour of free spaying

and neutering services, provided that a veterinarian shall be required to provide follow-up service for any post-operative complications related to the free spaying and neutering surgery that arise within twenty-four hours of performing any such surgery, and shall also be required to complete the core continuing education requirements that have already been established by the Department in section 62.8 of the Regulations of the Commissioner of Education.

The purpose of the purposed amendment to section 62.8 of the Regulations of the Commissioner of Education is to implement Chapter 398 of the Laws of 2016.

The proposed amendment of paragraph (3) of subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education amends the definition of self-instructional coursework to include the provision of free spaying and neutering and other veterinary services, as long as they satisfy other specified requirements, including, but not limited to, providing such services in conjunction with a municipality, duly incorporated not-for-profit society for the prevention of cruelty to animals, duly incorporated humane society, or duly incorporated animal protection association.

The proposed addition of paragraph (4) to subdivision (a) of section 62.8 of the Regulations of the Commissioner of Education defines other veterinary services as follow-up service(s) for any post-operative complications related to any free spaying or neutering surgery, as defined in paragraph (3) of subdivision (a), that arise within twenty-four hours of performing any such surgery.

The proposed amendment of subparagraph (i) of paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education provides that, for an applicant for registration as a veterinarian, the Department may offset up to three hours of the requisite number of hours of continuing education by the number of free spaying and neutering services rendered by an applicant, at a rate of one-half of one hour of continuing education for each hour of free spaying and neutering services, provided that a veterinarian shall be required to provide follow-up service for any post-operative complications related to the surgery that arise within twenty-four hours of performing the surgery, and shall also be required to complete the core continuing education requirements that have already been established by the Department in section 62.8 of the Regulations of the Commissioner of Education. The proposed amendment further provides that any such services shall be considered part of the maximum of 22½ hours of self-instructional coursework, which an applicant may complete, per each three-year registration period, to satisfy the 45 hours of continuing education requirement. The proposed amendment moves the general continuing education requirement provisions for applicants for registration as veterinary technicians to a new subparagraph (ii) of paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education. The proposed amendment would also repeal certain regulatory provisions relating to the proration of the required continuing education requirements for veterinarians and veterinary technicians which were applicable during the initial implementation process of the continuing education requirements for these two veterinary medicine professions, as those provisions no longer have any application.

The proposed amendment of subparagraphs (ii) and (iii) of paragraph (1) of subdivision (c) of section 62.8 of the Regulations of the Commissioner of Education reflects the renumbering of these subparagraphs as subparagraphs (iii) and (vi), respectively.

The proposed amendment to subdivision (g) of section 62.8 of the Regulations of the Commissioner of Education adds a requirement that an applicant for registration as a veterinarian seeking to satisfy a portion of his or her continuing education requirements by providing free spaying and neutering services shall maintain, on a form prescribed by the Department, and ensure access by the Department to, a record of all the free spaying and neutering services provided by the applicant, as well as any follow-up services for any post-operative complications related to any free spaying or neutering surgery that arise within twenty-four hours of performing any such surgery. Such records shall be retained for at least six years from the date of completion of the continuing education and shall be made available for review by the Department in the administration of the requirements of this section. The proposed amendment also separates subdivision (g) of section 62.8 of the Regulations of the Commissioner of Education into paragraphs (1) and (2).

The proposed amendment which provides applicants for registration as veterinarians the option of satisfying a portion of their mandatory triennial continuing education requirements by providing free spaying and neutering services, as long as they meet certain specified requirements, repeals outdated provisions, and renumbers certain provisions, will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Financial Services

NOTICE OF ADOPTION

Valuation of Life Insurance Reserves and Recognition of the 2001 CSO Mortality Table and the 2017 CSO Mortality Table, *et al*

I.D. No. DFS-09-17-00002-A
Filing No. 294
Filing Date: 2017-04-28
Effective Date: 2017-05-17

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

Action taken: Amendment of Parts 98 (Regulation 147) and 100 (Regulation 179) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 1304, 1308, 4217, 4218, 4221, 4224, 4240 and 4517

Subject: Valuation of Life Insurance Reserves and Recognition of the 2001 CSO Mortality Table and the 2017 CSO Mortality Table, *et al*.

Purpose: To adopt the 2017 CSO Mortality Table.

Text or summary was published in the March 1, 2017 issue of the Register, I.D. No. DFS-09-17-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Amanda Fenwick, New York State Department of Financial Services, One Commerce Plaza, Albany, New York 12257, (518) 474-7929, email: Amanda.Fenwick@dfs.ny.gov

Assessment of Public Comment
The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Private Passenger Motor Vehicle Insurance Multi-Tier Programs

I.D. No. DFS-20-17-00001-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 154.6 (Regulation 150) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 2301, 2303, 2349 and art. 23

Subject: Private Passenger Motor Vehicle Insurance Multi-Tier Programs.

Purpose: To ensure education level attained/occupational status in initial tier placement/movement does not result in unfair rate.

Text of proposed rule: A new Section 154.6 is added as follows:

Section 154.6 Use of Education Level Attained and/or Occupational Status in Multi-Tier Programs

(a) Background.

(1) Insurance Law section 2301 provides that the purpose of Insurance Law Article 23, in relevant part, is to "promote the public welfare by regulating insurance rates to the end that rates shall not be excessive, inadequate, unfairly discriminatory…." As a corollary, Insurance Law section 2303 requires, in relevant part, that rates not be excessive, inadequate, or unfairly discriminatory. In applying this rule, accepted actuarial standards and New York law require that a reasonable relationship exist between the characteristics of a class and the hazard insured against, and that the insurer bear the burden of establishing whether these requirements have been met.

(2) Pursuant to Insurance Law section 308, the superintendent initiated an investigation of the use of an insured's education level attained and/or occupational status within the voluntary market by certain private passenger motor vehicle insurers in their underwriting rules governing initial tier placement. During this investigation, the superintendent learned that some, but not all, insurers in the state use an individual's education level attained and/or occupational status in establishing initial tier placement. The insurers' consideration of these factors has resulted in cases where classes of insureds have been placed in less favorably rated tiers, which may lead to higher premiums, without adequate substantia-

tion that an individual's level of education attained and/or occupational status relates to his or her driving ability or habits such that the insurer would suffer a greater risk of loss. The insurers failed to provide sufficient support for the existence of the necessary relationship for the use of occupational status or any convincing evidence to support the necessary relationship for the use of an insured's level of education attained, whether alone or in combination with occupational status. As a result, the insurers failed to establish that their use of education and/or occupation in establishing initial tier placement was not unfairly discriminatory.

(3) To ensure that use of education level attained and/or occupational status in initial tier placement or tier movement shall not result in a rate that violates Article 23, the use of such variables by an insurer shall comply with the rules in this section or shall not be used to determine initial tier placement, tier movement, or premium rate for private passenger automobile insurance in the voluntary market in the State.

(b) Use of Education Level Attained in Multi-Tier Programs. As a result of the superintendent's determination following investigation that certain insurers' use of education level attained in initial tier placement results in unfairly discriminatory rates, an insurer shall not use an individual's education level attained as a factor in either initial tier placement or tier movement at all, unless the insurer demonstrates to the satisfaction of the superintendent that its use of education level attained in initial tier placement or tier movement shall not result in a rate that violates Insurance Law Article 23.

(c) Use of Occupational Status in Multi-Tier Programs.

(1) Except as provided in paragraph (2) of this subdivision, an insurer shall not use occupational status as a factor in either initial tier placement or tier movement, unless the insurer demonstrates to the satisfaction of the superintendent that its use of occupational status in initial tier placement or tier movement shall not result in a rate that violates Insurance Law Article 23.

(2) An insurer may use occupational status as a factor in initial tier placement and tier movement provided that each of the following conditions is satisfied and the insurer demonstrates to the satisfaction of the superintendent that its use of the factor shall not result in a rate that violates Insurance Law Article 23:

(i) the insurer demonstrates to the satisfaction of the superintendent that each particular occupation grouping has a reasonable relationship to an insureds' driving ability or habits such that an insurer would predictably suffer a greater or lesser risk of loss;

(ii) an insured's income shall not be a risk characteristic, whether directly or indirectly;

(iii) an unemployed person who was previously employed, including a retired person, shall remain in the group designated for his or her previous occupation regardless of the amount of time since such person was last employed;

(iv) the insurer shall establish a group separate from its other occupational groups that contains homemakers and those insureds who have never been employed, which group shall be a neutral factor for impacting rates;

(v) where the insured's initial tier placement is influenced by occupational status, the insurer shall provide tier movement rules that address a change in the insured's occupational status at the time of renewal providing the insured with the opportunity to reduce his or her premium;

(vi) any rate differential permitted under this paragraph shall be commensurate with the related reduction of loss costs and associated premiums; and

(vii) where insufficient data exists with respect to a particular occupation and the insurer wishes to align that occupation in a group with a similar one, the insurer shall have a sufficiently reasonable explanation for placing the two occupations in the same group.

(d) Notwithstanding section 154.2 of this Part, an insurer shall not use education level attained and/or occupational status as a factor in initial tier placement unless the insurer files with the superintendent its underwriting rules governing tier placement and the superintendent approves the rules in accordance with Insurance Law Article 23 as part of the insurer's multi-tier program. An insurer that, as of the effective date of this paragraph had utilized education level attained and/or occupational status in its initial tier placement, shall amend its multi-tier rating program and tier movement rules within 90 days after the effective date of this section to comply with this section for policies issued on or after such date.

(e) Every insurer that uses education level attained and/or occupational status in accordance with this section as a factor in its multi-tier program shall provide a written notice acceptable to the superintendent at least annually to the first-named insured that conspicuously explains how an insured may notify the insurer or its agent of any update in the insured's education level attained and/or occupational status that would result in a reduction of premium.

Text of proposed rule and any required statements and analyses may be obtained from: Stephen Doody, NYS Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5127, email: Stephen.Doody@dfs.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: Financial Services Law Sections 202 and 302 and Insurance Law Sections 301, 2301, 2303, and 2349, and Insurance Law Article 23.

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

Insurance Law Article 23 governs property/casualty insurance rates generally, including rating classifications and rules. Insurance Law Section 2301 states that the purpose of Article 23, in relevant part, is to promote the public welfare by regulating insurance rates to the end that they not be excessive, inadequate, or unfairly discriminatory. Insurance Law Section 2303 provides, in relevant part, that rates may not be excessive, inadequate, unfairly discriminatory, destructive of competition, or detrimental to the solvency of insurers.

Insurance Law Section 2349 permits an insurer to make available a multi-tier program, with more than one rate level in the same company, for private passenger motor vehicle insurance in the voluntary market under certain conditions, including that the program is based upon mutually exclusive underwriting rules per tier, to the extent feasible. For the purposes of Section 2349 and Insurance Regulation 150, "private passenger motor vehicle insurance policy" means a covered policy of automobile insurance as defined in Insurance Law Section 3425 providing liability or physical damage insurance, or both.

2. Legislative objectives: As stated in Insurance Law Section 2301, the purpose of Article 23, in relevant part, is to promote the public welfare by regulating insurance rates to the end that they not be excessive, inadequate, or unfairly discriminatory. Accordingly, Insurance Law Section 2303 requires that rates not be excessive, inadequate, unfairly discriminatory, destructive of competition, or detrimental to the solvency of insurers. In applying this rule, accepted actuarial standards and New York law require that a reasonable relationship must exist between the characteristics of a class and the hazard insured against, and that the insurer bear the burden of establishing whether its rates meet these requirements.

In addition, Insurance Law Section 2349 permits an insurer to make available a multi-tier program, with more than one rate level in the same company, for private passenger motor vehicle insurance policies in the voluntary market under certain conditions, including that the program is based upon mutually exclusive underwriting rules per tier, to the extent feasible. As per Insurance Regulation 150, the insurer's multi-tier program must accord with the requirements of Article 23. Insurance Regulation 150 was promulgated in 1995 to implement the legislative purposes of Section 2349.

This rule, amending Insurance Regulation 150, addresses specific concerns that have recently come to the attention of the Department of Financial Services ("Department") regarding the use of occupational status or educational level attained in private passenger motor vehicle insurance in the voluntary market in a way that does not appear to satisfy the requirements of Article 23. Accordingly, this rule, as more fully discussed in Needs and Benefits, makes clear than an insurer may not use occupational status or educational level attained as a factor in either initial tier placement or tier movement unless the insurer demonstrates, to the Superintendent's satisfaction, that the use of occupational status or educational level attained in initial tier placement or tier movement does not result in a rate that violates Insurance Law Article 23, Thus, this rule accords with the public policy objectives that the Legislature sought to advance in Insurance Law Sections 2301, 2303, and 2349.

3. Needs and benefits: Insurance Law Section 2303 requires that rates not be excessive, inadequate, unfairly discriminatory, destructive of competition, or detrimental to the solvency of insurers. In addition, Insurance Law Section 2349 permits an insurer to make available a multi-tier program, with more than one rate level in the same company, for private passenger motor vehicle insurance in the voluntary market under certain conditions, including that the program is based upon mutually exclusive underwriting rules per tier, to the extent feasible.

Pursuant to Insurance Law Section 308, the Superintendent initiated an investigation of the use of an insured's education level attained or occupational status within the voluntary market by certain private passenger motor vehicle insurers in their underwriting rules governing initial tier placement. During this investigation, the Superintendent learned that some, but not all, insurers in the state use an individual's education level

attained or occupational status in establishing initial tier placement. The insurers' consideration of these factors has resulted in cases where classes of insureds have been placed in less favorably rated tiers, which may lead to higher premiums, without adequate substantiation that an individual's level of education attained or occupational status relates to his or her driving ability or habits such that the insurer would suffer a greater risk of loss. The insurers failed to provide sufficient support for the existence of the necessary relationship for the use of occupational status or any convincing evidence to support the necessary relationship for the use of an insured's level of education attained, whether alone or in combination with occupational status. As a result, the insurers failed to establish that their use of education and occupation in establishing initial tier placement was not unfairly discriminatory.

The amended rule makes clear that an insurer may not use occupational status or educational level attained as a factor in either initial tier placement or tier movement unless the insurer demonstrates, to the Superintendent's satisfaction, that the use of occupational status or educational level attained in initial tier placement or tier movement does not result in a rate that violates Insurance Law Article 23.

While an insurer generally does not file initial tier placement rules with the Department under the regulation currently, the rule also prohibits an insurer from using occupational status or education level attained as a factor in initial tier placement unless the insurer files with the Superintendent its underwriting rules governing tier placement and the Superintendent approves the rules in accordance with Insurance Law Article 23 as part of the insurer's multi-tier program. In addition, the rule requires an insurer that, as of the effective date of this rule, had utilized education level attained or occupational status in its initial tier placement, to amend its multi-tier rating program and tier movement rules within 90 days after the effective date of the rule to comply with the rule for new policies. It further requires every such insurer to provide a written notice acceptable to the Superintendent, at least annually, to the first-named insured that conspicuously explains how an insured may notify the insurer or its agent of any update in the insured's educational level attained or occupational status that would result in a reduction of premium.

4. Costs: This rule will impose compliance costs on an insurer that: (a) seeks to utilize education level attained or occupational status in its initial tier placement because it now must file with the Superintendent its underwriting rules regarding initial tier placement; or (b) had utilized education level attained or occupational status in its initial tier placement because it now must amend its multi-tier rating program and tier movement rules within 90 days after the rule's effective date. In addition, an insurer that uses education level attained or occupational status as a factor in its multi-tier rating program must provide a written notice acceptable to the Superintendent, at least annually, to the first-named insured that conspicuously explains how an insured may notify the insurer or its agent of any update in the insured's educational level attained or occupational status that would result in a reduction of premium.

The costs are difficult to estimate because of several factors, such as the number of tier placement and movement rules and the number of first-named insureds to whom the insurer must send an annual written notice. The amount or expense incurred by each insurer will vary dependent upon whether the insurer utilizes such factors in its multi-tier rating program and by the size of the insurer.

The Department also may incur costs for the implementation and continuation of this rule, because the Department will need to review and approve the underwriting rules regarding initial tier placement and the written notice that insurers must send to first-named insureds annually. However, any additional costs incurred should be minimal and the Department should be able to absorb the costs in its ordinary budget.

This rule does not impose compliance costs on any local government.

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

6. Paperwork: Insurers that intend to use, or have used, education level attained or occupational status will incur additional paperwork because this rule requires every insurer that: (a) seeks to utilize education level attained or occupational status in its initial tier placement to file with the Superintendent its underwriting rules regarding initial tier placement; (b) had utilized education level attained or occupational status in its initial tier placement to amend its multi-tier rating program and tier movement rules within 90 days after the rule's effective date; and (c) uses education level attained or occupational status as a factor in its multi-tier rating program to provide a written notice acceptable to the Superintendent, at least annually, to the first-named insured that conspicuously explains how an insured may notify the insurer or its agent of any update in the insured's educational level attained or occupational status that would result in a reduction of premium.

7. Duplication: This rule does not duplicate, overlap, or conflict with any existing state or federal rules or other legal requirements.

8. Alternatives: The Department considered requiring an insurer that had utilized education level attained or occupational status in its initial tier placement to amend its multi-tier rating program and tier movement rules within 90 days after the rule's effective date. The Department also considered applying an immediate effective date to the final regulation. To allow insurers additional time to comply with the regulation, the proposed rule (1) provides an insurer 180 days to amend its multi-tier rating program and tier movement rules if the insurer has been utilizing education level attained or occupation status in its rating program and (2) has a proposed effective date of 90 days after publication of the final regulation in the State Register.

9. Federal standards: The rule does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: An insurer must comply with this rule within 90 days after the rule is published in the State Register, except that an insurer that had utilized education level attained or occupational status in its initial tier placement must amend its multi-tier rating program and tier movement rules within 90 days after the rule's effective date.

Regulatory Flexibility Analysis

1. Effect of rule: As stated in Insurance Law § 2301, the purpose of Article 23, in relevant part, is to promote the public welfare by regulating insurance rates to the end that they not be excessive, inadequate, or unfairly discriminatory. Accordingly, Insurance Law § 2303 requires that rates not be excessive, inadequate, unfairly discriminatory, destructive of competition, or detrimental to the solvency of insurers. In applying this rule, accepted actuarial standards and New York law require that a reasonable relationship must exist between the characteristics of a class and the hazard insured against, and that the insurer bear the burden of establishing whether these requirements have been met.

In addition, Insurance Law § 2349 permits an insurer to make available a multi-tier program, with more than one rate level in the same company, for private passenger motor vehicle insurance in the voluntary market under certain conditions, including that the program is based upon mutually exclusive underwriting rules per tier, to the extent feasible.

This rule makes clear that in order for an insurer to use occupational status or educational level attained as a factor in either initial tier placement or tier movement, with regard to private passenger motor vehicle insurance in the voluntary market, the insurer must demonstrate, to the satisfaction of the Superintendent of Financial Services ("Superintendent"), that its use of occupational status or educational level attained in initial tier placement or tier movement does not result in a rate that violates Insurance Law Article 23. As such, it should not affect local governments.

Industry asserts that certain insurers, in particular mutual insurers, subject to the rule fall within the definition of a "small business" as defined by State Administrative Procedure Act § 102(8) because in general they are independently owned and have fewer than 100 employees.

2. Compliance requirements: No local government will have to undertake any reporting, recordkeeping, or other affirmative acts to comply with the rule because the rule does not apply to any local government. An insurer that is a small business affected by this rule, if any, will be subject to reporting, recordkeeping, or other compliance requirements because an insurer that: (a) seeks to utilize education level attained or occupational status in its initial tier placement must file with the Superintendent its underwriting rules regarding initial tier placement; (b) had utilized education level attained or occupational status in its initial tier placement must amend its multi-tier rating program and tier movement rules within 90 days after the rule's effective date; and (c) uses education level attained or occupational status as a factor in its multi-tier rating program must provide a written notice acceptable to the Superintendent, at least annually, to the first-named insured that conspicuously explains how an insured may notify the insurer or its agent of any update in the insured's educational level attained or occupational status that would result in a reduction of premium.

3. Professional services: No local government will need professional services to comply with this rule because the rule does not apply to any local government. No insurer that is a small business affected by the rule, if any, should need to retain professional services, such as lawyers or auditors, to comply with this rule.

4. Compliance costs: No local government will incur any costs to comply with this rule because the rule does not apply to any local government. An insurer that is a small business affected by this rule, if any, will incur additional compliance costs because the insurer that: (a) seeks to utilize education level attained or occupational status in its initial tier placement must file with the Superintendent its underwriting rules regarding initial tier placement; (b) had utilized education level attained or occupational status in its initial tier placement must amend its multi-tier rating program and tier movement rules within 90 days after the rule's effective date; and (c) uses education level attained or occupational status as a factor in its multi-tier rating program must provide a written notice acceptable to the Superintendent, at least annually, to the first-named insured

that conspicuously explains how an insured may notify the insurer or its agent of any update in the insured's educational level attained or occupational status that would result in a reduction of premium.

5. Economic and technological feasibility: This rule does not apply to any local government; therefore, no local government should experience any economic or technological impact as a result of the rule. No insurer that is a small business affected by this rule, if any, should experience any economic or technological impact as a result of the rule.

6. Minimizing adverse impact: There will not be an adverse impact on any local government because the rule does not apply to any local government. This rule should not have an adverse impact on an insurer that is a small business affected by the rule, if any, because the rule uniformly affects all insurers that are subject to the rule.

7. Small business and local government participation: Small businesses and local governments will have an opportunity to participate in the rule-making process when the proposed rule is published in the State Register and posted on the Department of Financial Services' website.

Rural Area Flexibility Analysis

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

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule imposes additional reporting, recordkeeping, and other compliance requirements by requiring an insurer that: (a) seeks to utilize education level attained or occupational status in its initial tier placement to file with the Superintendent of Financial Services ("Superintendent") its underwriting rules regarding initial tier placement; (b) had utilized education level attained or occupational status in its initial tier placement to amend its multi-tier rating program and tier movement rules within 90 days after the rule's effective date; and (c) uses education level attained or occupational status as a factor in its multi-tier rating program to provide a written notice acceptable to the Superintendent, at least annually, to the first-named insured that conspicuously explains how an insured may notify the insurer or its agent of any update in the insured's educational level attained or occupational status that would result in a reduction of premium.

An insurer in a rural area should not need to retain professional services, such as lawyers or auditors, to comply with this rule.

3. Costs: This rule will impose compliance costs on an insurer that: (a) seeks to utilize education level attained or occupational status in its initial tier placement because it must now file with the Superintendent its underwriting rules regarding initial tier placement; (b) had utilized education level attained or occupational status in its initial tier placement because it must amend its multi-tier rating program and tier movement rules within 90 days after the rule's effective date; and (c) uses education level attained or occupational status as a factor in its multi-tier rating program because it must provide a written notice acceptable to the Superintendent, at least annually, to the first-named insured that conspicuously explains how an insured may notify the insurer or its agent of any update in the insured's educational level attained or occupational status that would result in a reduction of premium.

The costs are difficult to estimate because of several factors, such as the number of tier placement and movement rules and the number of first-named insureds to whom the insurer must send an annual written notice. The amount or expense incurred by each insurer will vary depending upon whether the insurer utilizes such factors in its multi-tier rating program and by the size of the insurer. Any additional costs to insurers in rural areas should be commensurate with costs for insurers in non-rural areas.

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

5. Rural area participation: Insurers in rural areas will have an opportunity to participate in the rule-making process when the proposed rule is published in the State Register and posted on the Department of Financial Services' website.

Job Impact Statement

The Department does not expect that the rule will adversely impact jobs or employment opportunities in New York State. With respect to insurers, the rule makes clear that an insurer may not use occupational status or educational level attained as a factor in either initial tier placement or tier movement, with respect to private passenger motor vehicle insurance in the voluntary market, unless the insurer demonstrates, to the satisfaction of the Superintendent of Financial Services ("Superintendent"), that its use of occupational status or educational level attained in initial tier placement or tier movement does not result in a rate that violates Insurance Law Article 23.

The rule also requires an insurer that uses occupational status or education level attained as a factor in initial tier placement to file with the Superintendent for approval its underwriting rules governing tier placement in accordance with Insurance Law Article 23 as part of the insurer's multi-tier program. In addition, the rule requires an insurer that, as of the effective date of this rule, had utilized education level attained or occupational status in its initial tier placement, to amend its multi-tier rating program and tier movement rules within 90 days after the effective date of the rule to comply with the rule for new policies. The rule further requires every such insurer to provide a written notice acceptable to the Superintendent, at least annually, to the first-named insured that conspicuously explains how an insured may notify the insurer or its agent of any update in the insured's educational level attained or occupational status that would result in a reduction of premium.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Financial Statement Filings and Accounting Practices and Procedures

I.D. No. DFS-20-17-00004-P

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

Proposed Action: This is a consensus rule making to amend Part 83 (Regulation 172) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 107(a)(2), 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law, sections 4403, 4403-a, 4403-(c)(12) and 4408-a; L. 2002, ch. 599; L. 2008, ch. 311

Subject: Financial Statement Filings and Accounting Practices and Procedures.

Purpose: To update citations in Part 83 to the Accounting practices and Procedures Manual as of March 2017 (instead of 2016).

Text of proposed rule: Subdivision (c) of section 83.2 is amended to read as follows:

(c) To assist in the completion of the financial statements, the NAIC also adopts and publishes from time to time certain policy, procedures and instruction manuals. The latest of these manuals, the Accounting Practices and Procedures Manual as of March [2016] *2017* * (accounting manual) includes a body of accounting guidelines referred to as statements of statutory accounting principles (SSAPs). The accounting manual shall be used in the preparation of quarterly statements and the annual statement for [2016] *2017*, which will be filed in [2017] *2018*.

* ACCOUNTING PRACTICES AND PROCEDURES MANUAL AS OF MARCH [2016] *2017*. © Copyright 1999 – [2016] *2017* by National Association of Insurance Commissioners, in Kansas City, Missouri.

Text of proposed rule and any required statements and analyses may be obtained from: Sally Geisel, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-7608, email: sally.geisel@dfs.ny.gov

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

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

Consensus Rule Making Determination

Statement that the Proposed Fourteenth Amendment to Regulation 172 (11 NYCRR 83) is a consensus rule and that no person is likely to object to its adoption.

No person is likely to object to amendment of the rule that adopts the most recent edition of the Accounting Practices and Procedures Manual As of March 2017 ("2017 Accounting Manual"), published by the National Association of Insurance Commissioners ("NAIC"), and replaces the rule's current reference to the Accounting Practices and Procedures Manual As of March 2016.

All states require insurers to comply with the 2017 Accounting Manual, which establishes uniform practices and procedures for U.S.-licensed insurers. Adoption of the rule is necessary for the Department to maintain its accreditation status with the NAIC. The NAIC-accreditation standards require that state insurance regulators have adequate statutory and administrative authority to regulate insurers' corporate and financial affairs, and that they have the necessary resources to carry out that authority.

The Department determines this rule to be a consensus rule, as defined in State Administrative Procedure Act § 102(11) (SAPA), and is proposed pursuant to SAPA § 202(1)(b)(i). Accordingly, this rulemaking is exempt from the requirement to file a Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments or a Rural Area Flexibility Analysis.

Job Impact Statement

The Department of Financial Services ("Department") believes that this rulemaking will not have any impact on jobs and employment opportuni-

ties, including self-employment opportunities. The amendment adopts the most recent edition published by the National Association of Insurance Commissioners ("NAIC") of the Accounting Practices and Procedures Manual As of March 2017 ("2017 Accounting Manual"), replacing the rule's current reference to the Accounting Practices and Procedures Manual As of March 2016.

All states require insurers to comply with the 2017 Accounting Manual, which establishes uniform practices and procedures for U.S.-licensed insurers. Adoption of the rule is necessary for the Department to maintain its accreditation status with the NAIC. The NAIC accreditation standards require that state insurance regulators have adequate statutory and administrative authority to regulate insurers' corporate and financial affairs, and that they have the necessary resources to carry out that authority.

Department of Health

NOTICE OF ADOPTION

HIV/AIDS Testing, Reporting and Confidentiality of HIV-Related Information

I.D. No. HLT-50-16-00008-A
Filing No. 289
Filing Date: 2017-04-26
Effective Date: 2017-05-17

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

Action taken: Amendment of Part 63 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2786 and 2139

Subject: HIV/AIDS Testing, Reporting and Confidentiality of HIV-Related Information.

Purpose: To simplify HIV testing consent and improve linkage to care.

Substance of final rule: Effective April 1, 2014, amendments contained in the 2014-15 enacted New York State budget authorized certain changes to HIV testing in New York State. These amendments simplified HIV testing as part of routine medical care, improved linkage to care, and made New York State law consistent with Centers for Disease Control and Prevention (CDC) recommendations for routine HIV screening in healthcare settings.

Effective April 1, 2015, amendments contained in the 2015-16 enacted New York State budget authorized the elimination of the requirement of written consent for HIV testing in New York State correctional facilities.

Effective November 28, 2016, amendments contained in Chapter 502 of the Laws of 2016 require that, at a minimum, the individual be advised that an HIV-related test is going to be performed, that no such test be performed if the individual objects, and that any objection by the individual be noted in the individual's medical record. Chapter 502 also expands the requirement to offer HIV testing to individuals over the age of 64.

Effective March 28, 2017, Chapter 461 of the Laws of 2016 allows disclosure of confidential HIV-related information to qualified researchers for medical research purposes upon the approval of a research protocol under applicable State or federal law.

Key provisions of these regulation amendments implementing the legislation include:

- Removing the requirement for informed consent prior to ordering an HIV-related test, including elimination of written consent for HIV testing in New York State correctional facilities, and removing references to consent forms.
- Adding a provision stating that performing an HIV test as part of routine medical care requires at a minimum advising that an HIV-related test is being performed, prior to ordering an HIV-related test.
- Removing the reference to expiration of an individual's informed consent.
- Adding a provision authorizing local and state health departments to share HIV surveillance information with health care providers, including entities engaged in care coordination, for purposes of patient linkage and retention in care.
- Clarifying language pertaining to reporting by blood and tissue banks.
- Inserting updates to the list of reportable HIV-related test results that need to be reported. These updates are consistent with CDC and Association of Public Health Laboratories guidance related to the diagnosis of HIV infection. Additionally, reporting of results for NYS residents and NYS-located clinicians is explicitly required. This change was designed to address known gaps in reporting.
- Including language specifically stating that reports must include the requesting provider and facility. The requirement is expected to improve the quality of provider data and lead to more complete data. This should improve accuracy of the Department's surveillance data and, consequently, the National HIV/AIDS Strategy retention and care measures.
- Removing the requirement that the information on HIV provider reporting forms associated with newly diagnosed cases of HIV infection be reported within 60 days.
- Adding individuals who were previously diagnosed as HIV positive, and who are at elevated risk of transmitting HIV to others, to the contact notification prioritization process.
- Removing the requirement that data on the partners of HIV cases be destroyed after three years, and stating that the Department will establish a policy for "record retention and schedule for disposition."
- Eliminating the upper age limit of 64 for the offering of HIV testing.
- Allowing the disclosure of HIV related information to qualified researchers in compliance with State and federal law.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 63.3(a), (b), 63.4, 63.8(b) and (j).

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

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

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

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 2022, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The New York State Department of Health (NYSDOH) received a total of 36 comments, which all expressed support of the proposed amendments to Part 63 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York. Comments were received from health care providers, community-based organizations and government stakeholders.

Comment:

Commenters requested that NYSDOH remove all references to "informed consent" for HIV-testing.

Response:

The final regulation removes a reference to informed consent in section 63.3(d) to clarify that during routine medical care, a provider may perform an HIV test by simply advising the individual, or, when the individual lacks capacity to consent, a person authorized to consent to health care for such individual, that an HIV test will be performed, unless the individual objects.

Comment:

Commenters requested that NYSDOH clarify that when a patient lacks capacity to consent, the advisement that an HIV test will be performed should be to the individual authorized to consent to health care for the patient.

Response:

NYSDOH agrees that if the patient lacks capacity to consent, the health care provider must advise the person authorized to consent to health care for the patient. The final regulation includes that clarification in section 63.3(a).

Comment:

Commenters suggested that the regulation uses the terms "protected individual" or "individual" to refer to the patient, consistent with the definition in Public Health Law section 2780(6) and 10 NYCRR section 63.1(g).

Response:

NYSDOH agrees, and the final regulation adopts this convention in most instances. The regulation does, however, still use the word "patient" in a few instances where the word is more appropriate in context.

Comment:

The existing regulation requires that a person who orders an HIV test provide the laboratory with information specified by NYSDOH. NYSDOH requires that such information include the protected individual's addresses and date of birth. One commenter suggested that NYSDOH incorporate this requirement explicitly in the regulation.

Response:

NYSDOH accepts this recommendation. In the final regulation, in section 63.3(a), the word "address" has been replaced with "addresses and date of birth."

Comment:

One commenter requested that the regulation not restrict how providers explain the seven key points under Public Health Law section 2781(2) when ordering an HIV test.

Response:

NYSDOH accepts this recommendation. In the proposed regulation, the phrase "through electronic, written or oral means" was intended to allow the explanation of the seven key points through any means. The final regulation deletes this phrase to clarify that providers are not limited in how they may explain the seven key points, so long as the provider does in fact provide the explanation.

Comment:

As reflected in the proposed regulation, during routine care, a health care provider may not perform an HIV test over the patient's objection. The Public Health Law, however, provides for court-ordered HIV testing in certain cases. One commenter suggested language to clarify that the regulation allows an HIV test over the objection of the individual being tested pursuant to law and regulation.

Response:

NYSDOH agrees with this comment. The final regulation adds the words "except as authorized or required by law" to section 63.3(a) and 63.3(b)(7).

Comment:

One commenter suggested minor changes to the wording of the requirements for post-test counseling of persons who test HIV-positive. The commenter asked that the regulation specify that the term "social services" includes public benefits, in relation to discrimination. The commenter also suggested a minor change in the wording of the requirement to inform individuals that providers may contact them for purposes of linkage and retention in care.

Response:

NYSDOH accepts these suggestions. The final regulation makes minor changes to the wording of section 63.3(e)(2) and section 63.3(e)(13).

Comment:

In section 63.8(j), the proposed regulation states that NYSDOH shall establish a records retention and disposition schedule for the destruction of information identifying a contact collected in the course of contact notification activities, rather than the current requirement of destruction within three years. A local health department (LHD) suggested that the regulation should allow LHDs to establish their own records retention and disposition schedules.

Response:

The intent of the proposed regulation was to allow the government agency that maintains the records to establish its own records retention and disposition schedule. Accordingly, the final regulation clarifies that where an LHD maintains the records instead of NYSDOH, the LHD may establish its own records retention and disposition schedule.

Comment:

One commenter suggested amending 63.4(a)(2) to add reporting for "all results of a diagnostic algorithm interpreted as positive for HIV antibody and/or HIV nucleic acid" and amending 63.4(a)(4) to add "reporting of the nucleotide sequence."

Response:

The "diagnostic algorithm" referenced in the commenter's suggested language is recommended by the Centers for Disease Control and Prevention (CDC), the Association of Public Health Laboratories, and the U.S. Food and Drug Administration (FDA) for initial patient screening and diagnosis. It is not recommended for screening blood or organ donors for HIV infection, which is the basis for the reporting requirement in Section 63.4(a)(2). The suggested language for section 63.4(a)(4) is also unnecessary, because the Commissioner can designate a different reporting format if HIV molecular testing technology changes. Accordingly, NYSDOH did not make any changes in response to this comment.

Comment:

Commenters suggested that the proposed amendment to Part 63 authorizes sharing of incarcerated patient data with outside organizations without limiting language ensuring privacy. Additionally, the commenter expressed concern over eliminating the "informed consent" requirement for HIV testing for incarcerated individuals, related to confidentiality.

Response:

The regulation involves minimal risk to confidentiality. Incarcerated individuals are treated the same as non-incarcerated individuals. No changes were made to the regulations in response to these comments.

Comment:

One commenter expressed concerns about the elimination of verbal notification that an HIV test will be performed.

Response:

At a minimum, patients must be orally advised that HIV testing will be conducted, and patients always have the right to decline the test. If the health care provider wishes, the provider may obtain consent to an HIV test in writing, in which case verbal notification is not required.

NOTICE OF ADOPTION

Federal Conditions of Participation

I.D. No. HLT-51-16-00003-A
Filing No. 292
Filing Date: 2017-04-27
Effective Date: 2017-05-17

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

Action taken: Amendment of Part 405 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803

Subject: Federal Conditions of Participation.

Purpose: To reflect amendments consistent with updated Federal Conditions of Participation.

Text or summary was published in the December 21, 2016 issue of the Register, I.D. No. HLT-51-16-00003-P.

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

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

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 no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

A letter of public comment was submitted by the New York Chapter of the American College of Physicians ("ACP") regarding the self-administration of medical marijuana. These comments and the New York State Department of Health's responses are summarized below.

COMMENT: ACP asked what kind of health care practitioner may make the required clinical assessment of a patient to determine whether the patient can safely and accurately administer medical marijuana.

RESPONSE: The regulations only specify that the health care practitioner must be "responsible for the patient's care." A hospital that wishes to permit self-administration of medical marijuana must develop policies and procedures to ensure that an appropriate health care practitioner performs the assessment. Such policies and procedures should specify which practitioners may make this determination.

COMMENT: ACP stated that hospital pharmacists and nurses are not trained in the safe and accurate administration of medical marijuana. Additionally, ACP stated that requiring hospitals to ensure that a patient's medical marijuana "is identified and visually evaluated for integrity" is unreasonable and that providers should not be expected to perform these tasks.

RESPONSE: Pursuant to Public Health Law (PHL) § 3362(1)(d), approved medical marijuana products must be properly labeled and kept in the original package in which they are dispensed. A hospital that wishes to permit self-administration of medical marijuana must develop policies and procedures to ensure that approved medical marijuana products are kept in the original packaging and properly labeled. A properly labeled product must include:

- The name and address of the registered organization that dispensed the product;
- The registry identification number of the certified patient and/or designated caregiver;
- Any recommendation or limitation by the practitioner as to the form or forms of medical marijuana or dosage for the certified patient;
- The form and quantity of medical marijuana dispensed;
- The expiration date; and
- The amount of individual dose contained within.

This information should be readily available on the packaging of any approved medical marijuana product a certified patient seeks to self-administer. In addition, the hospital's policies and procedures should ensure:

- That the quantity of medical marijuana in the package does not exceed the quantity indicated on the label;
- That the individual dose to be self-administered by the patient does not exceed the individual dose described on the label; and
- That approved medical marijuana products are not self-administered after the expiration date indicated on the label.

The Department believes that it is reasonable to require health care practitioners to verify this information. In addition, each registered organization that dispenses medical marijuana is required by regulation to have a

pharmacist on staff. If a health care practitioner at a hospital has any questions concerning the integrity of a product, the practitioner should contact the dispensing facility pharmacist.

COMMENT: ACP stated that allowing medical marijuana to be returned to a deceased patient's family is unreasonable because it is not legal for medication prescribed to an individual to be transferred to another individual. Additionally, ACP stated that medical marijuana should be destroyed or disposed of along with any other unused prescription medication.

RESPONSE: The regulations allow medical marijuana to be turned over for destruction or disposal to a designated caregiver as defined by PHL § 3360(5). Pursuant to PHL § 3362(1), designated caregivers are specifically authorized to possess approved medical marijuana products. A hospital may also choose to turn over unused medical marijuana to appropriate law enforcement.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Lead Testing in School Drinking Water

I.D. No. HLT-20-17-00013-P

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

Proposed Action: Addition of Subpart 67-4 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 1370-a and 1110

Subject: Lead Testing in School Drinking Water.

Purpose: Requires lead testing and remediation of potable drinking water in schools.

Text of proposed rule: Pursuant to the authority vested in the Commissioner of Health by Public Health Law sections 1370-a and 1110, Subpart 67-4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is added, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

SUBPART 67-4: Lead Testing in School Drinking Water

Section 67-4.1 Purpose.

This Subpart requires all school districts and boards of cooperative educational services, including those already classified as a public water system under 10 NYCRR Subpart 5-1, to test potable water for lead contamination and to develop and implement a lead remediation plan, where applicable.

Section 67-4.2 Definitions.

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

(a) Action level means 15 micrograms per liter (µg/L) or parts per billion (ppb). Exceedance of the action level requires a response, as set forth in this Subpart.

(b) Building means any structure, facility, addition, or wing of a school that may be occupied by children or students. The terms shall not include any structure, facility, addition, or wing of a school that is lead-free, as defined in section 1417 of the Federal Safe Drinking Water Act.

(c) Commissioner means the State Commissioner of Health.

(d) Department means the New York State Department of Health.

(e) Outlet means a potable water fixture currently or potentially used for drinking or cooking purposes, including but not limited to a bubbler, drinking fountain, or faucets.

(f) Potable water means water that meets the requirements of 10 NYCRR Subpart 5-1.

(g) School means any school district or board of cooperative educational services (BOCES).

Section 67-4.3 Monitoring.

(a) All schools shall test potable water for lead contamination as required in this Subpart.

(b) First-draw samples shall be collected from all outlets, as defined in this Subpart. A first-draw sample volume shall be 250 milliliters (mL), collected from a cold water outlet before any water is used. The water shall be motionless in the pipes for a minimum of 8 hours, but not more than 18 hours, before sample collection. First-draw samples shall be collected pursuant to such other specifications as the Department may determine appropriate.

(c) Initial first-draw samples.

(1) For existing buildings in service as of the effective date of this regulation, schools shall complete collection of initial first-draw samples according to the following schedule:

(i) for any school serving children in any of the levels prekindergarten through grade five, collection of samples is to be completed by September 30, 2016;

(ii) for any school serving children in any of the levels grades six through twelve that are not also serving students in any of the levels prekindergarten through grade five, and all other applicable buildings, collection of samples is to be completed by October 31, 2016.

(2) For buildings put into service after the effective date of this regulation, initial first-draw samples shall be performed prior to occupancy; provided that if the building is put into service between the effective date of this regulation but before October 31, 2016, the school shall have 30 days to perform first-draw sampling.

(3) Any first-draw sampling conducted consistent with this Subpart that occurred after January 1, 2015 shall satisfy the initial first-draw sampling requirement.

(d) Continued monitoring. Schools shall collect first-draw samples in accordance with subdivision (b) of this section again in 2020 or at an earlier time as determined by the commissioner. Schools shall continue to collect first-draw samples at least every 5 years thereafter or at an earlier time as determined by the commissioner.

(e) All first-draw samples shall be analyzed by a laboratory approved to perform such analyses by the Department's Environmental Laboratory Approval Program (ELAP).

Section 67-4.4 Response.

If the lead concentration of water at an outlet exceeds the action level, the school shall:

(a) prohibit use of the outlet until:

(1) a lead remediation plan is implemented to mitigate the lead level of such outlet; and

(2) test results indicate that the lead levels are at or below the action level;

(b) provide building occupants with an adequate supply of potable water for drinking and cooking until remediation is performed;

(c) report the test results to the local health department as soon as practicable, but no more than 1 business day after the school received the laboratory report; and

(d) notify all staff and all persons in parental relation to students of the test results, in writing, as soon as practicable but no more than 10 business days after the school received the laboratory report; and, for results of tests performed prior to the effective date of this Subpart, within 10 business days of this regulation's effective date, unless such written notification has already occurred.

Section 67-4.5 Public Notification.

(a) List of lead-free buildings. By October 31, 2016, the school shall make available on its website a list of all buildings that are determined to be lead-free, as defined in section 1417 of the Federal Safe Drinking Water Act.

(b) Public notification of testing results and remediation plans.

(1) The school shall make available, on the school's website, the results of all lead testing performed and lead remediation plans implemented pursuant to this Subpart, as soon as practicable, but no more than 6 weeks after the school received the laboratory reports.

(2) For schools that received lead testing results and implemented lead remediation plans in a manner consistent with this Subpart, but prior to the effective date of this Subpart, the school shall make available such information, on the school's website, as soon as practicable, but no more than 6 weeks after the effective date of this Subpart.

Section 67-4.6 Reporting.

(a) As soon as practicable but no later than November 11, 2016, the school shall report to the Department, local health department, and State Education Department, through the Department's designated statewide electronic reporting system:

(1) completion of all required first-draw sampling;

(2) for any outlets that were tested prior to the effective date of this regulation, and for which the school wishes to assert that such testing was in substantial compliance with this Subpart, an attestation that:

(i) the school conducted testing that substantially complied with the testing requirements of this Subpart, consistent with guidance issued by the Department;

(ii) any needed remediation, including re-testing, has been performed;

(iii) the lead level in the potable water of the applicable building(s) is currently below the action level; and

(iv) the school has submitted a waiver request to the local health department, in accordance with Section 67-4.8 of this Subpart; and

(3) a list of all buildings that are determined to be lead-free, as defined in section 1417 of the Federal Safe Drinking Water Act.

(b) As soon as practicable, but no more than 10 business days after the school received the laboratory reports, the school shall report data relating to test results to the Department, local health department, and State Education Department, through the Department's designated statewide electronic reporting system.

Section 67-4.7 Recordkeeping.

The school shall retain all records of test results, lead remediation plans, determinations that a building is lead-free, and waiver requests, for ten years following the creation of such documentation. Copies of such documentation shall be immediately provided to the Department, local health department, or State Education Department, upon request.

Section 67-4.8 Waivers.

(a) A school may apply to the local health department for a waiver from the testing requirements of this Subpart, for a specific school, building, or buildings, by demonstrating in a manner and pursuant to standards determined by the Department, that:

(1) prior to the publication date of these regulations, the school conducted testing that substantially complied with the testing requirements of this Subpart;

(2) any needed remediation, including re-testing, has been performed; and

(3) the lead level in the potable water of the applicable building(s) is currently below the action level.

(b) Local health departments shall review applications for waivers for compliance with the standards determined by the Department. If the local health department recommends approval of the waiver, the local health department shall send its recommendation to the Department, and the Department shall determine whether the waiver shall be issued.

Section 67-4.9 Enforcement.

(a) Upon reasonable notice to the school, an officer or employee of the Department or local health department may enter any building for the purposes of determining compliance with this Subpart.

(b) Where a school does not comply with the requirements of this Subpart, the Department or local health department may take any action authorized by law, including but not limited to assessment of civil penalties as provided by law.

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

The statutory authorities for the proposed regulation are set forth in Public Health Law (PHL) §§ 1110 and 1370-a. Section 1110 of the PHL directs the Department of Health (Department) to promulgate regulations regarding the testing of potable water provided by school districts and boards of cooperative education services (BOCES) (collectively, "schools") for lead contamination. Section 1370-a of the PHL authorizes the Department to establish programs and coordinate activities to prevent lead poisoning and to minimize the risk of exposure to lead.

Legislative Objective:

The legislative objective of PHL § 1110 is to protect children by requiring schools to test their potable water systems for lead contamination. Similarly, PHL § 1370-a authorizes the Department to establish programs and coordinate activities to prevent lead poisoning and to minimize the risk of exposure to lead. Consistent with these objectives, this regulation adds a new Subpart 67-4 to Title 10 of the New York Codes, Rules, and Regulations, establishing requirements for schools to test their potable water outlets for lead contamination.

Needs and Benefits:

Lead is a toxic material that is harmful to human health if ingested or inhaled.

Children and pregnant women are at the greatest risk from lead exposure. Scientists have linked lead exposure with lowered IQ and behavior problems in children. It is also possible for lead to be stored in bones and it can be released into the bloodstream later in life, including during pregnancy. Further, during pregnancy, lead in the mother's bloodstream can cross the placenta, which can result in premature birth and low birth weight, as well as problems with brain, kidney, or nervous system development, and learning and behavior problems. Studies have also shown that low levels of lead can negatively affect adults, leading to heart and kidney problems, as well as high blood pressure and nervous system disorders.

Lead is a common metal found in the environment. The primary source of lead exposure for most children is lead-based paint. However, drinking water is another source of lead exposure due to the lead content of certain plumbing materials and source water.

Laws now limit the amount of lead in new plumbing materials. However, plumbing materials installed prior to 1986 may contain significant amounts of lead. In 1986, the federal government required that only "lead-free" materials be used in new plumbing and plumbing fixtures. Although this was a vast improvement, the law still allowed certain fixtures with up to 8 percent lead to be labeled as "lead free." In 2011, amendments to the Safe Drinking Water Act appropriately re-defined the definition of "lead-free." Although federal law now appropriately defines "lead-free," some older fixtures can still leach lead into drinking water.

Elevated lead levels are commonly found in the drinking water of school buildings, due to older plumbing and fixtures and intermittent water use patterns. Currently, only schools that have their own public water systems are required to test for lead contamination in drinking water.

In the absence of federal regulations governing all schools, the Department's regulations require all schools to monitor their potable drinking water for lead. The new regulations: establish an action level of 15 micrograms per liter (equivalent to parts per billion, or ppb) for lead in the drinking water of school buildings; establish initial and future monitoring requirements; require schools to develop remedial action plans if the action level is exceeded at any potable water outlet; conduct public notification of results to the school community; and report results to the Department. The Environmental Protection Agency's "3Ts for Reducing Lead in Drinking Water in Schools, Revised Technical Guidance" will be used as a technical reference for implementation of the regulation.

Compliance Costs:

Costs to Private Regulated Parties:

These regulations only applies to public schools. No private schools are affected.

Costs to State Government and Local Government:

These regulations applies to schools, which are a form of local government. There are approximately 733 school districts and 37 BOCES in New York State, which include over 5,000 school buildings that will be subject to this regulation.

The regulations require schools to test each potable water outlet for lead, in each school building occupied by children, unless the building is determined to be lead-free pursuant to federal standards. The cost for a single lead analysis ranges from $20 - $75 per sample. Initial monitoring requires one sample per outlet. The number of outlets will vary from building to building.

If lead is detected above 15 ppb at any potable water outlet, the outlet must be taken out of service and a remedial action plan must be developed to mitigate the lead contamination, at the school's initial expense. Remediation costs can vary significantly depending on the plumbing configuration and source of lead. The school will also incur minor costs for notification of the school community and local health department, posting the information on their website, and reporting electronically to the Department. Recently enacted legislation authorizes schools to receive State Aid through the State Education Department ("SED") to defray these costs.

Local health departments will also incur some administrative costs related to tracking local implementation, reviewing waiver applications, and compliance oversight. These activities will be eligible for State Aid through the Department's General Public Health Work program.

Local Government Mandates:

Schools, as a form of local government, are required to comply with the regulations, as detailed above.

Paperwork:

The regulation imposes recordkeeping requirements related to: monitoring of potable water outlets; notifications to the public and local health department; and electronic reporting to the Department.

Duplication:

There will be no duplication of existing State or Federal regulations.

Alternatives:

There are no significant alternatives to these regulations, which are being promulgated pursuant to recent legislation.

Federal Standards:

There are no federal statutes or regulations pertaining to this matter. However, the Department's regulations are consistent with the Unites States Environmental Protection Agency's guidance document titled 3Ts for Reducing Lead in Drinking Water in Schools, Revised Technical Guidance (available at: https://www.epa.gov/sites/production/files/ 2015-09/ documents/toolkit_leadschools_guide_3ts_leadschools.pdf). EPA's document will serve as guidance to schools for implementing the program.

Compliance Schedule:

Schools should already be in compliance with these regulations, pursuant to identical emergency regulations that were filed by the Department on September 6, 2016, which established compliance deadlines of September 30, 2016, and October 31, 2016, for elementary and higher-level grades, respectively. Further, both the emergency and these permanent regulations require schools to perform testing for purposes of monitoring in 2020, and at least every 5 years thereafter.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

This regulation applies to schools, which are a form of local

government. As explained in the Regulatory Impact Statement, the new regulations: establish an action level of 15 micrograms per liter (equivalent to parts per billion, or ppb) for lead in the drinking water of school buildings; establish initial and future monitoring requirements; require schools to develop remedial action plans if the action level is exceeded at any potable water outlet; conduct public notification of results to the school community; and report results to the Department. The Environmental Protection Agency's 3Ts for Reducing Lead in Drinking Water in Schools, Revised Technical Guidance will be used as a technical reference for implementation of the regulation. Local health departments will also incur some administrative costs related to tracking local implementation and oversight of the regulation.

Additionally, the regulations require the services of a laboratory certified by the Department under its Environmental Laboratory Approval Program (ELAP). Some schools may also wish to hire environmental consultants to assist with compliance. Some labs and environmental consultants qualify as small businesses and, at least initially, their services will be in greater demand due to the new regulation.

Compliance Requirements:

As noted above, the new regulations: establish an action level of 15 micrograms per liter (equivalent to parts per billion, or ppb) for lead in the drinking water in school buildings; establish initial and future monitoring requirements; require schools to develop remedial action plans if the action level is exceeded at any potable water outlet; conduct public notification of results to the school community; and requiring reporting of results to the Department.

Reporting and Recordkeeping:

The regulation will impose new monitoring, reporting, and public notification requirements for schools.

Professional Services:

As noted above, the regulations require the services of a laboratory certified by the Department under its Environmental Laboratory Approval Program (ELAP). Some schools may also wish to hire environmental consultants to assist with compliance.

Compliance Costs:

The regulation will require schools to test each potable water outlet for lead, in each school building occupied by children. The cost for a single lead analysis ranges from $20 - $75 per sample. Initial monitoring requires one sample per outlet. The number of outlets will vary from building to building.

If lead is detected above 15 ppb at any potable water outlet, the outlet must be taken out of service and a remedial action plan must be developed to mitigate the lead contamination, at the school's expense. Remediation costs can vary significantly depending on the plumbing configuration and source of lead. The school will also incur minor costs for notification of the school community and local health department, posting the information on their website, and reporting electronically to the Department. Recently enacted legislation authorizes schools to receive State Aid through the State Education Department ("SED") to defray these costs.

Local health departments will also incur some administrative costs related to tracking local implementation, reviewing waiver applications, and compliance oversight. These activities will be eligible for State Aid through the Department's General Public Health Work program.

Cost to Private Parties:

There are no costs to private parties.

Economic and Technological Feasibility:

The technology for lead testing of drinking water is well-established. With respect to schools' costs of compliance, State Aid will be available through the State Education Department to ensure that compliance is feasible. Local health department activities will be eligible for State Aid through the Department's General Public Health Work program.

Minimizing Adverse Impact:

Any school that has already performed testing in compliance with these regulations, as far back as January 1, 2015, does not need to perform sampling again. Further, consistent with the requirements of PHL § 1110, if a school has performed testing that substantially complies with the regulations, the school may apply to the Department for a waiver, so that additional testing is not required. In either case, the requirement to report sample results, and other requirements, remain in place.

School buildings that are determined to be "lead-free," as defined in section 1417 of the Federal Safe Drinking Water Act, do not need to test their outlets. School will be required to make available on their website a list of all buildings that are determined to be lead-free.

Small Business and Local Government Participation:

Although small businesses were not consulted on these specific regulations, the dangers of lead in school drinking water has garnered significant local, state, and national attention. The New York State School Board Association (NYSSBA) requested a meeting with the Department to discuss the impacts of the enabling legislation. NYSSBA provided feedback on testing, prior monitoring, and other matters. The Department took this feedback into consideration when drafting the regulation. The Department will also conduct public outreach, and there will be an opportunity to comment on the proposed permanent regulations. The Department will review all public comments received.

Rural Area Flexibility Analysis

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

Job Impact Statement

The Department expects there to be a positive impact on jobs or employment opportunities. Some school districts will likely hire firms or individuals to assist with regulatory compliance. Schools impacted by this amendment will require the professional services of a certified laboratory to perform the analyses for lead, which will create a need for additional laboratory capacity.

Categories and Numbers Affected:

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

Regions of Adverse Impact:

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

Minimizing Adverse Impact:

Not applicable.

Higher Education Services Corporation

EMERGENCY RULE MAKING

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

I.D. No. ESC-20-17-00002-E
Filing No. 293
Filing Date: 2017-04-28
Effective Date: 2017-04-28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Classroom instruction shall mean elementary and secondary education instruction, as required by the New York State Education Department, including enrichment and supplemental instruction that may be offered to a subset of students. Classroom instruction shall not include support services, such as counseling, speech therapy or occupational therapy services.

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

(6) Full-time study shall mean the number of credits required by the institution in each term of the approved master's degree in education program. A recipient may complete fewer credits than required for full-time study if he or she is in their last term and fewer credit hours are necessary to complete their degree program. In this case, the award amount shall be based on the tuition reported by the institution.

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

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

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

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

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

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

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

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

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

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

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

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

(d) Administration.

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

(2) Recipients of an award shall:

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

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

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

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

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

(e) Amounts.

(1) The amount of the award shall be determined in accordance with section 669-f of the education law.

(2) Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time upon successful completion of the term subject to the verification and certification by the institution of the recipient's grade point average and other eligibility requirements.

(3) Awards shall be reduced by the value of other educational grants and scholarships limited to tuition, as authorized by section 669-f of the education law.

(f) Failure to comply.

(1) All award monies received shall be converted to a 10-year student loan plus interest for recipients who fail to meet the statutory, regulatory, contractual, administrative or other requirement of this program.

(2) The interest rate for the life of the loan shall be fixed and equal to that published annually by the U.S. Department of Education for undergraduate unsubsidized Stafford loans at the time the recipient signed the service contract with the corporation.

(3) Interest shall begin to accrue on the day each award payment is disbursed to the institution.

(4) Interest shall be capitalized on the day the award recipient violates any term of the service contract or the date the corporation deems the recipient was no longer able or willing to perform the terms of the service contract. Interest on this capitalized amount shall continue to accrue and be calculated using simple interest until the amount is paid in full.

(5) Where a recipient has demonstrated extreme hardship as a result of a disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, postpone converting the award to a student loan, temporarily suspend repayment of the amount owed, prorate the amount owed commensurate with service completed, discharge the amount owed, or take such other appropriate action.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire July 26, 2017.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Masters-in-Education Teacher Incentive Scholarship Program ("Program") is codified within Article 14 of the Education Law. In particular, Subpart A of Chapter 56 of the Laws of 2015 created the Program by adding a new section 669-f to the Education Law. Subdivision 6 of section 669-f of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objectives and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 669-f to create the "New York State Masters-in-Education Teacher Incentive Scholarship Program" (Program). The objective of this Program is to incent New York's highest-achieving undergraduate students to pursue teaching as a profession.

Needs and benefits:

According to a recent Wall Street Journal article, many experts call teacher quality the most important school-based factor affecting learning. Studies underscore the impact of highly effective teachers and the need to put them in classrooms with struggling students to help them catch up. To improve teacher quality, New York State has significantly raised the bar by modifying the three required exams and adding the Educative Teacher Performance Assessment, known as edTPA, as part of the licensing requirement for all teachers. To supplement this effort, this Program aims to incentivize top undergraduate students to pursue their master's degree in New York State and teach in public elementary and secondary schools (including charter schools) across the State.

The Program provides for annual tuition awards to students enrolled full-time, at a New York State public institution of higher education, in a master's degree in education program leading to a career as a classroom teacher in elementary or secondary education. Eligible recipients may receive annual awards for not more than two academic years of full-time graduate study. The maximum amount of the award is equal to the annual tuition charged to New York State resident students attending a graduate program full-time at the State University of New York (SUNY). Payments will be made directly to schools on behalf of students upon certification of their successful completion of the academic term.

Students receiving a New York State Masters-in-Education Teacher Incentive Scholarship Program award must sign a service agreement and agree to teach in the classroom at a New York State public elementary or secondary school, which includes charter schools, for five years following completion of their master's degree. Recipients who do not fulfill their service obligation will have the value of their awards converted to a student loan and be responsible for interest.

Costs:

a. There are no application fees, processing fees, or other costs to the applicants of this Program.

b. It is anticipated that there will be no costs to the agency for the implementation of, or continuing compliance with this rule.

c. The maximum cost of the Program to the State is $1.5 million in the first year, based upon budget estimates.

d. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.

e. The source of the cost data in (c) above is derived from the New York State Division of the Budget.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic application, together with supporting documentation, for eligibility. Each year recipients will file an electronic request for payment together with supporting documentation for up to two years of award payments. Recipients are required to sign a contract for services in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to the State Education Department, the State University of New York and the City University of New York with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 679-g of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government and efforts were made to align it with similar federal subject areas as evidenced by the adoption of the federal undergraduate unsubsidized Stafford loan rate in the event that the award is converted to a student loan.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master's degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master's degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which benefits rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master's degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

Office of Parks, Recreation and Historic Preservation

NOTICE OF ADOPTION

Swimming in State Park Lands

I.D. No. PKR-09-17-00004-A
Filing No. 298
Filing Date: 2017-05-02
Effective Date: 2017-05-17

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

Action taken: Addition of section 375.1(t); and amendment of section 377.1(h) of Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, section 3.09(2), (5), (8) and (10)

Subject: Swimming in state park lands.

Purpose: To amend and clarify an outdated regulation.

Text or summary was published in the March 1, 2017 issue of the Register, I.D. No. PKR-09-17-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Shari Calnero, Associate Counsel, NYS Office of Parks, Recreation and Historic Preservation, 625 Broadway, Albany, NY 12238, (518) 486-2921, email: shari.calnero@parks.ny.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, 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.

Public Service Commission

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-37-16-00014-A
Filing Date: 2017-04-27
Effective Date: 2017-04-27

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

Action taken: On 4/20/17, the PSC adopted an order approving 61st & 2nd NYC, LLC's (61st & 2nd NYC) notice of intent to submeter electricity at 301 East 61st Street, New York, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Submetering of electricity.

Purpose: To approve 61st & 2nd NYC's notice of intent to submeter electricity.

Substance of final rule: The Commission, on April 20, 2017, adopted an order approving 61st & 2nd NYC, LLC's notice of intent to submeter electricity at 301 East 61st Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc., 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.

(16-E-0396SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-37-16-00015-A
Filing Date: 2017-04-26
Effective Date: 2017-04-26

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

Action taken: On 4/20/17, the PSC adopted an order approving 10 Sullivan Condominium's (10 Sullivan) notice of intent to submeter electricity at 10 Sullivan Street, New York, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Submetering of electricity.

Purpose: To approve 10 Sullivan's notice of intent to submeter electricity.

Substance of final rule: The Commission, on April 20, 2017, adopted an order approving 10 Sullivan Condominium's notice of intent to submeter electricity at 10 Sullivan Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc., 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.

(16-E-0400SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-40-16-00016-A
Filing Date: 2017-04-27
Effective Date: 2017-04-27

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

Action taken: On 4/20/17, the PSC adopted an order approving 301 East 50th Street Condominium's (301 East 50th Street) notice of intent to submeter electricity at 301 East 50th Street, New York, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Submetering of electricity.

Purpose: To approve 301 East 50th Street's notice of intent to submeter electricity.

Substance of final rule: The Commission, on April 20, 2017, adopted an order approving 301 East 50th Street Condominium's notice of intent to submeter electricity at 301 East 50th Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc., 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.

(16-E-0476SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-43-16-00003-A
Filing Date: 2017-04-26
Effective Date: 2017-04-26

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

Action taken: On 4/20/17, the PSC adopted an order approving Haus LLC's (Haus) notice of intent to submeter electricity at 152 Freeman Street, Brooklyn, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Submetering of electricity.

Purpose: To approve Haus's notice of intent to submeter electricity.

Substance of final rule: The Commission, on April 20, 2017, adopted an order approving Haus LLC's notice of intent to submeter electricity at 152 Freeman Street, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc., 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.

(16-E-0539SA1)

NOTICE OF ADOPTION

Submetering of Electricity and Waiver of Energy Audit

I.D. No. PSC-44-16-00018-A
Filing Date: 2017-04-27
Effective Date: 2017-04-27

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

Action taken: On 4/20/17, the PSC adopted an order approving 325 Kent LLC c/o Two Trees Management Co., LLC's (325 Kent) notice of intent to submeter electricity at 325 Kent Avenue, Brooklyn, New York and request for waiver of 16 NYCRR section 96.5(k)(3).

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Submetering of electricity and waiver of energy audit.

Purpose: To approve 325 Kent's notice of intent to submeter electricity and waiver request.

Substance of final rule: The Commission, on April 20, 2017, adopted an order approving 325 Kent LLC c/o Two Trees Management Co., LLC's notice of intent to submeter electricity at 325 Kent Avenue, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc. and request for waiver of 16 NYCRR § 96.5(k)(3), requiring an energy audit, 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.

(16-E-0399SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-46-16-00013-A
Filing Date: 2017-04-27
Effective Date: 2017-04-27

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

Action taken: On 4/20/17, the PSC adopted an order approving Hudson Cornell Tech LLC's (Hudson Cornell) notice of intent to submeter electricity at 1 East Loop Road, New York, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Submetering of electricity.

Purpose: To approve Hudson Cornell's notice of intent to submeter electricity.

Substance of final rule: The Commission, on April 20, 2017, adopted an order approving Hudson Cornell Tech LLC's notice of intent to submeter electricity at 1 East Loop Road, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc., 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.

(16-E-0553SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-46-16-00014-A
Filing Date: 2017-04-26
Effective Date: 2017-04-26

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

Action taken: On 4/20/17, the PSC adopted an order approving 846 6th Avenue Venture's (846 6th Avenue) notice of intent to submeter electricity at 50 West 30th Street, New York, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Submetering of electricity.

Purpose: To approve 846 6th Avenue's notice of intent to submeter electricity.

Substance of final rule: The Commission, on April 20, 2017, adopted an order approving 846 6th Avenue Venture's notice of intent to submeter electricity at 50 West 30th Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc., 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.

(16-E-0563SA1)

NOTICE OF ADOPTION

Submetering of Electricity and Waiver of Energy Audit

I.D. No. PSC-50-16-00004-A
Filing Date: 2017-04-26
Effective Date: 2017-04-26

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

Action taken: On 4/20/17, the PSC adopted an order approving Watermark Court Square Property Owner LLC's (Watermark) notice of intent to submeter electricity at 27-19 44th Drive, Long Island City, New York and request for waiver of 16 NYCRR section 96.5(k)(3).

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Submetering of electricity and waiver of energy audit.

Purpose: To approve Watermarks' notice of intent to submeter electricity and waiver request.

Substance of final rule: The Commission, on April 20, 2017, adopted an order approving Watermark Court Square Property Owner LLC's notice of intent to submeter electricity at 27-19 44th Drive, Long Island City, New York, located in the service territory of Consolidated Edison Company of New York, Inc. and request for waiver of 16 NYCRR § 96.5(k)(3), requiring an energy audit, 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.

(16-E-0625SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-51-16-00008-A
Filing Date: 2017-04-26
Effective Date: 2017-04-26

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

Action taken: On 4/20/17, the PSC adopted an order approving 172 Madison Condominium's (172 Madison) notice of intent to submeter electricity at 172 Madison Avenue, New York, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Submetering of electricity.

Purpose: To approve 172 Madison's notice of intent to submeter electricity.

Substance of final rule: The Commission, on April 20, 2017, adopted an order approving 172 Madison Condominium's notice of intent to submeter electricity at 172 Madison Avenue, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc., 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.

(16-E-0576SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-51-16-00009-A
Filing Date: 2017-04-26
Effective Date: 2017-04-26

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

Action taken: On 4/20/17, the PSC adopted an order approving the Board of Managers of the 111 Murray Street Condominium's (111 Murray) notice of intent to submeter electricity at 111 Murray Street, New York, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Submetering of electricity.

Purpose: To approve 111 Murray's notice of intent to submeter electricity.

Substance of final rule: The Commission, on April 20, 2017, adopted an order approving the Board of Managers of the 111 Murray Street Condominium's notice of intent to submeter electricity at 111 Murray Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc., 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.

(16-E-0613SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Public Street Lighting – LED Options

I.D. No. PSC-20-17-00006-P

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

Proposed Action: The Commission is considering a proposal filed by Orange and Rockland Utilities, Inc. to update Service Classification (SC) No. 4 – Public Street Lighting – Company Owned with the addition of a 23 Watt LED luminaire option, P.S.C. No. 3 – Electricity.

Statutory authority: Public Service Law, section 66(12)

Subject: Public Street Lighting – LED Options.

Purpose: To consider the addition of a 23 Watt LED luminaire option under SC No. 4 – Public Street Lighting – Company Owned.

Substance of proposed rule: The Public Service Commission is considering a proposal filed by Orange and Rockland Utilities, Inc. (O&R) to update Service Classification (SC) No. 4 – Public Street Lighting – Company Owned to incorporate a 23 Watt Light Emitting Diode (LED) option in its electric tariff schedule, P.S.C. No. 3. O&R's filing is being made in response to the Commission's Order Approving Tariff Amendments with Modifications (LED Order), issued March 10, 2017. The LED Order directed O&R to make a tariff filing to add an LED luminaire option to SC No. 4 – Public Street Lighting – Company Owned in the range of 20-25 Watts, no later than May 1, 2017. On April 27, 2017, O&R proposed an amendment with an effective date of August 1, 2017. The full text of the filing may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(16-E-0226SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Minor Rate Filing

I.D. No. PSC-20-17-00007-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 proposed tariff amendments filed by the Village of Akron, to P.S.C. No. 1 – Electricity, to increase its annual electric revenues by approximately $319,412 or 12.9%.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Minor rate filing.

Purpose: To consider an increase in annual revenues of about $319,412 or 12.9%.

Substance of proposed rule: The Commission is considering proposed tariff amendments filed by the Village of Akron, to P.S.C. No. 1 – Electricity, to increase its annual electric revenues by approximately $319,412 or 12.9%. Under the proposal, the monthly bill of a residential customer using 750 kilowatt-hours of electricity would increase from $34.57 to $39.12 or 13.16%. The proposed amendments have an effective date of September 1, 2017. The full text of the minor rate filing may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(17-E-0231SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Compressed Natural Gas As a Motor Fuel for Diesel Fueled Vehicles

I.D. No. PSC-20-17-00008-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 report filed by The Brooklyn Union Gas Company d/b/a National Grid NY (National Grid NY) regarding the potential for adoption of compressed natural gas as a motor fuel for diesel fueled vehicles in its service territory.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Compressed natural gas as a motor fuel for diesel fueled vehicles.

Purpose: To consider a report filed by National Grid NY regarding the potential for adoption of compressed natural gas as a motor fuel.

Substance of proposed rule: The Public Service Commission is considering a report filed on April 3, 2017 by The Brooklyn Union Gas Company d/b/a National Grid NY (National Grid NY) to assess the potential for adoption of compressed natural gas as a motor fuel for vehicles currently fueled by diesel. National Grid NY's filing made its filing in response to the Commission's Order Adopting Terms of Joint Proposal and Establishing Gas Rate Plans (Rate Order), issued in this proceeding on December 16, 2016. The Rate Order directed National Grid NY to file "a study of the potential for conversions of diesel fueled vehicles to natural gas vehicles in [National Grid NY's] service territory. This study will address (i) the potential for diesel conversions and (ii) the funds available to support such conversions, and will contain a proposal for an incentive that would be earned by [National Grid NY] if it was successful in achieving such conversions." The full text of the report may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(16-G-0059SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Proof of Distributed Generation Project Site Control and Local Moratoria Attestation

I.D. No. PSC-20-17-00009-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 statewide standardized site control form and a standardized moratorium attestation form proposed by the Department of Public Service Staff in compliance with a directive from a January 25, 2017 Commission Order.

Statutory authority: Public Service Law, sections 5(2), 65(3), 66(1), (2), (3), (4), (12)(a), (b), 66-c, 66-j and 66-l

Subject: Proof of distributed generation project site control and local moratoria attestation.

Purpose: To support developing mature project applications and appropriately focus utility resources.

Substance of proposed rule: The Public Service Commission (Commission) is considering a filing made on April 24, 2017, by the New York State Department of Public Service Staff (Staff), requesting the Commission amend the Standardized Interconnection Requirements to include a standardized statewide property owner consent form. In the Order Adopting Interconnection Management Plan and Cost Allocation Mechanism, and Making Other Findings, issued on January 25, 2017, in Case 16-E-0560, the Commission directed Staff to work with Interconnection Policy Working Group (IPWG) stakeholders to develop a standard statewide site control form, and bring it to the Commission for review as warranted. Additionally, the Commission is considering adopting a standardized moratorium attestation form, also the result of Staff and stakeholder efforts in the IPWG. The full text of the filing may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the requested amendments, and may resolve other related matters.

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

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(16-E-0560SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Compressed Natural Gas As a Motor Fuel for Diesel Fueled Vehicles

I.D. No. PSC-20-17-00010-P

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

Proposed Action: The Commission is considering a report filed by KeySpan Gas East Corporation d/b/a National Grid (National Grid) regarding the potential for adoption of compressed natural gas as a motor fuel for diesel fueled vehicles in its service territory.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Compressed natural gas as a motor fuel for diesel fueled vehicles.

Purpose: To consider a report filed by National Grid regarding the potential for adoption of compressed natural gas as a motor fuel.

Substance of proposed rule: The Public Service Commission is considering a report filed on April 3, 2017 by KeySpan Gas East Corporation d/b/a National Grid (National Grid) to assess the potential for adoption of compressed natural gas as a motor fuel for vehicles currently fueled by diesel. National Grid's filing made its filing in response to the Commission's Order Adopting Terms of Joint Proposal and Establishing Gas Rate Plans (Rate Order), issued in this proceeding on December 16, 2016. The Rate Order directed National Grid to file "a study of the potential for conversions of diesel fueled vehicles to natural gas vehicles in [National Grid's] service territory. This study will address (i) the potential for diesel conversions and (ii) the funds available to support such conversions, and will contain a proposal for an incentive that would be earned by [National Grid] if it was successful in achieving such conversions." The full text of the report may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(16-G-0058SP3)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-20-17-00011-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent of FreeWythe, LLC to submeter electricity at 60 South 2nd Street, Brooklyn, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent of FreeWythe, LLC to submeter electricity at 60 South 2nd Street, Brooklyn, New York.

Substance of proposed rule: The Commission is considering the Notice of Intent of FreeWythe LLC, filed on April 18, 2017, to submeter electricity at 60 South 2nd Street, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The full text of the Notice of Intent may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(17-E-0198SP1)

Workers' Compensation Board

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Attorneys Fees and Representation of Clients

I.D. No. WCB-20-17-00012-P

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

Proposed Action: Amendment of section 300.17 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 24, 117 and 141

Subject: Attorneys fees and representation of clients.

Purpose: Create criteria for legal bills and withdrawal of representation.

Text of proposed rule: § 300.17 Notices of retainer, appearance, [and] substitution *and withdrawal*, and fees of claimant's attorney or licensed representative

In the representation of a claimant before the board or a Workers' Compensation Law Judge in any case:

(a) An attorney or licensed representative shall file a notice of retainer and appearance, and, when appropriate, a notice of substitution, [on forms] *in the format* prescribed by the chair, immediately upon being retained. The attorney or licensed representative shall also transmit a copy of such notice to the insurance carrier, self-insured or other representative of the employer at the time of filing.

(b) *(1)* An attorney or licensed representative, substituted for a former attorney or licensed representative, shall immediately upon being retained serve the former attorney or licensed representative with a copy of the notice of substitution.

(2) An attorney or licensed representative may withdraw from representation of a claimant when (i) a notice of substitution has been filed; or (ii) a withdrawal of representation completed in the format prescribed by the Chair has been filed and approved by a Workers' Compensation Law Judge or conciliator. Failure to obtain the approval of a Workers' Compensation Law Judge or conciliator prior to ceasing representation of a claimant, when a notice of substitution has not been filed, will be considered a violation of Rule 1.16 of the Rules of Professional Conduct (22 NYCRR 1200.0) for an attorney, and may be the basis for license revocation of a licensed representative.

(c) No fee shall be approved or fixed, in accordance with subdivision (f) of this section, for the services of any such attorney or licensed representative [with fee] who has failed or neglected to serve and file the required notice of retainer and appearance, [or] the required notice of substitution, *or obtained approval of a withdrawal of representation as required in subparagraph (2) of subdivision (b) herein*.

(d) (1) An attorney or licensed representative shall file an application

[upon a form OC-400.1]*in the format prescribed by the Chair* in each instance where a fee is requested pursuant to sections 24 and 24-a of the Workers' Compensation Law, except that where the fee requested is not more than $ *1000*[450], the attorney or licensed representative may, in lieu of such written application, make an oral statement on the record as to the services rendered and the time spent for the performance of such services. Notwithstanding the foregoing, the board may require [a written] *an* application [on form OC-400.1] *in the format prescribed by the Chair* for a fee of $ *1000* [450] or less. Any [form OC-400.1] *fee application* [filed] shall be accurately completed.

(2) All fees awarded at a hearing are to be made in the presence of the claimant, except that the Workers' Compensation Law Judge may, in his or her discretion, waive this requirement if the amount of the fee requested is not more than $ *1000* [450], provided that the attorney or licensed representative makes a statement on the record as to the services rendered and the time spent for the performance of such services.

(3) In any case where the claimant is not present and the amount of the fee requested is more than $ *1000* [450], the claimant must be advised of the amount requested by the attorney or licensed representative 10 days in advance of the awarding of a fee. *The fee application shall contain a statement signed by the claimant indicating that he or she has reviewed the fee request with the attorney or licensed representative, has no objection to the requested fee, and understands that any approved fee will be deducted from the award, or the attorney of licensed representative shall, together with the fee application, submit written explanation as to why the signature was not obtained. If the board finds insufficient excuse for failure to obtain the written signature, the fee application may be considered defective.* Proof of service by mail or otherwise on the copy of the fee application prescribed by the chair and filed with the board, may be accepted as evidence that the claimant has been so advised.

(e) Whenever a fee is requested in excess of $ *1000* [450] for services rendered in conciliation, administrative determination, agreement pursuant to section 32 of the Workers' Compensation Law, or conference calendar processing, the request is to be made [upon form OC-400.1] *in the format prescribed by the Chair* in each instance where a fee is requested. *Such fee request shall be itemized as to the services performed in the time since any prior fee request was submitted and the time spent for each service, with a total amount of time spent. Failure to sufficiently itemize services or time spent on services may be the basis for reducing or denying the fee request.* The claimant must be advised of the amount requested, the service rendered and the time spent for the performance of the services by the attorney or licensed representative 10 days prior to the awarding of a fee. Proof of service by mail or otherwise on the copy of the fee request filed with the board, may be acceptable as evidence that the claimant has been so advised. Fees awarded in conciliation, administrative determination, agreement pursuant to section 32 of the Workers' Compensation Law, or conference calendar processing, may be approved by a conciliator or designee of the chair.

(f) Whenever an award is made to a claimant who is represented by an attorney or a licensed representative [with fee], and a fee is requested, the board in such case shall approve a fee in an amount commensurate with the services rendered and having due regard for the financial status of the claimant and whether the attorney or licensed representative engaged in dilatory tactics or failed to comply in a timely manner with board rules. *Unbecoming or unethical conduct by an attorney or licensed representative may result in reduction or denial of a fee request.* In no case shall the fee be based solely on the amount of the award.

(g) Whenever an attorney or licensed representative is notified, by notice of substitution or otherwise, that the claimant has terminated his or her retainer, the attorney or licensed representative, in each instance where a fee is requested for services rendered for which no previous fee has been approved, shall file an application for such final fee forthwith [on form OC-400.1]*in the format prescribed by the Chair*, *within thirty days of the filing of the notice of substitution,* and serve a copy upon the claimant. The claimant must be advised of the amount requested, the service rendered and the time spent for the performance of the services by the attorney or licensed representative, 10 days prior to the awarding of a fee. Proof of service by mail or otherwise on the copy of a fee request filed with the board, may be acceptable as evidence that the claimant has been so advised. Where the fee requested is not more than $ *1000* [450], the attorney or licensed representative may make an oral statement on the record as to the services rendered and the time spent for the performance of such services, at the first hearing held following notice to such attorney or licensed representative that the retainer has been terminated.

(h) No fee shall be awarded to a claimant's attorney or licensed representative unless the attorney or licensed representative has complied with the requirements of this section.

(i) The chair may require that an attorney or licensed representative with access via the internet to his or her client's electronic case folder receive Board notices via an electronic mailbox.

Text of proposed rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers' Compensation Board, Office of General Counsel, 328 State Street, Schenectady, NY 12305-2318, (518) 486-9564, email: regulations@wcb.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority:

The Chair of the Workers' Compensation Board (Board) is authorized to amend Section 300.17 of Title 12 of the New York Codes Rules and Regulations (NYCRR). Workers' Compensation Law (WCL) sections 13, 141, and 117(1) authorize the Chair to make reasonable regulations consistent with and supplemental to the provisions of the WCL.

2. Legislative objectives:

The proposed amendment to 12 NYCRR section 300.17 is in accordance with the legislative purpose of WCL sections 24 and 24-a to regulate attorneys' and licensed representatives' fees.

3. Needs and benefits:

The purpose of the proposed amendment is to create a procedure for the withdrawal of representation of a claimant and to ensure all fee requests are made in the format prescribed by the Chair. The proposed amendment also permits the Chair to require attorneys and licensed representatives who already have electronic access to Board information to receive notices from the Board using an electronic mailbox.

4. Costs:

There are no projected costs to regulated parties who may be affected by the proposed amendment. There are no projected costs to the Board, State and local governments. The proposal eliminates the costs associated with paper mailing of fee requests that exceed $450 and are less than $1000, and may reduce the costs associated to printing and mailing paper notices to attorneys who use the Board's eCase program.

5. Local government mandates:

The proposed amendment does not impose any mandate, duty, or responsibility upon any municipality or governmental entity.

6. Paperwork:

The proposed amendment requires attorneys and licensed representatives to use forms prescribed by the Chair when requesting fees or withdrawing representation of a claimant. It reduces paperwork as it has increased the threshold for orally requesting attorney fees and may reduce paper notices sent to attorneys.

7. Duplication:

There is no duplication of State or federal regulations or standards.

8. Alternatives:

There were no significant alternative proposals under consideration.

9. Federal standards:

There are no applicable federal standards which address the standards contained in the proposed amendment.

10. Compliance schedule:

It is believed that compliance will be easily achieved, following an update in Board processes and forms, and community outreach.

Regulatory Flexibility Analysis

The proposed rule will not have an adverse impact on small businesses and local governments. The proposed rule amends section 300.17 of 12 NYCRR to provide a procedure for the withdrawal of representation of a claimant, requires an itemized fee request when the fee amount exceeds 1000 dollars, allows for a reduction or denial of a fee request due to an attorney or licensed representative's unethical conduct, makes other minor changes related to attorneys' fees, and permits the Chair to require attorneys to receive notices electronically when the attorney has electronic access. The rule does not eliminate any existing process, procedure, or program, and will not result in an adverse impact on small businesses and local governments.

Rural Area Flexibility Analysis

The proposed rule will not have an adverse impact on rural areas. The proposed rule amends section 300.17 of 12 NYCRR to provide a procedure for the withdrawal of representation of a claimant, requires an itemized fee request when the fee amount exceeds 1000 dollars, allows for a reduction or denial of a fee request due to an attorney or licensed representative's unethical conduct, makes other minor changes related to attorneys' fees, and permits the Chair to require attorneys to receive notices electronically when the attorney has electronic access. The rule does not eliminate any existing process, procedure, or program, and will not result in an adverse impact on rural areas.

Job Impact Statement

The proposed rule will not have an adverse impact on jobs. The proposed rule amends section 300.17 of 12 NYCRR to provide a procedure for the

withdrawal of representation of a claimant, requires an itemized fee request when the fee amount exceeds 1000 dollars, allows for a reduction or denial of a fee request due to an attorney or licensed representative's unethical conduct, makes other minor changes related to attorneys' fees, and permits the Chair to require attorneys to receive notices electronically when the attorney has electronic access. The rule does not eliminate any existing process, procedure, or program, and will not result in an adverse impact on jobs.