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.

Education Department

EMERGENCY RULE MAKING

Criteria for Approval of Pathway Assessments in Languages Other Than English (LOTE)

I.D. No. EDU-13-17-00015-E
Filing No. 319
Filing Date: 2017-05-09
Effective Date: 2017-06-11

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

Action taken: Amendment of sections 100.2 and 100.5 of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The proposed amendment will allow the Department to seek applications from third parties to submit Languages other than English (LOTE) examinations to be approved for use as a pathway assessment toward graduation under Commissioner's Regulations 100.2(mm). It is anticipated that some entities may wish to submit assessments in order to make them available to students for graduation at the end of this school year.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(4-a), is the July 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the July meeting would be August 2, 2017, the date a Notice of Adoption would be published in the State Register. Emergency action is therefore needed at the March 2017 meeting in order to ensure there is adequate time for the Department to review examinations for potential use for graduation purposes before the end of the 2016-17 school year. It is also necessary to ensure that applicants throughout the State have an adequate amount of time to become familiar with the application process, which will be made available once the proposed amendment becomes effective as an emergency rule.

Subject: Criteria for Approval of Pathway Assessments in Languages Other Than English (LOTE).

Purpose: To provide for approval of pathway examinations in Languages Other Than English (LOTE) to meet diploma requirements.

Text of emergency rule: 1. Item (iv) of subclause (1) of clause (f) of subparagraph (i) of paragraph (5) of subdivision (a) of section 100.5 of the Regulations of the Commissioner of Education, shall be amended, to read as follows:

(iv) a pathway assessment [(e.g., languages] *in* Languages other than English [)] approved by the commissioner in accordance with section 100.2 [(f)(2)] *mm* of this Part; or

2. Paragraph (2) of subdivision (f) of section 100.2 of the Regulations of the Commissioner of Education, shall be amended, to read as follows:

(2) Pathway assessments. With the approval of the commissioner, pathway assessments which measure an equivalent level of knowledge and skill may be substituted for the assessments specified in this Part. Notwithstanding the requirements of subdivision (d) of this section and section 100.5(b)(7)(v)(c) of this Part any examination that is used to satisfy the pathway assessment graduation requirements in section 100.5(a)(5)(i)(f) of this Part, other than those specifically enumerated in subdivision (mm) of this section relating to pathway assessments in career and technical education, *Languages other than English* and in the arts. shall meet the conditions and criteria set forth in subparagraphs (1)(i) through (vi) of this subdivision.

3. Subdivision (mm) of section 100.2 of the Regulations of the Commissioner of Education, shall be amended, to read as follows:

Pathway assessments in career and technical education*, Languages other than English,* and [in] the arts.

Except as provided in subdivision (f) of this section, students who have passed four required Regents examinations or department-approved alternative assessments in each of the areas of English Language Arts, mathematics, science, and social studies pursuant to section 100.5 of this Part and who are otherwise eligible to receive a high school diploma in June 2015 and thereafter may meet the fifth assessment requirement for graduation pursuant to section 100. 5 of this Part by passing a fifth pathway assessment in career and technical education (CTE)*, Languages other than English,* or [in] the arts, that is approved by the commissioner pursuant to the following conditions and criteria:

(1) . . .
(2) . . .
(3) . . .
(4) . . .
(5) .. .
(6) . . .
(7) . . .

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-13-17-00015-EP, Issue of March 29, 2017. The emergency rule will expire July 7, 2017.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the State Educa-

tion Department (SED), with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges SED with the general management and supervision of public schools and the educational work of the State.

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

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

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Regents relating to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement.

3. NEEDS AND BENEFITS:

In January 2015, the Board established regulations to establish multiple, rigorous assessment pathways for graduation for all students. Those pathways included STEM, Humanities, Career and Technical Education (CTE), Languages other than English (LOTE), and the Arts. In March of 2016, the Board established a Career Development Occupational Studies (CDOS) pathway as a sixth option for New York State students.

Since that time, the Office of State Assessment has approved 30 examinations in CTE and 9 examinations in the Arts. At the time the regulations establishing the pathways were approved, the specific rules governing the criteria for evaluating pathway examinations, outlined in Commissioner's Regulations § 100.2(mm), only included approval of CTE and Arts examinations. The proposed amendment applies the same criteria for evaluating pathway examinations to the evaluation of LOTE pathway assessments, rather than the criteria set forth in 100.2(f). The proposed amendment is necessary to ensure that there is an appropriate set of criteria by which assessments in LOTE can be evaluated and approved to be used to meet assessment requirements for graduation.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties: none.

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

The proposed amendment does not impose any additional costs on the State, school districts, charter schools or SED. The amendment implements Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize examinations for the evaluation of the languages other than English pathway. The proposed amendment applies the same criteria for evaluating pathway examinations to the evaluation of LOTE pathway assessments, rather than the criteria set forth in 100.2(f). The proposed amendment is necessary to ensure that there is an appropriate set of criteria by which assessments in LOTE can be evaluated and approved to be used to meet assessment requirements for graduation.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The amendment implements Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize examinations for the evaluation of the languages other than English pathway. The proposed amendment applies the same criteria for evaluating pathway examinations to the evaluation of LOTE pathway assessments, rather than the criteria set forth in 100.2(f). The proposed amendment is necessary to ensure that there is an appropriate set of criteria by which assessments in LOTE can be evaluated and approved to be used to meet assessment requirements for graduation.

6. PAPERWORK:

The amendment does not impose any specific additional recordkeeping, reporting or other paperwork requirements.

7. DUPLICATION:

The amendment does not duplicate existing State or federal requirements.

8. ALTERNATIVES:

There are no significant alternatives to the rule and none were considered.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment implements Regents policy to establish criteria for evaluating pathway examinations to the evaluation of LOTE pathway assessments, rather than the criteria set forth in 100.2(f). The proposed amendment is necessary to ensure that there is an appropriate set of criteria by which assessments in LOTE can be evaluated and approved to be used to meet assessment requirements for graduation.

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

Local Governments:

1. EFFECT OF RULE:

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

2. COMPLIANCE REQUIREMENTS:

In January 2015, the Board established regulations to establish multiple, rigorous assessment pathways for graduation for all students. Those pathways included STEM, Humanities, Career and Technical Education (CTE), Languages other than English (LOTE), and the Arts. In March of 2016, the Board established a Career Development Occupational Studies (CDOS) pathway as a sixth option for New York State students.

Since that time, the Office of State Assessment has approved 30 examinations in CTE and 9 examinations in the Arts. At the time the regulations establishing the pathways were approved, the specific rules governing the criteria for evaluating pathway examinations, outlined in Commissioner's Regulations § 100.2(mm), only included approval of CTE and Arts examinations. The proposed amendment applies the same criteria for evaluating pathway examinations to the evaluation of LOTE pathway assessments, rather than the criteria set forth in 100.2(f). The proposed amendment is necessary to ensure that there is an appropriate set of criteria by which assessments in LOTE can be evaluated and approved to be used to meet assessment requirements for graduation.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on school districts or charter schools.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements or costs on school districts or charter schools.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on school districts or charter schools.

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness.

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.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to each of the 689 public school districts in the State, and to charter schools that are authorized to issue Regents diplomas with respect to State assessments and high school graduation and diploma requirements, including those in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

In January 2015, the Board established regulations to establish multiple, rigorous assessment pathways for graduation for all students. Those pathways included STEM, Humanities, Career and Technical Education (CTE), Languages other than English (LOTE), and the Arts. In March of 2016, the Board established a Career Development Occupational Studies (CDOS) pathway as a sixth option for New York State students.

Since that time, the Office of State Assessment has approved 30 examinations in CTE and 9 examinations in the Arts. At the time the regulations establishing the pathways were approved, the specific rules governing the criteria for evaluating pathway examinations, outlined in Commissioner's Regulations § 100.2(mm), only included approval of CTE and Arts examinations. The proposed amendment applies the same criteria for evaluating pathway examinations to the evaluation of LOTE pathway assessments, rather than the criteria set forth in 100.2(f). The proposed amendment is necessary to ensure that there is an appropriate set of criteria by which assessments in LOTE can be evaluated and approved to be used to meet assessment requirements for graduation.

3. COSTS:

The proposed amendment does not impose any costs on school districts or BOCES across the State, including those located in rural areas of the State.

4. MINIMIZING ADVERSE IMPACT:

In order to ensure that LOTE assessments are being evaluated consistently across the State, no alternatives were considered.

5. RURAL AREA PARTICIPATION:

Copies of the rule have been provided to Rural Advisory Committee for review and comment.

Job Impact Statement

The proposed amendment implements Regents policy to establish criteria for evaluating pathway examinations to the evaluation of LOTE pathway assessments, rather than the criteria set forth in 100.2(f). The proposed amendment is necessary to ensure that there is an appropriate set of criteria by which assessments in LOTE can be evaluated and approved to be used to meet assessment requirements for graduation.

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

Assessment of Public Comment

The agency received no public comment.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Teaching Certificates in Career and Technical Education

I.D. No. EDU-21-17-00010-EP

Filing No. 320

Filing Date: 2017-05-09

Effective Date: 2017-05-09

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

Proposed Action: Amendment of sections 80-3.3, 80-3.4, 80-3.5 and 80-3.7 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 305, 3004 and 3009

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

Specific reasons underlying the finding of necessity: In order to address teacher shortages in the career and technical education field, the proposed amendments add an additional Transitional A pathway for holders of a bachelor's degree and one year of work experience in the career and technical education area sought, or a closely related area, as determined by the Department. The proposed amendment also uses the existing Transitional A options as the gateway to Initial and Professional certification.

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on May 24, 2017. Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) for a proposed rulemaking, would be the September 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be September 27, 2017, the date a Notice of Adoption would be published in the State Register. To ensure these provisions are in effect prior to the next school year, emergency action is therefore necessary for the preservation of general welfare to conform to the provisions of the new law for the 2017-2018 school year and to provide candidates sufficient time to apply for certification under these pathways so school districts can hire these individuals for the 2017-2018 school year.

Subject: Teaching Certificates in Career and Technical Education.

Purpose: Establish flexibility in the requirements for teaching certificates in career and technical education to address teacher shortage.

Substance of emergency/proposed rule (Full text is posted at the following State website: http://www.counsel.nysed.gov/rules/indices-fulltext/2017/05): Section 80-3.3 of the Regulations of the Commissioner of Education was amended to add the career and technical education (CTE) Transitional A Pathways D, G, H, I and J to the pathways for obtaining an Initial certificate in CTE. The amendments also eliminated the requirement to take and pass the Educating All Students (EAS) exam.

Section 80-3.4 of the Regulations of the Commissioner of Education was amended to add the existing CTE Transitional A Pathways D, G, H, I and J to the existing pathways for obtaining a Professional certificate in CTE. The amendments also added a requirement that candidates must receive a satisfactory passing score on the EAS exam to obtain their professional certificate.

Section 80-3.5 of the Regulations of the Commissioner of Education was amended to add a new Transitional A Pathway J to the existing CTE pathways. This option allows those candidates with a bachelor's degree or higher in the certificate area sought, or a closely related area and one year of satisfactory work experience or hold an industry related credential in the certificate area to be taught or in a closely related subject area acceptable to the Department.

Section 80-3.7 of the Regulations of the Commissioner of Education was amended to add the existing CTE Transitional A Pathways D, G, I and J to the existing pathways for obtaining an Initial and/or a Professional certificate in CTE through individual evaluation. The amendments to this section eliminated the EAS and the required 30 semester hours of coursework required to obtain an Initial certificate and replaced the requirement with 9 hours of pedagogy coursework. The amendments added the requirement that candidates must receive a satisfactory passing score on the EAS exam in to obtain their professional certificate though individual evaluation.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 6, 2017.

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

Data, views or arguments may be submitted to: Peg Rivers, State Education Department, Room 977 EBA, 89 Washington Avenue, Albany, NY 12234, (518) 486-3633, email: REGCOMMENTS@NYSED.GOV

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

Education Law 3001 establishes the qualifications of teachers in the classroom.

Education Law 3004(1), (2) and (3) authorizes the Commissioner to promulgate regulations governing the certification requirements for teachers employed in public schools and requires that teacher candidates complete certain prior to obtaining certification.

Education Law 3009(1) prohibits school district money from being used to pay the salary of an unqualified teacher.

2. LEGISLATIVE OBJECTIVES:

The proposed emergency rule provides additional flexibility for candidates seeking a certification in a career and technical educational (CTE) subject. First, it provides for a new Option J pathway to obtain a Transitional A certificate and it also provides additional gateways to obtaining Initial and/or Professional certification through either individual evaluation or program completion. The amendments also eliminate the current 30 semester hour coursework requirement for the Initial certificate in CTE and replaces it with nine hours of pedagogy coursework for an Initial certificate and an additional nine hours of pedagogy coursework for the Professional CTE certificate.

3. NEEDS AND BENEFITS:

For several years, the Department has received reports from school districts and BOCES on the inability to find and retain qualified Career and Technical Education (CTE) teaching candidates. While there are current shortages in various subject areas, the CTE field has experienced additional pressures due to the unique technical skill sets required and development of new and emerging occupational areas being established in business and industry adding to the demand for qualified individuals in similar technical areas.

Due to non-traditional education and experience, prospective candidates have had difficulty obtaining certification through the traditional teacher certification requirements.

To begin to address this problem, an ad hoc advisory group, comprised of stakeholders that represent entities that hire, train, or represent CTE teachers, including school districts, BOCES, teacher preparation programs, and teacher unions, was established to consider how to restructure the existing CTE teacher certification system to simplify the process and reduce barriers to prospective teacher candidates.

After extensive discussion around the challenges to finding and hiring qualified teacher candidates and presentations on national and local induction models, consensus of the group was for the Department to draft a CTE teacher certification structure that utilized the nationally recognized 16 Career Clusters as a framework for current, new and emerging CTE titles. By doing this, prospective candidates for certification will be able to better match their education and work experience as "experts in field" and have a clear understanding of what they must do to attain Initial and/or Professional certification while meeting the needs of the hiring district.

Proposed Amendment:

The Department proposes adding a new Option J to the Transitional A pathway for prospective candidates who have a bachelor's degree or higher in the certificate area sought, or a closely related area and one year of satisfactory work experience or hold an industry related credential in the certificate area to be taught or in a closely related subject area acceptable to the Department. The Department is also proposing to use the existing Transitional A options, including the new Option J, as the gateway to Initial and Professional certification. Last, the amendments eliminate the 30 semester hour coursework requirement and replace it with nine semester hours of pedagogical coursework for the initial certificate and nine additional semester hours of pedagogical coursework for the professional certificate as specified below.

Current and Proposed Pathways Leading to Transitional A Certificate:

- Option A: An associates or higher degree in the CTE field plus two years of work experience in the CTE field.
- Option B: A high school diploma and four years of work experience in the CTE field.
- Option C: An associate's degree in the CTE field and two years of teaching experience at the postsecondary level in the CTE field.
- Option D: A full Bureau of Proprietary School Supervision (BPSS) license in the CTE field and two years of BPSS teaching experience in the CTE field.
- Option G: High school diploma, two years of work experience in the CTE field, and an industry credential in the CTE field.
- Option H: Enrollment in a CTE program and either one year of work experience in the CTE field or passing score on an industry exam in the CTE field.
- Option I: Teaching certification in grades 7-12 (any subject) and either one year of work experience in the CTE field or an industry related credential.
- *New* Option J: Bachelor's degree and either one year of work experience in the CTE field or an industry credential in the CTE field.

To obtain Initial certification, in addition to meeting the requirements for a specific Transitional A option, candidates will need to complete nine semester hours of pedagogical coursework in the following:

- human development and learning including, but not limited to, the impact of culture, heritage, socioeconomic level, and factors in the home and community that may affect a student's readiness to learn;
- teaching students with disabilities and special health-care needs within the general education classroom, including assistive technology; and
- curriculum and/or instruction, including instructional technology.

To obtain Professional certification, in addition to the requirements for the Initial and passing the Educating All Students (EAS) exam, candidates will need to complete an additional nine semester hours of pedagogical coursework in the following:

- Teaching Literacy Skills Methods – 3 semester hours
- Instruction and/or Assessment
- Classroom Management

The proposed amendment also requires candidates who obtain an Initial certificate through one of the Transitional A pathways described above to take and pass the Educating All Students examination for the Professional certificate, rather than the Initial certificate, as was previously required.

In addition to the current Transitional A options, the Department is recommending a new option (Option J) to gain certain CTE certification titles. This option would allow persons who have completed a bachelor's degree in the subject area or a closely related subject area and have one year of work experience, and have completed the required workshops and fingerprint clearance to gain a Transitional A certificate.

This option is needed for the emerging occupations where it is difficult to find individuals with multiple years of experience and who want to teach instead of work in the technical field.

4. COSTS:

a. Costs to State government: The amendments do not impose any costs on State government, including the State Education Department.

b. Costs to local government: The amendments do not impose any costs on local government, including school districts and BOCES.

c. Costs to private regulated parties: The amendments do not impose any costs on private regulated parties.

d. Costs to regulating agency for implementation and continued administration: See above.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendments do not impose any additional program, service, duty or responsibility upon any local government, school districts or BOCES.

6. PAPERWORK:

The amendments do not require any additional paperwork requirements upon state or local government, the State Education Department, school districts, BOCES, or CTE teacher certification candidates.

7. DUPLICATION:

The rule does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

The amendments were proposed in response to concerns raised in the field regarding CTE teacher certification and barriers to certification as well as in response to the outcome of the work of CTE ad hoc advisory group. The amendment applies equally to all candidates pursuing teacher certification in New York State.

9. FEDERAL STANDARDS:

There are no applicable Federal standards related to the amendment.

10. COMPLIANCE SCHEDULE:

The proposed emergency amendment will be presented at the May 2017 Board of Regents meeting, and will be effective as an emergency rule on May 9, 2017. It is anticipated that the proposed emergency amendment will be adopted as a permanent rule at the September 2017 Board of Regents meeting, and will become effective as a permanent rule on September 27, 2017.

Regulatory Flexibility Analysis

The purpose of the proposed emergency amendment is to address concerns raised by the field related to certification in the Career and Technical Education (CTE) subjects, and to establish a new Option J pathway to obtain a Transitional A certificate in a CTE subject and to allow candidates to use the existing Transitional A pathways for obtaining certification in a CTE subject as the gateways to obtaining Initial and/or Professional certification through either individual evaluation or program completion.

The proposed amendments to the Regulations do not impose any new recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the rule that it does not affect

small businesses or local governments, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The purpose of the proposed emergency amendment is to address concerns raised by the field related to certification in the Career and Technical Education (CTE) subjects, and to establish a new Option J to obtain a Transitional A certificate and to allow candidates to use the existing Transitional A pathways for obtaining certification in a CTE subject as the gateways to obtaining Initial and/or Professional certification through either individual evaluation or program completion.

This proposed amendment applies to all teacher certification candidates, including those in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The Department proposes adding a new Option J to the Transitional A pathway for prospective candidates who have a bachelor's degree or higher in the certificate area sought, or a closely related area and one year of satisfactory work experience or hold an industry related credential in the certificate area to be taught or in a closely related subject area acceptable to the Department. The Department is also proposing to use the existing Transitional A options, including the new Option J, as the gateway to Initial and Professional certification. Last, the amendments eliminate the 30 semester hour coursework requirement and replace it with nine semester hours of pedagogical coursework for the initial certificate and nine additional semester hours of pedagogical coursework for the professional certificate as specified below.

Current and Proposed Pathways Leading to Transitional A Certificate:

- Option A: An associates or higher degree in the CTE field plus two years of work experience in the CTE field.
- Option B: A high school diploma and four years of work experience in the CTE field.
- Option C: An associate's degree in the CTE field and two years of teaching experience at the postsecondary level in the CTE field.
- Option D: A full Bureau of Proprietary School Supervision (BPSS) license in the CTE field and two years of BPSS teaching experience in the CTE field.
- Option G: High school diploma, two years of work experience in the CTE field, and an industry credential in the CTE field.
- Option H: Enrollment in a CTE program and either one year of work experience in the CTE field or passing score on an industry exam in the CTE field.
- Option I: Teaching certification in grades 7-12 (any subject) and either one year of work experience in the CTE field or an industry related credential.
- *New* Option J: Bachelor's degree and either one year of work experience in the CTE field or an industry credential in the CTE field.

To obtain Initial certification, in addition to meeting the requirements for a specific Transitional A option, candidates will need to complete nine semester hours of pedagogical coursework in the following:

- human development and learning including, but not limited to, the impact of culture, heritage, socioeconomic level, and factors in the home and community that may affect a student's readiness to learn;
- teaching students with disabilities and special health-care needs within the general education classroom, including assistive technology; and
- curriculum and/or instruction, including instructional technology.

To obtain Professional certification, in addition to the requirements for the Initial and passing the Educating All Students (EAS) exam, candidates will need to complete an additional nine semester hours of pedagogical coursework in the following:

- Teaching Literacy Skills Methods – 3 semester hours
- Instruction and/or Assessment
- Classroom Management

The proposed amendment also requires candidates who obtain an Initial certificate through one of the Transitional A pathways described above to take and pass the Educating All Students examination for the Professional certificate, rather than the Initial certificate, as was previously required.

In addition to the current Transitional A options, the Department is recommending a new option (Option J) to gain certain CTE certification titles. This option would allow persons who have completed a bachelor's degree in the subject area or a closely related subject area and have one year of work experience, and have completed the required workshops and fingerprint clearance to gain a Transitional A certificate.

This option is needed for the emerging occupations where it is difficult to find individuals with multiple years of experience and who want to teach instead of work in the technical field.

3. COSTS:

The proposed amendments do not impose any costs on CTE teacher certification candidates in New York State, including those located in rural areas of the State. In fact, it will result in a cost savings to those pursuing CTE teacher certification in New York State because candidates will no longer be required to complete 30 semester hours of coursework to obtain their Initial certificate.

4. MINIMIZING ADVERSE IMPACT:

The amendments were proposed in response to concerns raised in the field regarding CTE teacher certification and barriers to certification as well as in response to the outcome of the work of CTE ad hoc advisory group. The amendment applies equally to all candidates pursuing CTE teacher certification in New York State.

5. RURAL AREA PARTICIPATION:

Copies of the rule have been provided to Rural Advisory Committee for review and comment.

Job Impact Statement

The purpose of the proposed emergency amendment is to address concerns raised by the field related to certification in the Career and Technical Education (CTE) subjects, and to establish a new Option J pathway to obtain a Transitional A certificate in a CTE subject and to allow candidates to use the existing Transitional A pathways for obtaining certification in a CTE subject as the gateways to obtaining Initial and/or Professional certification through either individual evaluation or program completion.

It is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, and no further steps were needed to ascertain that fact and none were taken. In fact, it may help to address potential CTE teacher shortage issues in New York State by removing barriers to certification. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION

School Counseling, Certification Requirements for School Counselors and the School Counselor Program Registration Requirements

I.D. No. EDU-06-16-00004-A

Filing No. 318

Filing Date: 2017-05-09

Effective Date: 2017-07-01

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

Action taken: Amendment of Part 80, sections 52.21 and 100.2(j) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 214(not subdivided), 215(not subdivided), 305(1), (2), 308, 3001(2), 3004(1), 3006(1)(b) and 3009(1)

Subject: School counseling, certification requirements for school counselors and the school counselor program registration requirements.

Purpose: School counseling/guidance programs, certification requirements for school counselors, and school counselor program registration.

Text or summary was published in the February 10, 2016 issue of the Register, I.D. No. EDU-06-16-00004-P.

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

Revised rule making(s) were previously published in the State Register on March 29, 2017 and November 30, 2016.

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Since publication of a Notice of Revised Rule Making in the State Register on March 29, 2017, the State Education Department received the following comments.

1. COMMENT:

Commenter supports the proposed amendments and believes that they will positively impact students. The new regulations would bring a higher level of professionalism, accountability, and service to my school counseling program. They will also inform my local school board and administrators of the benefits of a standards-based school counseling program that

serves the needs of students K-12. The amendments propose a system of developing and providing school counseling services that is collaborative. However, my social worker and school psychologist colleagues may be confused by the change in title from "guidance program" to "comprehensive school counseling program." My colleagues need your reassurance that this regulation is not about their counseling services, nor special education program services. My colleagues also need new regulations developed based on their professional standards to address the services they provide in schools. The proposed regulations, however, would be confusing and compromised if their services are inserted rather than addressed separately so as to clearly maintain the differentiation between our distinct professional training and scope of practice. Developing and delivering a school counseling program requires the services of a certified school counselor(s) who are uniquely trained to do so. We are trained mental health professionals. We are able to help students with their academic, social/emotional and career needs.

DEPARTMENT RESPONSE:

No response is necessary to the extent the comment is supportive. To the extent the comment seeks clarification on the roles of school social workers and school psychologists. See the Department's previous Responses to Comments #9 and 10 included in the Assessment of Public Comment published in the State Register on March 29, 2017.

2. COMMENT:

Commenter expressed concern relating to the impact of the proposed amendments on the authority of the board of education. Other than allowing for the participation of board members on the advisory council and receiving the annual report from that council, the role of the board of education in the plan and program development and implementation process is not articulated in the proposed amended regulations which may inadvertently lead some to believe that the board's role is limited to those two functions.

Boards of education are responsible by law for the superintendence, management and control of the educational affairs of the district and to prescribe the curriculum. They have the duty and the authority to present a proposed budget to the voters for approval and to make determinations regarding the allocation of a district's fiscal and human resources. We are concerned that the proposed amended regulatory language may be interpreted by some to place the plan and program development in the hands of certified school counselor(s), with the support of other school staff and a stakeholder advisory council without involvement or approval of the board of education, as the districts governing body, notwithstanding the board's statutory responsibilities. If that is, indeed, the intent of the proposed amended regulations we consider them to violate the Education law. If that is not the intent, we recommend that the proposed amended regulations be revised to require school board approval lf all aspects of the counseling/guidance program and plan, including but not limited to those elements that involve the allocation of fiscal and human resources and selection of counseling/guidance curriculum.

DEPARTMENT RESPONSE:

The Department does not believe, nor was it the intent of the proposed amendment to assign any duty within the statutory scope of a school board to a certified school counselor. While the amendments do clarify that the program must be designed by a certified school counselor (as opposed to an uncertified individual), the school board still retains oversight over the curriculum and fiscal components of the plan. For instance, a school counselor cannot develop a guidance plan and move forward with it if there are elements that need to be incorporated into the district's budget or there are other staffing decisions to be made by the board. Department staff will review the commenter's concerns, and determine if further revisions are needed in the future to clarify the role of the school board.

3. COMMENT:

Commenter expressed concern surrounding the individual progress review plans for students with disabilities in grades 6-12 and sought clarification that such plans do not supersede the duties and recommendations of the Committee on Special Education.

DEPARTMENT RESPONSE:

The annual progress review plans which are currently required for students in grades 7-12 do not serve the same purpose, nor are they to be a substitute for an individualized education program for students with disabilities. The current regulation requires an annual check-in for students in grades 7-12. In a collaborative school environment, these existing plans for student's educational progress and career plans should be shared with, and not duplicative of the work of the committee on special education. See also, the Department's previous response to Comment #30 in the Assessment of Public Comment published in the State Register on November 30, 2016.

4. COMMENT:

Commenters believe the proposed regulations are a positive step in strengthening school counselor preparation programs. However, commenters believe there are additional enhancements that should be made to the school counselor preparation programs. Generally, commenters proposed additions and amendments to the six core content areas, encouraged expanding field experience to require internships at the elementary, middle school, and high school levels, and requiring that such field supervision be only provided by certified school counselors.

DEPARTMENT RESPONSE:

The Department anticipates continuing the dialogue and engaging with the field to receive feedback as these standards for school counselor preparation programs are implemented in 2020.

Regarding the recommendation for expanded core content areas, the regulation provides that the 48 semester hour program should include but need not be limited to the six core content areas, which would permit the inclusion of additional content areas as suggested. Additionally, the regulations were clarified to specify that the internship experience must include both K-8 and 9-12 experience, rather than just elementary experience, which allows flexibility and includes opportunities for experience at all levels.

With respect to the concern about field supervision, the Department agrees that school counselor interns should be supervised by certified school counselors. However, the regulation provides for flexibility in limited circumstances if the employing school district cannot provide a certified school counselor in the school building in which the internship occurs. Therefore, no revisions are necessary. See generally, Response to Comment #17 in the Assessment of Public Comment published in the State Register on March 29, 2017. See also, Responses to Comment #75, 76 in the Assessment of Public Comment published in the State Register on November 30, 2016.

5. COMMENT:

Commenters sought the expansion of the required content areas in a registered program leading to an advanced certificate in school counseling. The advanced certificate would allow candidates to enter already established certificates in many graduate programs and to increase their skills in a specialty area. It also would allow school counselors to add a professional license in addition to school counseling certification, which school counselors do in all other states. Commenters suggested included these additional content areas, bilingual school counseling, mental health counseling, addictions counseling, rehabilitation counseling, couple, marital and family counseling, student affairs/higher education, advanced college and career counseling, supervision and consultation, and other categories.

DEPARTMENT RESPONSE:

The proposed amendment allows for program flexibility. By requiring programs leading to an advanced certificate to include 12 semester hours in "at least" the two core content areas of best practices for the profession and school counseling programming and research and program development, the regulation allows for the flexibility of programs to include other core content areas and subareas as well. The core content areas included in the proposed amendments are only included as a "minimum" which provides greater flexibility for programs to include areas such as those suggested by the commenters, and/or additional areas and subareas in their programs. See also, Responses to Comment #75, 76 in the Assessment of Public Comment published in the State Register on November 30, 2016.

6. COMMENT:

Commenter urged the inclusion of professional development for school counselors. On-going professional development requirements are needed to ensure that school counselors are current in their skills, knowledge, and practices to support all K-12 students.

DEPARTMENT RESPONSE:

Department staff will continue to engage the field in discussions around possible future professional development requirements for school counselors. See the Department's previous Response to Comment #16 in the Assessment of Public Comment published in the State Register on March 29, 2017.

7. COMMENT:

Commenters thank the Department for its responsiveness in addressing concerns for an inclusive design and implementation for K-5 comprehensive developmental school counseling programs. Commenters expressed concern specifically regarding section 100.2(j)(2)(i)(c) which states "school counseling/guidance core curriculum and instruction for the purpose of addressing student competencies related to career/college readiness, academic skills and social/emotional development by a certified school counselor(s)." Commenters believe this is confusing to the public and districts and would seem to indicate that core curriculum and instruction would only be delivered by certified school counselor, and requested more inclusive language.

DEPARTMENT RESPONSE:

This regulation only relates to the implementation of the components of the school counseling/guidance program. Therefore, within the context of the program it is appropriate for the instruction of the school counseling

curriculum to be developed and implemented by certified school counselors. See also, Response to Comments #1 and 9 in the Assessment of Public Comment published in the State Register on March 29, 2017.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Education Requirements for Certification As a Certified Athletic Trainer

I.D. No. EDU-21-17-00006-P

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

Proposed Action: Amendment of section 79-7.2 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a) and 8355(2)

Subject: Education requirements for certification as a certified athletic trainer.

Purpose: To conform to current national education standards for certification by eliminating 79-7.2(b) education pathway by July 1, 2022.

Text of proposed rule: Section 79-7.2 of the Regulations of the Commissioner of Education is amended, as follows:

79-7.2 Education requirements.

To meet the professional education requirements for certification in this State, the applicant shall present satisfactory evidence of completing:

(a) a program in athletic training leading to the baccalaureate degree, its equivalent or a higher degree that is either registered by the department pursuant to section 52.27 of this Title, or accredited by an acceptable accrediting agency, or the equivalent of such a registered or accredited program; or

(b) a program, *completed before July 1, 2022,* other than a program described in subdivision (a) of this section, that leads to the baccalaureate degree, its equivalent or a higher degree, and includes or is supplemented by didactic course work and clinical experience that meet the requirements to become certified by an acceptable United States certifying body at the time such course work and clinical experience are completed, provided that the following requirements are met:

(1) the applicant has completed at least 1,500 hours of clinical or work experience in the practice of athletic training, as defined in section 8352 of the Education Law, that provided the applicant with an equivalent type of experience to the clinical experience obtained in a practicum offered within a program of athletic training registered pursuant to section 52.27 of this Title; and

(2) the applicant has completed at least 12 semester hours or its equivalent of postsecondary course work at a level that is equivalent to that offered in a program registered pursuant to section 52.27 of this Title in the professional athletic training content area, as defined in section 52.27(a)(3) of this Title; and

(3) the applicant has completed at least nine semester hours or its equivalent of postsecondary course work at a level that is equivalent to that offered in a program registered pursuant to section 52.27 of this Title in the human biological and physical sciences and social and behavioral sciences content area, as defined in section 52.27(a)(2) of this Title.

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general 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 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.

Subparagraph (2) of section 8355 of the Education Law authorizes the Commisisoner of Education to promulgate regulations to establish the education requirements for certification as a certified athletic trainer.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative intent of the aforementioned statutes that the Board of Regents and the Department regulate the admission to and the practice of the professions, including the education requirements for certification as a certified athletic trainer.

The proposed amendment to section 79-7.2 of the Regulations of the Commissioner of Education eliminates, by July 1, 2022, pathway two for certification as a certified athletic trainer.

Currently, under section 79-7.2 of the Regulations of the Commissioner of Education, there are two pathways that applicants for certification as a certified athletic trainer can choose to satisfy the education requirements. Pursuant to section 79-7.2(a) of the Regulations of the Commissioner of Education, pathway one requires the applicant to present satisfactory evidence of completing a program in athletic training leading to the baccalaureate degree, its equivalent or a higher degree that is either registered by the Department pursuant to section 52.27 of the Regulations of the Commissioner of Education, or accredited by an acceptable accrediting agency, or the equivalent of such a registered or accredited program.

Under section 79-7.2(b) of the Regulations of the Commissioner of Education, pathway two requires the applicant to present satisfactory evidence of completing a program, other than a program described in section 79-7.2(a) of the Regulations of the Commissioner of Education, that leads to the baccalaureate degree, its equivalent or a higher degree, and includes or is supplemented by didactic course work and clinical experience that meet the requirements to become certified by an acceptable United States certifying body at the time such course work and clinical experience are completed, provided that the following requirements are met: (1) the applicant has completed at least 1,500 hours of clinical or work experience in the practice of athletic training, as defined in Education Law § 8352, that provided the applicant with an equivalent type of experience to the clinical experience obtained in a practicum offered within a program of athletic training registered pursuant to section 52.27 of the Regulations of the Commissioner of Education; and (2) the applicant has completed at least 12 semester hours or its equivalent of postsecondary course work at a level that is equivalent to that offered in a program registered pursuant to section 52.27 of the Regulations of the Commissioner of Education in the professional athletic training content area, as defined in section 52.27(a)(3) of the Regulations of the Commissioner of Education; and (3) the applicant has completed at least nine semester hours or its equivalent of postsecondary course work at a level that is equivalent to that offered in a program registered pursuant to section 52.27 of the Regulations of the Commissioner of Education in the human biological and physical sciences and social and behavioral sciences content area, as defined in section 52.27(a)(2) of the Regulations of the Commissioner of Education.

However, since promulgation of section 79-7.2 in the 1990s, the athletic training profession's standardized education and national certification requirements have evolved to the point where the education requirements of pathway two no longer reflect the national education standards for certification as a certified athletic trainer. Presently, in order to sit for the national certification examination and achieve national certification, individuals must have a baccalaureate degree in athletic training or higher, in addition to other requirements. However, as detailed above, pathway two allows individuals who do not have baccalaureate degrees in athletic training to meet the education requirements for New York certification as a certified athletic trainer, if they have a baccalaureate or higher degree, and meet other specified requirements.

Additionally, after years of analysis, leaders of the key athletic training organizations nationally represented in the Athletic Training Strategic Alliance, have recently decided to change the certification requirements nationally to a master's degree in athletic training. The Athletic Training Strategic Alliance includes the National Athletic Trainers' Association (NATA), the NATA Research & Education Foundation (NATA Foundation), the Commission on Accreditation of Athletic Training Education (CAATE), and the Board of Certification for the Athletic Trainer (BOC). This new educational standard for national certification becomes effective in 2022.

Due to the aforementioned changes in the athletic training profession, there is a potential risk that, by continuing to allow individuals with a baccalaureate degree in programs other than athletic training to obtain New York certification, New Yorkers, who receive services from such individuals might receive a lower standard of care than they would receive from an individual who obtained New York certification under pathway one and/or from individuals licensed or certified in other states under the national certification standards.

The proposed amendment to section 79-7.2 of the Regulations of the Commissioner of Education addresses this aforementioned situation by eliminating, by July 1, 2022, pathway two for certification as a certified athletic trainer.

Moreover, today, virtually all applicants for certification as a certified athletic trainer in New York are certified under pathway one, which

requires applicants to be educated in a program in athletic training leading to the baccalaureate degree, its equivalent or a higher degree that is either registered by the Department or accredited by an acceptable accrediting agency, or the equivalent of such a registered or accredited program. In fact, since 2012, no applicant has obtained certification as a certified athletic trainer in New York under pathway two. Therefore, the proposed amendment's elimination of pathway two, by July 1, 2022, is not anticipated to impact demand for registered athletic training programs New York. Similarly, the proposed amendment's elimination of pathway two is expected to have little or no impact on higher education institutions that do not have registered athletic training programs, and their students who may aspire to become athletic trainers, because, as stated above, few if any applicants have applied for certification as a certified athletic trainer under this pathway in several years and there is no indication that this trend will reverse itself. Thus, the proposed amendment's elimination of pathway two is expected to have little or no impact on the number of certified athletic trainers in New York.

The proposed amendment's elimination of pathway two, which is already rapidly becoming obsolete due to changes in the athletic training profession, would enhance public protection by ensuring that, as of July 1, 2022, all applicants for certification as certified athletic trainers meet the current national education standards for such certification. The five year phase-in period for the elimination of pathway two will help ensure that individuals who are currently in the process of obtaining certification under this pathway will have an opportunity to do so. However, based on the information above, at this point in time, there may be few, if any, such individuals impacted. As of July 1, 2022, all applicants for certification as certified athletic trainers will be required to satisfy the education requirements of pathway one, which requires applicants to present satisfactory evidence of completing a program in athletic training leading to the baccalaureate degree, its equivalent or a higher degree that is either registered by the Department, or accredited by an acceptable accrediting agency, or the equivalent of such a registered or accredited program.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment to section 79-7.2 of the Regulations of the Commissioner of Education is to address the aforementioned situation and confer the benefits as discussed in the Legislative Objectives section by eliminating pathway two for certification as a certified athletic trainer.

4. COSTS:

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

(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 to regulated parties.

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed rule imposes no new reporting requirements or other paperwork requirements.

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.

8. ALTERNATIVES:

The proposed amendment arose out of changes to the athletic training profession's standardized education and national education requirements, which have evolved to the point where the education requirements of pathway two no longer reflect the national education standards for certification as a certified athletic trainer. The proposed amendment's elimination of pathway two would enhance public protection by ensuring that, as of July 1, 2022, all applicants for certification as certified athletic trainers meet the national standards for such certification. There are no significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

No federal standards apply to the subject matter of this rule making. The federal government does not regulate the education requirements for applicants for certification as certified athletic trainers in New York State. Since there are no applicable federal standards, the proposed amendment does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

It is anticipated that the regulated parties will be able to comply with the proposed amendments by the effective date.

Regulatory Flexibility Analysis

Currently, under section 79-7.2 of the Regulations of the Commissioner of Education, there are two pathways that applicants for certification as a certified athletic trainer can choose to satisfy the education requirements. Pursuant to section 79-7.2(a) of the Regulations of the Commissioner of Education, pathway one requires the applicant to present satisfactory evidence of completing a program in athletic training leading to the baccalaureate degree, its equivalent or a higher degree that is either registered by the Department pursuant to section 52.27 of the Regulations of the Commissioner of Education, or accredited by an acceptable accrediting agency, or the equivalent of such a registered or accredited program.

Under section 79-7.2(b) of the Regulations of the Commissioner of Education, pathway two requires the applicant to present satisfactory evidence of completing a program, other than a program described in section 79-7.2(a) of the Regulations of the Commissioner of Education, that leads to the baccalaureate degree, its equivalent or a higher degree, and includes or is supplemented by didactic course work and clinical experience that meet the requirements to become certified by an acceptable United States certifying body at the time such course work and clinical experience are completed, provided that the following requirements are met: (1) the applicant has completed at least 1,500 hours of clinical or work experience in the practice of athletic training, as defined in Education Law § 8352, that provided the applicant with an equivalent type of experience to the clinical experience obtained in a practicum offered within a program of athletic training registered pursuant to section 52.27 of the Regulations of the Commissioner of Education; and (2) the applicant has completed at least 12 semester hours or its equivalent of postsecondary course work at a level that is equivalent to that offered in a program registered pursuant to section 52.27 of the Regulations of the Commissioner of Education in the professional athletic training content area, as defined in section 52.27(a)(3) of the Regulations of the Commissioner of Education; and (3) the applicant has completed at least nine semester hours or its equivalent of postsecondary course work at a level that is equivalent to that offered in a program registered pursuant to section 52.27 of the Regulations of the Commissioner of Education in the human biological and physical sciences and social and behavioral sciences content area, as defined in section 52.27(a)(2) of the Regulations of the Commissioner of Education.

However, since promulgation of section 79-7.2 in the 1990s, the athletic training profession's standardized education and national certification requirements have evolved to the point where the education requirements of pathway two no longer reflect the national education standards for certification as a certified athletic trainer. Presently, in order to sit for the national certification examination and achieve national certification, individuals must have a baccalaureate degree in athletic training or higher, in addition to other requirements. However, as detailed above, pathway two allows individuals who do not have baccalaureate degrees in athletic training to meet the education requirements for New York certification as a certified athletic trainer, if they have a baccalaureate or higher degree, and meet other specified requirements.

Additionally, after years of analysis, leaders of the key athletic training organizations nationally represented in the Athletic Training Strategic Alliance, have recently decided to change the certification requirements nationally to a master's degree in athletic training. The Athletic Training Strategic Alliance includes the National Athletic Trainers' Association (NATA), the NATA Research & Education Foundation (NATA Foundation), the Commission on Accreditation of Athletic Training Education (CAATE), and the Board of Certification for the Athletic Trainer (BOC). This new educational standard for national certification becomes effective in 2022.

Due to the aforementioned changes in the athletic training profession, there is a potential risk that, by continuing to allow individuals with a baccalaureate degree in programs other than athletic training to obtain New York certification, New Yorkers, who receive services from such individuals might receive a lower standard of care than they would receive from an individual who obtained New York certification under pathway one and/or from individuals licensed or certified in other states under the national certification standards.

The proposed amendment to section 79-7.2 of the Regulations of the Commissioner of Education addresses this aforementioned situation by eliminating, by July 1, 2022, pathway two for certification as a certified athletic trainer.

Moreover, today, virtually all applicants for certification as a certified athletic trainer in New York are certified under pathway one, which requires applicants to be educated in a program in athletic training leading to the baccalaureate degree, its equivalent or a higher degree that is either registered by the Department or accredited by an acceptable accrediting agency, or the equivalent of such a registered or accredited program. In fact, since 2012, no applicant has obtained certification as a certified athletic trainer in New York under pathway two. Therefore, the proposed amendment's elimination of pathway two, by July 1, 2022, is not anticipated to impact demand for registered athletic training programs New York. Similarly, the proposed amendment's elimination of pathway two is expected to have little or no impact on higher education institutions that

do not have registered athletic training programs, and their students who may aspire to become athletic trainers, because, as stated above, few if any applicants have applied for certification as a certified athletic trainer under this pathway in several years and there is no indication that this trend will reverse itself. Thus, the proposed amendment's elimination of pathway two is expected to have little or no impact on the number of certified athletic trainers in New York.

The proposed amendment's elimination of pathway two, which is already rapidly becoming obsolete due to changes in the athletic training profession, would enhance public protection by ensuring that, as of July 1, 2022, all applicants for certification as certified athletic trainers meet the current national education standards for such certification. The five year phase-in period for the elimination of pathway two will help ensure that individuals who are currently in the process of obtaining certification under this pathway will have an opportunity to do so. However, based on the information above, at this point in time, there may be few, if any, such individuals impacted. As of July 1, 2022, all applicants for certification as certified athletic trainers will be required to satisfy the education requirements of pathway one, which requires applicants to present satisfactory evidence of completing a program in athletic training leading to the baccalaureate degree, its equivalent or a higher degree that is either registered by the Department, or accredited by an acceptable accrediting agency, or the equivalent of such a registered or accredited program.

The proposed amendment is applicable only to applicants for certification as a certified athletic trainer. The proposed amendment will not affect small businesses or local governments in New York State. The proposed amendment will not impose any new reporting, recordkeeping, or any other compliance requirements, or have any adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will not adversely effect small businesses and 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

Currently, under section 79-7.2 of the Regulations of the Commissioner of Education, there are two pathways that applicants for certification as a certified athletic trainer can choose to satisfy the education requirements. Pursuant to section 79-7.2(a) of the Regulations of the Commissioner of Education, pathway one requires the applicant to present satisfactory evidence of completing a program in athletic training leading to the baccalaureate degree, its equivalent or a higher degree that is either registered by the Department pursuant to section 52.27 of the Regulations of the Commissioner of Education, or accredited by an acceptable accrediting agency, or the equivalent of such a registered or accredited program.

Under section 79-7.2(b) of the Regulations of the Commissioner of Education, pathway two requires the applicant to present satisfactory evidence of completing a program, other than a program described in section 79-7.2(a) of the Regulations of the Commissioner of Education, that leads to the baccalaureate degree, its equivalent or a higher degree, and includes or is supplemented by didactic course work and clinical experience that meet the requirements to become certified by an acceptable United States certifying body at the time such course work and clinical experience are completed, provided that the following requirements are met: (1) the applicant has completed at least 1,500 hours of clinical or work experience in the practice of athletic training, as defined in Education Law § 8352, that provided the applicant with an equivalent type of experience to the clinical experience obtained in a practicum offered within a program of athletic training registered pursuant to section 52.27 of the Regulations of the Commissioner of Education; and (2) the applicant has completed at least 12 semester hours or its equivalent of postsecondary course work at a level that is equivalent to that offered in a program registered pursuant to section 52.27 of the Regulations of the Commissioner of Education in the professional athletic training content area, as defined in section 52.27(a)(3) of the Regulations of the Commissioner of Education; and (3) the applicant has completed at least nine semester hours or its equivalent of postsecondary course work at a level that is equivalent to that offered in a program registered pursuant to section 52.27 of the Regulations of the Commissioner of Education in the human biological and physical sciences and social and behavioral sciences content area, as defined in section 52.27(a)(2) of the Regulations of the Commissioner of Education.

However, since promulgation of section 79-7.2 in the 1990s, the athletic training profession's standardized education and national certification requirements have evolved to the point where the education requirements of pathway two no longer reflect the national education standards for certification as a certified athletic trainer. Presently, in order to sit for the national certification examination and achieve national certification, individuals must have a baccalaureate degree in athletic training or higher, in addition to other requirements. However, as detailed above, pathway two allows individuals who do not have baccalaureate degrees in athletic training to meet the education requirements for New York certification as a certified athletic trainer, if they have a baccalaureate or higher degree, and meet other specified requirements.

Additionally, after years of analysis, leaders of the key athletic training organizations nationally represented in the Athletic Training Strategic Alliance, have recently decided to change the certification requirements nationally to a master's degree in athletic training. The Athletic Training Strategic Alliance includes the National Athletic Trainers' Association (NATA), the NATA Research & Education Foundation (NATA Foundation), the Commission on Accreditation of Athletic Training Education (CAATE), and the Board of Certification for the Athletic Trainer (BOC). This new educational standard for national certification becomes effective in 2022.

Due to the aforementioned changes in the athletic training profession, there is a potential risk that, by continuing to allow individuals with a baccalaureate degree in programs other than athletic training to obtain New York certification, New Yorkers, who receive services from such individuals might receive a lower standard of care than they would receive from an individual who obtained New York certification under pathway one and/or from individuals licensed or certified in other states under the national certification standards.

The proposed amendment to section 79-7.2 of the Regulations of the Commissioner of Education addresses this aforementioned situation by eliminating, by July 1, 2022, pathway two for certification as a certified athletic trainer.

Moreover, today, virtually all applicants for certification as a certified athletic trainer in New York are certified under pathway one, which requires applicants to be educated in a program in athletic training leading to the baccalaureate degree, its equivalent or a higher degree that is either registered by the Department or accredited by an acceptable accrediting agency, or the equivalent of such a registered or accredited program. In fact, since 2012, no applicant has obtained certification as a certified athletic trainer in New York under pathway two. Therefore, the proposed amendment's elimination of pathway two, by July 1, 2022, is not anticipated to impact demand for registered athletic training programs New York. Similarly, the proposed amendment's elimination of pathway two is expected to have little or no impact on higher education institutions that do not have registered athletic training programs, and their students who may aspire to become athletic trainers, because, as stated above, few if any applicants have applied for certification as a certified athletic trainer under this pathway in several years and there is no indication that this trend will reverse itself. Thus, the proposed amendment's elimination of pathway two is expected to have little or no impact on the number of certified athletic trainers in New York.

The proposed amendment's elimination of pathway two, which is already rapidly becoming obsolete due to changes in the athletic training profession, would enhance public protection by ensuring that, as of July 1, 2022, all applicants for certification as certified athletic trainers meet the current national education standards for such certification. The five year phase-in period for the elimination of pathway two will help ensure that individuals who are currently in the process of obtaining certification under this pathway will have an opportunity to do so. However, based on the information above, at this point in time, there may be few, if any, such individuals impacted. As of July 1, 2022, all applicants for certification as certified athletic trainers will be required to satisfy the education requirements of pathway one, which requires applicants to present satisfactory evidence of completing a program in athletic training leading to the baccalaureate degree, its equivalent or a higher degree that is either registered by the Department, or accredited by an acceptable accrediting agency, or the equivalent of such a registered or accredited program.

The proposed amendment is applicable only to applicants for certification as certified athletic trainers in New York State. The proposed amendment will not impose any adverse impact on rural areas and would not impose any new reporting, recordkeeping, or other compliance requirements, on entities in rural areas of New York State. Accordingly, no further steps were needed to ascertain the impact of the proposed amendment on entities in rural areas and none were taken. Thus, a rural area flexibility analysis is not required, and one has not been prepared.

Job Impact Statement

Currently, under section 79-7.2 of the Regulations of the Commissioner of Education, there are two pathways that applicants for certification as a certified athletic trainer can choose to satisfy the education requirements. Pursuant to section 79-7.2(a) of the Regulations of the Commissioner of Education, pathway one requires the applicant to present satisfactory evidence of completing a program in athletic training leading to the baccalaureate degree, its equivalent or a higher degree that is either registered by the Department pursuant to section 52.27 of the Regulations of the Commissioner of Education, or accredited by an acceptable accrediting agency, or the equivalent of such a registered or accredited program.

Under section 79-7.2(b) of the Regulations of the Commissioner of

Education, pathway two requires the applicant to present satisfactory evidence of completing a program, other than a program described in section 79-7.2(a) of the Regulations of the Commissioner of Education, that leads to the baccalaureate degree, its equivalent or a higher degree, and includes or is supplemented by didactic course work and clinical experience that meet the requirements to become certified by an acceptable United States certifying body at the time such course work and clinical experience are completed, provided that the following requirements are met: (1) the applicant has completed at least 1,500 hours of clinical or work experience in the practice of athletic training, as defined in Education Law § 8352, that provided the applicant with an equivalent type of experience to the clinical experience obtained in a practicum offered within a program of athletic training registered pursuant to section 52.27 of the Regulations of the Commissioner of Education; and (2) the applicant has completed at least 12 semester hours or its equivalent of postsecondary course work at a level that is equivalent to that offered in a program registered pursuant to section 52.27 of the Regulations of the Commissioner of Education in the professional athletic training content area, as defined in section 52.27(a)(3) of the Regulations of the Commissioner of Education; and (3) the applicant has completed at least nine semester hours or its equivalent of postsecondary course work at a level that is equivalent to that offered in a program registered pursuant to section 52.27 of the Regulations of the Commissioner of Education in the human biological and physical sciences and social and behavioral sciences content area, as defined in section 52.27(a)(2) of the Regulations of the Commissioner of Education.

However, since promulgation of section 79-7.2 in the 1990s, the athletic training profession's standardized education and national certification requirements have evolved to the point where the education requirements of pathway two no longer reflect the national education standards for certification as a certified athletic trainer. Presently, in order to sit for the national certification examination and achieve national certification, individuals must have a baccalaureate degree in athletic training or higher, in addition to other requirements. However, as detailed above, pathway two allows individuals who do not have baccalaureate degrees in athletic training to meet the education requirements for New York certification as a certified athletic trainer, if they have a baccalaureate or higher degree, and meet other specified requirements.

Additionally, after years of analysis, leaders of the key athletic training organizations nationally represented in the Athletic Training Strategic Alliance, have recently decided to change the certification requirements nationally to a master's degree in athletic training. The Athletic Training Strategic Alliance includes the National Athletic Trainers' Association (NATA), the NATA Research & Education Foundation (NATA Foundation), the Commission on Accreditation of Athletic Training Education (CAATE), and the Board of Certification for the Athletic Trainer (BOC). This new educational standard for national certification becomes effective in 2022.

Due to the aforementioned changes in the athletic training profession, there is a potential risk that, by continuing to allow individuals with a baccalaureate degree in programs other than athletic training to obtain New York certification, New Yorkers, who receive services from such individuals might receive a lower standard of care than they would receive from an individual who obtained New York certification under pathway one and/or from individuals licensed or certified in other states under the national certification standards.

The proposed amendment to section 79-7.2 of the Regulations of the Commissioner of Education addresses this aforementioned situation by eliminating, by July 1, 2022, pathway two for certification as a certified athletic trainer.

Moreover, today, virtually all applicants for certification as a certified athletic trainer in New York are certified under pathway one, which requires applicants to be educated in a program in athletic training leading to the baccalaureate degree, its equivalent or a higher degree that is either registered by the Department or accredited by an acceptable accrediting agency, or the equivalent of such a registered or accredited program. In fact, since 2012, no applicant has obtained certification as a certified athletic trainer in New York under pathway two. Therefore, the proposed amendment's elimination of pathway two, by July 1, 2022, is not anticipated to impact demand for registered athletic training programs New York. Similarly, the proposed amendment's elimination of pathway two is expected to have little or no impact on higher education institutions that do not have registered athletic training programs, and their students who may aspire to become athletic trainers, because, as stated above, few if any applicants have applied for certification as a certified athletic trainer under this pathway in several years and there is no indication that this trend will reverse itself. Thus, the proposed amendment's elimination of pathway two is expected to have little or no impact on the number of certified athletic trainers in New York.

The proposed amendment's elimination of pathway two, which is already rapidly becoming obsolete due to changes in the athletic training profession, would enhance public protection by ensuring that, as of July 1, 2022, all applicants for certification as certified athletic trainers meet the current national education standards for such certification. The five year phase-in period for the elimination of pathway two will help ensure that individuals who are currently in the process of obtaining certification under this pathway will have an opportunity to do so. However, based on the information above, at this point in time, there may be few, if any, such individuals impacted. As of July 1, 2022, all applicants for certification as certified athletic trainers will be required to satisfy the education requirements of pathway one, which requires applicants to present satisfactory evidence of completing a program in athletic training leading to the baccalaureate degree, its equivalent or a higher degree that is either registered by the Department, or accredited by an acceptable accrediting agency, or the equivalent of such a registered or accredited program.

It is not anticipated that the proposed rule will impact jobs and employment opportunities. This is because, among other things, since 2012, no applicant has obtained certification as a certified athletic trainer in New York under pathway two. Most, if not all applicants, during that time period have obtained certification under pathway one and there is no indication that this trend will reverse itself. Therefore, the proposed rule will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rule 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.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Unit of Study Requirements for Career and Technical Education in Grades 7 and 8

I.D. No. EDU-21-17-00007-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 100.4 of Title 8 NYCRR.

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

Subject: Unit of Study Requirements for Career and Technical Education in Grades 7 and 8.

Purpose: To implement Regents policy relating to career and technical education units of study.

Text of proposed rule: Paragraph (1) of subdivision (c) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective July 1, 2017, as follows:

(c) Units of study in grades 7 and 8.

(1) Except as otherwise provided herein, all students shall be provided instruction designed to enable them to achieve, by the end of grade 8, State intermediate learning standards through:

(i) English language arts, two units of study;

(ii) social studies, two units of study;

(iii) science, two units of study;

(iv) mathematics, two units of study;

(v) technology education, one unit of study*, provided that for the 2018-2019 school year and thereafter, this unit of study requirement shall be replaced by that described in subparagraph (xiii) of this subdivision*;

(vi) home and career skills, three quarters of a unit of study*, provided that for the 2018-2019 school year and thereafter, this unit of study requirement shall be replaced by that described in subparagraph (xiii) of this subdivision*;

(vii) physical education, as required by section 135.4(c)(2)(ii) of this Title;

(viii) health education, one half unit of study, as required by section 135.3(c) of this Title;

(ix) the arts, including one half unit of study in the visual arts, and one half unit of study in music;

(x) library and information skills, the equivalent of one period per week in grades 7 and 8;

(xi) languages other than English pursuant to section 100.2(d) of this Part; [and]

(xii) career development and occupational studies[.]*; and*

(xiii) for students in schools that have vacancies in teacher positions for the courses described in subparagraphs (v) and (vi) of this subdivision during the 2017-2018 school year, and for all students in the 2018-2019 school year and thereafter, career and technical education (i.e., technology education, family and consumer sciences, trade and

technical subjects, business, agriculture, and/or health sciences), for a total of one and three fourths units of study.

(2) The requirements for technology education, home and career skills, *career and technical education* and library and information skills may be met by the integration of the State learning standards of such subjects into other courses in accordance with the following criteria:

(i) In public schools, the unit of study requirements specified in subparagraphs (1)(v), (vi)*,* [and/or] (xii) *and (xiii)* of this subdivision are met.

(ii) In public schools, the subjects of technology education*,* [and] home and career skills*, and any other career and technical education* shall be taught by persons certified to teach those subjects.

(iii) In public schools, library and information skills shall be taught by library media specialists and classroom teachers to ensure coordination and integration of library instruction with classroom instruction.

(iv) In nonpublic schools, the unit of study requirements specified in subparagraphs (1)(v), (vi)*,* [and/or] (xii) *and (xiii)* of this subdivision may be met, or their equivalents may be met, by the incorporation of the State learning standards of such subjects into the syllabi for other courses and/or by appropriate results on examinations which demonstrate student mastery of the learning standards of such subjects. The chief administrative officer of a nonpublic school shall document the manner in which such nonpublic school has implemented the provisions of this subparagraph. Such documentation shall be in writing and available for review upon request by the commissioner.

(3) The unit of study requirement for technology education*,* [and/or] home and career skills*, and any other career and technical education* included in paragraph (1) of this subdivision may be initiated in grade 5, provided that in public schools such subjects shall be taught by teachers *appropriately* certified in [those areas] *career and technical education*.

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

Data, views or arguments may be submitted to: Jhone M. Ebert, Senior Deputy Commissioner, New York State Education Department, 89 Washington Avenue, 2M, Albany, NY 12234, (518) 474-3812, email: regcomments@nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues existence of Education Department, with Board of Regents as its head, and authorizes Regents to appoint Commissioner of Education as Department's Chief Administrative Officer, which is charged with general management and supervision of all public schools and educational work of State.

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

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

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

Education Law section 305(1) and (2) provide Commissioner, as chief executive officer of the State's education system, with general supervision over all schools and institutions subject to the Education Law, or any statute relating to education, and responsibility for executing all educational policies of the Regents. Section 305(20) provides Commissioner shall have such further powers and duties as charged by the Regents.

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

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

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement Regents policy relating to the required courses of study pertaining to middle level instruction in career and technical education units of study in grades 7 and 8.

3. NEEDS AND BENEFITS:

With respect to units of study for grades 7 and 8, current regulations require that all students complete the following by the end of grade 8:

- 2 units English Language Arts
- 2 units Mathematics
- 2 units Social Studies
- 2 units Science
- 1 unit Technology Education – May begin as early as grade 5, provided that in public schools, it must be taught by a certified Technology Education teacher (CTE)
- ¾ units Home and Careers Skills Course (Family and Consumer Sciences) – May begin as early as grade 5, provided that in public schools, it must be taught by a certified FACS teacher
- ½ unit Visual Arts
- ½ unit Music
- ½ unit Health – May begin as early as grade 6, provided that in public schools, it must be taught by a certified health education teacher.
- 1 unit Languages other than English – May begin in any grade prior to grade 8, provided that in public schools, it must be taught by a teacher certified in that area
- Physical Education – Minimum of 3 periods per week during one semester of each school year and two periods during the other semester (or a comparable time each semester)
- Library and Information Skills – The equivalent of 1 period per week in grades 7 and 8

Current Middle Level (Grades 5-8) CTE Requirements

Current regulations provide for the first formal introduction in CTE in two specific disciplines: Family and Consumer Sciences (FACS) and Technology Education. As noted above, both FACS and Technology Education instruction may begin as early as grade 5, provided that in public schools these subjects must be taught by teachers certified in those subjects. Students experience a total of 70 weeks or 1.75 units of study in grades 5-8 taught by certified teachers in FACS and Technology Education. These courses address not only CTE content, but also instruction in the intermediate CDOS standards providing the foundation students need to make informed selections of graduation pathways (including the CTE, STEM, or CDOS pathways) available to them when they enter high school.

Challenges

Districts face a number of challenges with the existing requirements:

1) There is shortage of certified teachers in the areas of FACS and Technology Education to fill the need across the state.

2) Middle level student experiences in CTE are limited to FACS and Technology Education which represent only 2 of 6 CTE content areas and may not directly address other relevant CTE content areas in business, health sciences, agriculture, or trade and technical education.

3) Opportunities to create sequential programs that align to high school pathways and course offerings are limited to only 2 of 6 areas in CTE.

Proposed Changes

The Department is proposing added flexibility to allow the CTE requirement at the middle level (grades 5-8) to be met in new and innovative ways in order to address the challenges above. The Department is proposing to:

1) provide students with a broad-based introduction to Career and Technical Education through the lens of the 6 CTE content areas; and

2) allow districts to meet the unit of study requirement utilizing any of the 6 CTE content areas as a vehicle; and

3) provide guidance to districts on how to utilize available certified teachers and resources to repurpose the CTE experience at the middle level to better prepare students for available pathways in CTE, STEM, and CDOS at the high school level.

Benefits

- Currently CTE certification allows assignments in K-12 or 7-12. Opening the middle level requirement to all six CTE disciplines would expand the pool of teachers eligible for recruitment into open positions. Teachers certified in trade and technical subjects, business, agriculture or health sciences would become viable candidates for middle level positions.
- Districts will be better positioned to design meaningful articulated programs in any CTE discipline creating a link between middle and high school programs.

Options

Opening the door to various CTE disciplines would allow districts that are struggling to meet the current middle level CTE requirement, to create a new approach to CTE. Districts that have effective FACS and Technology Education programs could continue to meet the unit of study requirement in the traditional manner. Districts that wish to explore new ways to deliver this instruction can do so by creating articulated programs that bet-

ter align to available CTE, STEM or CDOS pathways at the high school level. Programs could be created to address the intermediate standards and, when available, could also provide accelerated instruction in CTE for students in grade 8 so such students could earn credit toward a pathway in CTE, STEM, or CDOS before entering high school. Attachment A illustrates some examples of the various ways districts could meet the intermediate requirements in CTE under the proposed flexibility. Should the Regents adopt the proposed regulatory amendment, districts that have vacancies in teaching positions in FACS and/or Technology Education may begin to use this flexibility during the 2017-18 school year. All other districts must use this option beginning in the 2018-19 school year.

Current Initiative

Work is underway, led by members of the FACS, Business and Technology Education professional associations and supported by NYSED and the CTE Technical Assistance Center, to plan to enhance the existing 1 3/4 unit of middle level FACS and Technical Education by creating a foundational course called "Introduction to CTE." Should the Regents adopt the proposed regulatory amendment, this work will serve as a model for the other CTE disciplines. Introduction to CTE would:

- bridge middle level CTE to high school CTE; and
- expose students to all CTE content areas; and
- follow a module format allowing for flexibility in delivery; and
- foster acceleration into graduation pathways (CTE, STEM, CDOS) that capitalize on students' interest.

Draft theme and content modules developed by the FACS Association are serving as models for further development by the Business, Technology, Agriculture, Health Sciences, and Trade and Technical education communities.

4. COSTS:

Cost to the State: none.

Costs to local government: none.

Cost to private regulated parties: none.

Cost to regulating agency for implementation and continued administration of this rule: none.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments but merely provides flexibility for school districts to allow the CTE requirement at the middle level (grades 5-8) to be met in new and innovative ways.

6. PAPERWORK:

The proposed amendment does not impose any specific recordkeeping, reporting or other paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

The proposed amendment is necessary to implement Regents policy relating to career and technical education units of study in grades 7 and 8. There were no significant alternatives considered.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated parties will be able to achieve compliance with the rule by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment implements Regents policy relating to the required courses of study pertaining to middle level instruction in career and technical education units of study in grades 7 and 8. As a result it does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 689 public school districts in the State.

2. COMPLIANCE REQUIREMENTS:

The Department is proposing added flexibility to allow the CTE requirement at the middle level (grades 5-8) to be met in new and innovative ways in order to address the challenges presented by the current regulatory requirements. The Department is proposing to:

1) provide students with a broad-based introduction to Career and Technical Education through the lens of the 6 CTE content areas; and

2) allow districts to meet the unit of study requirement utilizing any of the 6 CTE content areas as a vehicle; and

3) provide guidance to districts on how to utilize available certified teachers and resources to repurpose the CTE experience at the middle level to better prepare students for available pathways in CTE, STEM, and CDOS at the high school level.

Benefits

- Currently CTE certification allows assignments in K-12 or 7-12. Opening the middle level requirement to all six CTE disciplines would expand the pool of teachers eligible for recruitment into open positions. Teachers certified in trade and technical subjects, business, agriculture or health sciences would become viable candidates for middle level positions.
- Districts will be better positioned to design meaningful articulated programs in any CTE discipline creating a link between middle and high school programs.

Options

Opening the door to various CTE disciplines would allow districts that are struggling to meet the current middle level CTE requirement, to create a new approach to CTE. Districts that have effective FACS and Technology Education programs could continue to meet the unit of study requirement in the traditional manner. Districts that wish to explore new ways to deliver this instruction can do so by creating articulated programs that better align to available CTE, STEM or CDOS pathways at the high school level. Programs could be created to address the intermediate standards and, when available, could also provide accelerated instruction in CTE for students in grade 8 so such students could earn credit toward a pathway in CTE, STEM, or CDOS before entering high school. Attachment A illustrates some examples of the various ways districts could meet the intermediate requirements in CTE under the proposed flexibility. Should the Regents adopt the proposed regulatory amendment, districts that have vacancies in teaching positions in FACS and/or Technology Education may begin to use this flexibility during the 2017-18 school year. All other districts must use this option beginning in the 2018-19 school year.

Current Initiative

Work is underway, led by members of the FACS, Business and Technology Education professional associations and supported by NYSED and the CTE Technical Assistance Center, to plan to enhance the existing 1 3/4 unit of middle level FACS and Technical Education by creating a foundational course called "Introduction to CTE." Should the Regents adopt the proposed regulatory amendment, this work will serve as a model for the other CTE disciplines. Introduction to CTE would:

- bridge middle level CTE to high school CTE; and
- expose students to all CTE content areas; and
- follow a module format allowing for flexibility in delivery; and
- foster acceleration into graduation pathways (CTE, STEM, CDOS) that capitalize on students' interest.

Draft theme and content modules developed by the FACS Association are serving as models for further development by the Business, Technology, Agriculture, Health Sciences, and Trade and Technical education communities.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on school districts or charter schools.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements or costs on school districts or charter schools.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on school districts or charter schools.

7. LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to each of the 689 public school districts in the State, including those in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The proposed rule generally does not impose any additional compliance requirements upon local governments but merely provides flexibility for school districts to allow the CTE requirement at the middle level (grades 5-8) to be met in new and innovative ways. The proposed rule does not impose any additional professional services requirements on entities in rural areas.

3. COSTS:

The proposed amendment does not impose any costs on school districts

or BOCES across the State, including those located in rural areas of the State, but merely provides flexibility for school districts that choose to meet the middle level CTE requirement in new and innovative ways.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on school districts or charter schools but merely provides flexibility for school districts to allow the CTE requirement at the middle level (grades 5-8) to be met in new and innovative ways. Therefore, no alternatives were considered.

5. RURAL AREA PARTICIPATION:

Copies of the rule have been provided to Rural Advisory Committee for review and comment.

Job Impact Statement

The proposed amendment implements Regents policy to provide flexibility for school districts to allow the CTE requirement at the middle level (grades 5-8) to be met in new and innovative ways.

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Education of Homeless Children and Youths (McKinney-Vento Homeless Assistance Act)

I.D. No. EDU-21-17-00008-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 100.2(x) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1), (2), 3202(1), (8), 3209(1)(a), (7), 3713(1) and (2)

Subject: Education of homeless children and youths (McKinney-Vento Homeless Assistance Act).

Purpose: Required by the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. section 11431 et seq.), as amended by ESSA.

Substance of proposed rule (Full text is posted at the following State website: http://www.counsel.nysed.gov/ rulesandregs): Below is a summary of the proposed amendment to Commissioner's regulation § 100.2(x) which conforms to the new federal and State statutory provisions by revising the definitions section of the regulation to:

a. Define feeder school and receiving school;

b. Eliminate "awaiting foster care placement" from the definition of homeless child as of December 10, 2016;

c. Define preschool; and

d. Define school of origin to include feeder schools and preschools.

To be consistent with the recent McKinney-Vento changes, the proposed amendment allows the parent or guardian, or in the case of an unaccompanied youth, the youth (known as the designator) to make the initial designation of the school district and school he/she wants his/her child to attend and upon receipt of such designation, the school district will be required to determine whether the designation made by the designator is consistent with the best interests of the homeless child or youth.

In determining a homeless child's best interest, the school district must presume that keeping the homeless child or youth in the school of origin is in the child's or youth's best interest, except when doing so is contrary to the request of the designator.

When making a best interest determination, the school district must consider student-centered factors, including but not limited to factors related to the impact of mobility on achievement, education, the health and safety of the homeless child, giving priority to the request of the child's or youth's parent or guardian or the youth in the case of an unaccompanied youth.

If after considering student-centered factors, the LEA determines that it is not in the homeless child's best interest to attend the school of origin or the school designated by the designator, the local educational agency must provide a written explanation of the reasons for its determination, in a manner and form understandable to such parent, guardian, or unaccompanied youth. The information must also include information regarding the right to a timely appeal. The homeless child or youth must be enrolled in the school in which enrollment is sought by the designator during the pendency of all available appeals.

To conform to the new federal changes, the proposed amendment also requires the designated school district to immediately enroll the homeless child even if the child or youth is unable to produce records of immunization and/or other required health records and/or even if the child has missed application or enrollment deadlines during any period of homelessness, if applicable. However, the amendment does not require the immediate attendance of an enrolled student lawfully excluded from school temporarily pursuant to Education Law § 906 because of a communicable or infectious disease that imposes a significant risk to others.

The proposed amendment also requires that a student be allowed to maintain enrollment in the same school for the duration of homelessness, through the remainder of the school year in which the student becomes permanently housed, and possibly one additional year if it is the terminal grade for the student in that school.

The proposed amendment further requires that local departments of social services give completed designation forms to school districts and eliminates the requirement that school districts submit designation forms to the New York State Education Department (NYSED or "the Department") for all students identified as homeless, only those for whom the district is seeking tuition reimbursement (which is consistent with current practice).

The proposed amendment also makes the following revisions to the transportation provisions:

a. Clarifies that transportation beyond 50 miles is subject to a best interest determination using the same factors that school districts must use in reviewing school designations; and

b. Requires transportation to the school of origin, which includes preschool, through the remainder of the school year in which the student becomes permanently housed and for one additional year if it is the student's terminal year in the school.

The provisions relating to the responsibilities of LEAs is also revised to:

a. Require continued enrollment and transportation during any enrollment dispute pending final resolution of all available appeals, including those commenced pursuant to Education Law § 310 (i.e., elimination of the stay provision);

b. Ensure that homeless children are provided with services comparable to services offered to other students in the designated district of attendance including preschool and other educational programs or services for which a homeless student meets the eligibility criteria, such as programs for students with disabilities, English language learners, after-school programs, school nutrition programs and transportation, career and technical education, and programs for gifted and talented students, and to the extent such child or youth is eligible, services under ESSA;

c. Include the updated LEA McKinney-Vento Liaison responsibilities in ESSA; and

d. Require that information about a homeless child's living situation (e.g., homeless status, temporary address) be treated as a student education record and not be deemed to be directory information.

For the full text of the terms please visit: http://www.regents.nysed.gov/common/regents/files/517p12a2.pdf

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

Data, views or arguments may be submitted to: Jhone M. Ebert, Senior Deputy Commissioner, New York State Education Department, 89 Washington Avenue, 2M, Albany, NY 12234, (518) 474-3812, email: regcomments@nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Ed.L.§ 101 continues the existence of the Education Department (NYSED), with the Board of Regents as its head, and authorizes the Regents to appoint the Commissioner as chief administrative officer of NYSED, which is charged with the general management and supervision of public schools and the educational work of the State.

Ed.L.§ 207 authorizes the Regents and Commissioner to adopt rules and regulations implementing State law regarding education.

Ed.L.§ 215 provides the Commissioner with authority to require schools to submit reports containing such information as the Commissioner may prescribe.

Ed.L.§ 305(1) designates the Commissioner as chief executive officer of the State system of education and the Regents, and authorizes the Commissioner to enforce laws relating to the educational system and to execute the Regents' educational policies.

Ed.L.§ 305(2) authorizes the Commissioner to have general supervision over schools subject to the Education Law.

Ed.L.§ 3202(1) specifies the school district of residence as the school district in which children residing in New York State are entitled to attend

school without the payment of tuition. That section is intended to assure that each child residing within the State is able to attend school on a tuition-free basis in accordance with Article XI, section 1 of the New York State Constitution. Moreover, it is the policy of the Legislature, as expressed in Ed.L. section 3205(1) to require instruction for each child of compulsory school age within the State.

Ed.L.§ 3202(8) provides that a homeless child, as defined in Ed.L.§ 3209(1), over the age of five and under twenty-one years of age, who has not received a high school diploma, shall be entitled to attend a public school without the payment of tuition, in accordance with the provisions of Ed.L.§ 3209.

Ed.L.§ 3209 sets forth requirements for the education of homeless children. Ed.L 3209 authorizes the Commissioner to promulgate regulations to carry out the provisions of the statute.

Ed.L.§ 3713(1) and (2) authorizes the State and school districts to accept federal law making appropriations for educational purposes and authorizes the Commissioner to cooperate with federal agencies to implement such law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes, and is necessary to conform Commissioner's regulations to the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. section 11431 et seq.), as amended by Title IX of the Every Student Succeeds Act of 2015 (Public Law 114-95) and Part C of Chapter 56 of the Laws of 2017.

3. NEEDS AND BENEFITS:

The Education for Homeless Children and Youth program is administered under Title VII-B of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) ("McKinney-Vento"), originally authorized in 1987 and most recently re-authorized in December 2015 by ESSA. Under McKinney-Vento, State educational agencies (SEAs) must ensure that each homeless child and youth has equal access to the same free, appropriate public education, including a public preschool education, as other children and youths. Several changes were made as a result of ESSA, including, but not be limited to:

1. Removes "awaiting foster care placement" from the definition of homeless (December 10, 2016);

2. Expands the definition of "school of origin" to include preschool and feeder schools;

3. Requires continued enrollment and transportation during any enrollment dispute pending final resolution of the dispute, including all available appeals;

4. Expands transportation to the school of origin through the remainder of the school year in which the student becomes permanently housed;

5. Requires SEAs and local educational agencies (LEAs) have policies to remove barriers to identification, enrollment and retention of children and youth who are homeless, including barriers to enrollment and retention due to outstanding fees or fines or absences;

6. Requires SEAs to have procedures that ensure that students who are homeless and who meet the relevant eligibility criteria do not face barriers to accessing academic and extra-curricular activities, including magnet schools, summer school, career and technical education, advanced placement courses, online learning and charter schools;

7. Requires that the State Plan describe how youth who are homeless will receive assistance from counselors to advise such youth and improve their readiness for college;

8. Requires that the State Plan ensure appropriate access to secondary education, including procedures to remove barriers that prevent youth from receiving appropriate for full or partial coursework completed while attending a prior school;

9. Requires LEAs to immediately enroll children and youth who are homeless even if they have missed application or enrollment deadlines during any period of homelessness;

10. Allows LEA liaisons to refer students and their families to needed housing services and to affirm eligibility for students and their families for homeless assistance programs funded by the United States Department of Housing and Urban Development if the liaison has received training;

11. Requires that information about a homeless child's living situation (e.g., homeless status, temporary address) be treated as a student education record and not be deemed to be directory information.

In order to conform State law to the ESSA-related changes in McKinney-Vento, the Legislature and the Governor passed Part C of Chapter 56 of the Laws of 2017 amending Ed/L.§ 3209. The proposed amendment conforms to the new federal and State statutory provisions by revising the definitions section of the regulation to:

a. Define feeder school and receiving school;

b. Eliminate "awaiting foster care placement" from the definition of homeless child as of December 10, 2016;

c. Define preschool; and

d. Define school of origin to include feeder schools and preschools.

To be consistent with the recent McKinney-Vento changes, the proposed amendment allows the parent or guardian, or in the case of an unaccompanied youth, the youth (known as the designator) to make the initial designation of the school district and school he/she wants his/her child to attend and upon receipt of such designation, the school district will be required to determine whether the designation made by the designator is consistent with the best interests of the homeless child or youth.

In determining a homeless child's best interest, the school district must presume that keeping the homeless child or youth in the school of origin is in the child's or youth's best interest, except when doing so is contrary to the request of the designator.

When making a best interest determination, the school district must consider student-centered factors, including but not limited to factors related to the impact of mobility on achievement, education, the health and safety of the homeless child, giving priority to the request of the child's or youth's parent or guardian or the youth in the case of an unaccompanied youth.

If after considering student-centered factors, the LEA determines that it is not in the homeless child's best interest to attend the school of origin or the school designated by the designator, the LEA must provide a written explanation of the reasons for its determination, in a manner and form understandable to such parent, guardian, or unaccompanied youth. The information must also include information regarding the right to a timely appeal. The homeless child or youth must be enrolled in the school in which enrollment is sought by the designator during the pendency of all available appeals.

The proposed amendment also requires the designated school district to immediately enroll the homeless child even if the child or youth is unable to produce records of immunization and/or other required health records and/or even if the child has missed application or enrollment deadlines during any period of homelessness, if applicable. However, the amendment does not require the immediate attendance of an enrolled student lawfully excluded from school temporarily pursuant to Ed.L.§ 906 because of a communicable or infectious disease that imposes a significant risk to others.

The proposed amendment also requires that a student be allowed to maintain enrollment in the same school for the duration of homelessness, through the remainder of the school year in which the student becomes permanently housed, and possibly one additional year if it is the terminal grade for the student in that school.

The proposed amendment further requires that local departments of social services give completed designation forms to school districts and eliminates the requirement that school districts submit designation forms to NYSED for all students identified as homeless, only those for whom the district is seeking tuition reimbursement (consistent with current practice). It also makes the following revisions to transportation:

a. Clarifies that transportation beyond 50 miles is subject to a best interests determination using the same factors that school districts must use in reviewing school designations; and

b. Requires transportation to the school of origin, which includes preschool, through the remainder of the school year in which the student becomes permanently housed and for one additional year if it is the student's terminal year in the school.

The responsibilities of LEAs are also revised to:

a. Require continued enrollment and transportation during any enrollment dispute pending final resolution of all available appeals, including those commenced pursuant to Ed.L.§ 310 (i.e., elimination of the stay provision);

b. Ensure that homeless children are provided with services comparable to services offered to other students in the designated district of attendance including preschool and other educational programs or services for which a homeless student meets the eligibility criteria, such as programs for students with disabilities, ELLs, after-school programs, school nutrition programs and transportation, career and technical education, and programs for gifted and talented students, and to the extent such child or youth is eligible, services under ESSA;

c. Include the updated LEA McKinney-Vento Liaison responsibilities in ESSA; and

d. Require that information about a homeless child's living situation (e.g., homeless status, temporary address) be treated as a student education record and not be deemed to be directory information.

4. COSTS:

Cost to the State: The proposed amendment is necessary to conform Commissioner's Regulations to federal McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 et seq.), as amended by Title IX of ESSA of 2015 (Public Law 114-95) and Part C of Chapter 56 of the Laws of 2017. The State is required to comply with federal statutes as a condition to its receipt of federal funding. The proposed amendment will not impose any costs on the State beyond those imposed by State and federal statutes.

Costs to local government: The proposed amendment will not impose

any costs on school districts beyond those imposed by State and federal statutes.

Cost to private regulated parties: The proposed amendment applies to school districts and does not impose any costs or compliance requirements on private parties.

Cost to regulating agency for implementation and continued administration of this rule: The proposed amendment will not impose any additional costs on NYSED beyond those imposed by State and federal statutes.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to conform Commissioner's Regulations to federal McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 et seq.), as amended by Title IX of ESSA (P.L.114-95) and Part C of Ch. 56 of the L. of 2017. The proposed amendment will not impose any additional program, service, duty or responsibility beyond those imposed by State and federal statutes.

6. PAPERWORK:

The proposed amendment will not impose any additional recordkeeping or other paperwork requirements beyond those imposed by State and federal statutes.

7. DUPLICATION:

The proposed amendment does not duplicate, overlap or conflict with State and federal rules or requirements, and is necessary to conform Commissioner's Regulations to federal McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 et seq.), as amended by Title IX of ESSA (P.L.114-95) and Part C of Ch. 56 of the L. of 201.7.

8. ALTERNATIVES:

There were no significant alternatives and none were considered. The proposed amendment is necessary to conform Commissioner's Regulations to federal McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 et seq.), as amended by Title IX of ESSA (P.L.114-95) and Part C of Ch. 56 of the L. of 201.7.

9. FEDERAL STANDARDS:

The proposed amendment is necessary to conform Commissioner's Regulations to federal McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 et seq.), as amended by Title IX of ESSA (P.L.114-95) and Part C of Ch. 56 of the L. of 201.7.

10. COMPLIANCE SCHEDULE:

It is anticipated parties will be able to achieve compliance with the rule by its effective date. The proposed amendment does not impose any compliance requirements beyond those required by State and federal statutes.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment is necessary to conform Commissioner's Regulations to federal McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 et seq.), as amended by Title IX of ESSA (P.L.114-95) and Part C of Ch. 56 of the L. of 2017. As a result it does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 689 public school districts in the State.

2. COMPLIANCE REQUIREMENTS:

The Education for Homeless Children and Youth program is administered under Title VII-B of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) ("McKinney-Vento"), originally authorized in 1987 and most recently re-authorized in December 2015 by ESSA. Under McKinney-Vento, State educational agencies (SEAs) must ensure that each homeless child and youth has equal access to the same free, appropriate public education, including a public preschool education, as other children and youths. Several changes were made as a result of ESSA, including, but not be limited to:

1. Removes "awaiting foster care placement" from the definition of homeless (December 10, 2016);

2. Expands the definition of "school of origin" to include preschool and feeder schools;

3. Requires continued enrollment and transportation during any enrollment dispute pending final resolution of the dispute, including all available appeals;

4. Expands transportation to the school of origin through the remainder of the school year in which the student becomes permanently housed;

5. Requires SEAs and local educational agencies (LEAs) have policies to remove barriers to identification, enrollment and retention of children and youth who are homeless, including barriers to enrollment and retention due to outstanding fees or fines or absences;

6. Requires SEAs to have procedures that ensure that students who are homeless and who meet the relevant eligibility criteria do not face barriers to accessing academic and extra-curricular activities, including magnet schools, summer school, career and technical education, advanced placement courses, online learning and charter schools;

7. Requires that the State Plan describe how youth who are homeless will receive assistance from counselors to advise such youth and improve their readiness for college;

8. Requires that the State Plan ensure appropriate access to secondary education, including procedures to remove barriers that prevent youth from receiving appropriate for full or partial coursework completed while attending a prior school;

9. Requires LEAs to immediately enroll children and youth who are homeless even if they have missed application or enrollment deadlines during any period of homelessness;

10. Allows LEA liaisons to refer students and their families to needed housing services and to affirm eligibility for students and their families for homeless assistance programs funded by the United States Department of Housing and Urban Development if the liaison has received training;

11. Requires that information about a homeless child's living situation (e.g., homeless status, temporary address) be treated as a student education record and not be deemed to be directory information.

In order to conform State law to the ESSA-related changes in McKinney-Vento, the Legislature and the Governor passed Part C of Chapter 56 of the Laws of 2017 amending Ed/L.§ 3209. The proposed amendment conforms to the new federal and State statutory provisions by revising the definitions section of the regulation to:

a. Define feeder school and receiving school;

b. Eliminate "awaiting foster care placement" from the definition of homeless child as of December 10, 2016;

c. Define preschool; and

d. Define school of origin to include feeder schools and preschools.

To be consistent with the recent McKinney-Vento changes, the proposed amendment allows the parent or guardian, or in the case of an unaccompanied youth, the youth (known as the designator) to make the initial designation of the school district and school he/she wants his/her child to attend and upon receipt of such designation, the school district will be required to determine whether the designation made by the designator is consistent with the best interests of the homeless child or youth.

In determining a homeless child's best interest, the school district must presume that keeping the homeless child or youth in the school of origin is in the child's or youth's best interest, except when doing so is contrary to the request of the designator.

When making a best interest determination, the school district must consider student-centered factors, including but not limited to factors related to the impact of mobility on achievement, education, the health and safety of the homeless child, giving priority to the request of the child's or youth's parent or guardian or the youth in the case of an unaccompanied youth.

If after considering student-centered factors, the LEA determines that it is not in the homeless child's best interest to attend the school of origin or the school designated by the designator, the LEA must provide a written explanation of the reasons for its determination, in a manner and form understandable to such parent, guardian, or unaccompanied youth. The information must also include information regarding the right to a timely appeal. The homeless child or youth must be enrolled in the school in which enrollment is sought by the designator during the pendency of all available appeals.

The proposed amendment also requires the designated school district to immediately enroll the homeless child even if the child or youth is unable to produce records of immunization and/or other required health records and/or even if the child has missed application or enrollment deadlines during any period of homelessness, if applicable. However, the amendment does not require the immediate attendance of an enrolled student lawfully excluded from school temporarily pursuant to Ed.L.§ 906 because of a communicable or infectious disease that imposes a significant risk to others.

The proposed amendment also requires that a student be allowed to maintain enrollment in the same school for the duration of homelessness, through the remainder of the school year in which the student becomes permanently housed, and possibly one additional year if it is the terminal grade for the student in that school.

The proposed amendment further requires that local departments of social services give completed designation forms to school districts and eliminates the requirement that school districts submit designation forms to NYSED for all students identified as homeless, only those for whom the district is seeking tuition reimbursement (consistent with current practice). It also makes the following revisions to transportation:

a. Clarifies that transportation beyond 50 miles is subject to a best interests determination using the same factors that school districts must use in reviewing school designations; and

b. Requires transportation to the school of origin, which includes preschool, through the remainder of the school year in which the student becomes permanently housed and for one additional year if it is the student's terminal year in the school.

The responsibilities of LEAs are also revised to:

a. Require continued enrollment and transportation during any enrollment dispute pending final resolution of all available appeals, including those commenced pursuant to Ed.L.§ 310 (i.e., elimination of the stay provision);

b. Ensure that homeless children are provided with services comparable to services offered to other students in the designated district of attendance including preschool and other educational programs or services for which a homeless student meets the eligibility criteria, such as programs for students with disabilities, ELLs, after-school programs, school nutrition programs and transportation, career and technical education, and programs for gifted and talented students, and to the extent such child or youth is eligible, services under ESSA;

c. Include the updated LEA McKinney-Vento Liaison responsibilities in ESSA; and

d. Require that information about a homeless child's living situation (e.g., homeless status, temporary address) be treated as a student education record and not be deemed to be directory information.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on school districts or charter schools beyond those required by federal McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 et seq.), as amended by Title IX of ESSA (P.L.114-95) and Part C of Ch. 56 of the L. of 2017.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements or costs on school districts or charter schools beyond those required by federal McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 et seq.), as amended by Title IX of ESSA (P.L.114-95) and Part C of Ch. 56 of the L. of 2017.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on school districts or charter schools beyond those required by federal McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 et seq.), as amended by Title IX of ESSA (P.L.114-95) and Part C of Ch. 56 of the L.of 2017.

7. LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to each of the 689 public school districts in the State, including those in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The proposed rule generally does not impose any additional compliance requirements upon local governments beyond those required by federal McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 et seq.), as amended by Title IX of ESSA (P.L.114-95) and Part C of Ch. 56 of the Laws of 2017. The proposed rule does not impose any additional professional services requirements on entities in rural areas.

3. COSTS:

The proposed amendment does not impose any costs on school districts or BOCES across the State, including those located in rural areas of the State beyond those required by federal McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 et seq.), as amended by Title IX of ESSA (P.L.114-95) and Part C of Ch. 56 of the Laws of 2017.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on school districts or charter schools beyond those required by federal McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 et seq.), as amended by Title IX of ESSA (P.L.114-95) and Part C of Ch. 56 of the Laws of 2017. Therefore, no alternatives were considered.

5. RURAL AREA PARTICIPATION:

Copies of the rule have been provided to Rural Advisory Committee for review and comment.

Job Impact Statement

The proposed amendment necessary to conform Commissioner's regulations to the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. section 11431 et seq.), as amended by Title IX of the Every Student Succeeds Act of 2015 (Public Law 114-95) and Part C of Chapter 56 of the Laws of 2017. Because of the nature of the proposed amendment, it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, and no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Reporting Requirements Relating to Sexual Assault on College Campuses

I.D. No. EDU-21-17-00009-P

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

Proposed Action: Addition of Part 48 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207, 305 and 6439 through 6449, as added by chapter 76 of the Laws of 2015

Subject: Reporting Requirements Relating to Sexual Assault on College Campuses.

Purpose: To Implement chapter 76 of the Laws of 2015 to establish reporting requirements relating to sexual assault on college campuses.

Text of proposed rule: A new Part 48, is added to the Regulations of the Commissioner of Education, effective September 27, 2017, to read as follows:

Part 48

Annual Aggregate Data Reporting by New York State Institutions of Higher Education Related to Reports of Domestic Violence, Dating Violence, Stalking and Sexual Assault

§ 48.1 Definitions. For purposes of this Part:

(a) Accused shall mean a person accused of a violation who has not yet entered an institution's judicial or conduct process.

(b) Domestic violence, dating violence, stalking and sexual assault shall be defined by each institution in its code of conduct in a manner consistent with applicable federal definitions.

(c) Incident shall mean an incident of domestic violence, dating violence, stalking or sexual assault, where the reporting individual and/or the accused were subject to the code of conduct at the time of the incident.

(d) Institution shall mean any college or university chartered by the Board of Regents or incorporated by special act of the Legislature and that maintains a campus in New York.

(e) Reporting individual shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used by an institution to reference an individual who brings forth a report of a violation.

(f) Respondent shall mean a person accused of a violation who has entered an institution's judicial or conduct process.

(g) Title IX coordinator shall mean the Title IX Coordinator and/or his or her designee or designees.

(h) On campus shall be defined as campus is defined in the Higher Education Act (Clery Act), 20 U.S.C. § 1092(f)(6)(A)(ii).

(i) Off campus shall be defined as any location not included in the definition of on campus.

§ 48.2 Annual Aggregate Data Reporting.

On or before October 1, 2019, and by October 1 of each subsequent year thereafter, institutions shall report to the Department the following information concerning incidents that were reported during the prior calendar year in a form and manner prescribed by the Commissioner:

(a) the following numbers of incidents reported to the Title IX Coordinator (which shall be established based upon the number of reporting individuals, not by the number of the accused or respondents):

(1) the number of incidents that occurred on campus;

(2) the number of incidents that occurred off campus; and

(3) the total of incidents in (1) and (2) above;

(i) of those incidents reported in paragraph (a)(3) of this subdivision:

(a) the number of incidents that the Title IX Coordinator is aware of, that were reported to law enforcement prior to being reported to the Title IX Coordinator;

(b) the number of incidents reported to campus police/campus security/campus public safety; and

(c) the number of incidents that the Title IX Coordinator is aware of, for which the reporting individual requested referral to additional ser-

vices through the institution, including counseling, mental health, medical or legal services, whether those services were provided on-campus or through outside service providers.

(b) of those incidents reported in subdivision (a)(3) of this section,

(1) the number of incidents for which the reporting individual sought the institution's judicial or conduct process (which includes incidents for which a reporting individual made a request, in writing or orally, to engage the judicial or conduct process, whether an investigator or hearing model, and those incidents where, pursuant to section 6446(4) of the Education Law, the institution made a determination to pursue the judicial or conduct process without the consent of the reporting individual); and

(2) the number of incidents that are not included in (b)(1) of this section, including those for which there was no institutional jurisdiction over the accused or respondent, and those incidents for which the judicial or conduct process could not otherwise go forward;

(3) the number of incidents for which the reporting individual sought an order of "no contact" with the respondent(s), and the number of "no contact" orders issued.

(c) of those incidents reported in subdivision (b)(1) of this section, the number of cases processed through the institution's judicial or conduct process, (which process shall commence upon a respondent's receipt of a notice of charges pursuant to section 6444(5)(b) of the Education Law);

(d) of those cases in subdivision (c) of this section, the number of respondents who were found responsible through the institution's judicial or conduct process after all levels of appeal were exhausted, which number shall include those cases in which the respondent accepted responsibility at any point in the process;

(e) of those cases in subdivision (c) of this section, the number of respondents who were found not responsible through the institution's judicial or conduct process, or whose finding of responsibility was overturned on appeal;

(f) a description of the final sanctions imposed by the institution for each incident for which a respondent was found responsible for sexual assault, dating violence, domestic violence or stalking, as provided in subdivision (d) of this section, through the institution's judicial or conduct process, which shall be defined as:

(1) the number of respondents found responsible who were expelled/dismissed from the institution;

(2) the number of respondents found responsible who were suspended from the institution;

(3) the number of respondents found responsible who received sanctions other than expulsion/dismissal or suspension;

(4) the number of respondents found responsible who received a notation added to their official transcript noting a violation of the institutions' code of conduct; and

(5) the number of respondents found responsible who received a notation added to their official transcript noting withdrawal from the institution with conduct charges pending.

(g) the number of cases in the institution's judicial or conduct process that were closed prior to a final determination after the respondent withdrew from the institution and declined to complete the disciplinary process; and

(h) the number of cases in the institution's judicial or conduct process that were closed because the complaint was withdrawn by the reporting individual prior to a final determination or an informal resolution was reached. Such number shall include all cases, regardless of the stage at which the reporting individual withdrew the complaint or the informal resolution was reached.

(i) Additional training information. Institutions may additionally report the number of trainings held by the institution, the number of staff trained, and the number of students trained during the reporting period.

Text of proposed rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, 89 Washington Avenue, Room 142, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Data, views or arguments may be submitted to: Peg Rivers, State Education Department, 89 Washington Avenue, Room 975 EBA, Albany, NY 12234, (518) 408-1189, email: REGCOMMENTS@NYSED.GOV

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law 101 charges the Department with the general management and supervision of all public schools and all of the educational work of the State.

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

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

Education Law 6439 through 644, as added by Chapter 76 of the Laws of 2015 relates to implementation by colleges and universities of sexual assault, dating violence, domestic violence and stalking prevention and response policies and procedures and requires the Department to promulgate regulations to establish the data reporting requirements.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment establishes the annual aggregate data reporting requirements for New York State institutions of higher education related to reports of domestic violence, dating violence, stalking, and sexual abuse to implement the requirements of Chapter 76 of the Laws of 2015.

3. NEEDS AND BENEFITS:

On July 7, 2015, Governor Cuomo signed into law Chapter 76 of the Laws of 2015, implementation by Colleges and Universities of sexual assault, dating violence, domestic violence and stalking prevention and response policies and procedures, known as the "Enough is Enough" statute. This statute requires higher education institutions in New York State to adopt a set of comprehensive procedures and guidelines, including a uniform definition of affirmative consent, a statewide amnesty policy, and expanded access to law enforcement. The statute also requires that institutions annually report aggregate data to the State Education Department concerning reports of domestic violence, dating violence, stalking and sexual assault.

Proposed Amendment

The Department was required to create a reporting mechanism for these annual data submissions and to issue regulations, developed in consultation with the higher education sectors, concerning the annual data reports.

Education Law § 6449, as added by Chapter 76 of the Law of 2015, delineates the following specific data elements that are required to be reported to the Department:

a. The number of such incidents that were reported to the Title IX Coordinator.

b. Of those incidents in paragraph a, the number of reporting individuals who sought the institution's judicial or conduct process.

c. Of those reporting individuals in paragraph b, the number of cases processed through the institution's judicial or conduct process.

d. Of those cases in paragraph c, the number of respondents who were found responsible through the institution's judicial or conduct process.

e. Of those cases in paragraph c, the number of respondents who were found not responsible through the institution's judicial or conduct process.

f. A description of the final sanctions imposed by the institution for each incident for which a respondent was found responsible, as provided in paragraph d, through the institution's judicial or conduct process.

g. The number of cases in the institution's judicial or conduct process that were closed prior to a final determination after the respondent withdrew from the institution and declined to complete the disciplinary process.

h. The number of cases in the institution's judicial or conduct process that were closed because the complaint was withdrawn by the reporting individual prior to a final determination.

The proposed amendment further clarifies the reporting requirements in each of these areas.

4. COSTS:

a. Costs to State government: The amendment does not impose any costs on State government, including the State Education Department, beyond what is required by State statute.

b. Costs to local government: The amendment does not impose any costs on local government above those imposed by State statute.

c. Costs to private regulated parties: The amendment does not impose any costs on private regulated parties above those imposed by State statute.

d. Costs to regulating agency for implementation and continued administration: See above.

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed amendment does not require any additional paperwork requirements upon state or local government, the State Education Department, school districts, BOCES, or institutions of higher education beyond what is required by State statute.

7. DUPLICATION:

There are provisions of Chapter 76 of the Laws of 2015 which reinforce and/or expand on existing obligations imposed on institutions of higher education by Title IX of the Education Amendments of 1972 (the "Clery Act").

8. ALTERNATIVES:

The Department solicited comment from the four higher education sectors and the New York State Office of Campus Safety on the proposed

amendment. Several suggestions were made related to the definitions proposed and clarifications that would provide consistency and accuracy in reporting. Many of those suggestions were incorporated into the proposed amendment. Sector representatives also requested that the timeline for submission of the annual data reports required by the "Enough is Enough" statute should align with the existing timeline for institutions to submit data required by the federal "Clery Act" under Title IX of federal statute, which are required by October 1st of each year. This change was also made.

9. FEDERAL STANDARDS:

Title IX of the Education Amendments of 1972 ("Title IX") and/or the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, as amended by the Violence Against Women Act/Campus Sexual Violence Act (the "Clery Act").

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be adopted by the Board of Regents at its September 2017 meeting and will then become effective on September 27, 2017.

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed amendment adds a new Part 48 to the Regulations of the Commissioner of Education related to annual aggregate data reporting by New York State institutions of higher education related to reports of domestic violence, dating violence, stalking and sexual assault to implement Chapter 76 of the Laws of 2015 ("Enough is Enough" statute).

1. EFFECT OF RULE:

The proposed amendment applies to all New York State institutions of higher education, including those with fewer than 100 employees.

2. COMPLIANCE REQUIREMENTS:

Education Law § 6449, as added by Chapter 76 of the Law of 2015, delineates the following specific data elements that are required to be reported to the Department relating to sexual abuse on college campuses:

a. The number of such incidents that were reported to the Title IX Coordinator.

b. Of those incidents in paragraph a, the number of reporting individuals who sought the institution's judicial or conduct process.

c. Of those reporting individuals in paragraph b, the number of cases processed through the institution's judicial or conduct process.

d. Of those cases in paragraph c, the number of respondents who were found responsible through the institution's judicial or conduct process.

e. Of those cases in paragraph c, the number of respondents who were found not responsible through the institution's judicial or conduct process.

f. A description of the final sanctions imposed by the institution for each incident for which a respondent was found responsible, as provided in paragraph d, through the institution's judicial or conduct process.

g. The number of cases in the institution's judicial or conduct process that were closed prior to a final determination after the respondent withdrew from the institution and declined to complete the disciplinary process.

h. The number of cases in the institution's judicial or conduct process that were closed because the complaint was withdrawn by the reporting individual prior to a final determination.

The proposed amendment further clarifies the reporting requirements in each of these areas.

3. PROFESSIONAL SERVICES:

The proposed amendments do not impose any additional professional services requirements on small businesses beyond those imposed by statute.

4. COMPLIANCE COSTS:

There are no additional costs on small businesses beyond those required by State statute.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The statute (and proposed amendment) requires the department to issue a report to the Governor and the Legislature regarding the data collected by the Department, and the Office of Higher Education is working with staff in the Officer of Information Technology Services (ITS) to develop an electronic data reporting system for the annual "Enough is Enough" data reports.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment incorporates suggestions from the four higher education sectors to align the timeline for submission of "Enough is Enough" data with the existing timeline for institutions to submit data required by the federal "Clery Act" under Title IX of the federal statute, which is required by October 1 of each year. This rule applies equally to all institutions of higher education throughout the State.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

In December 2016, the Department circulated a discussion draft of the regulations and convened a meeting of representatives of the four higher education sectors, which included representatives of higher education institutions that may constitute small businesses, and the New York State Office of Campus Safety to discuss the regulations. During that meeting, and in subsequent email communications with the sector representatives, several suggestions were made for definitions and clarifications that would provide consistency and accuracy in reporting. Many of those suggestions were incorporated into the proposed regulations attached to this item.

(b) Local governments:

The proposed amendment does not impose any new recordkeeping or other compliance requirements, and will not have an adverse economic impact, on local governments. Because it is evident from the nature of the rule that it does not affect local governments, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all New York State institutions of higher education, including those in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

Education Law § 6449, as added by Chapter 76 of the Law of 2015 required the Department to establish reporting requirements for New York State institutions of higher education related to reports of domestic violence, dating violence, stalking, and sexual abuse to implement the requirement of Chapter 76 of the Laws of 2015.

Education Law § 6449, as added by Chapter 76 of the Law of 2015, delineates the following specific data elements that are required to be reported to the Department:

a. The number of such incidents that were reported to the Title IX Coordinator.

b. Of those incidents in paragraph a, the number of reporting individuals who sought the institution's judicial or conduct process.

c. Of those reporting individuals in paragraph b, the number of cases processed through the institution's judicial or conduct process.

d. Of those cases in paragraph c, the number of respondents who were found responsible through the institution's judicial or conduct process.

e. Of those cases in paragraph c, the number of respondents who were found not responsible through the institution's judicial or conduct process.

f. A description of the final sanctions imposed by the institution for each incident for which a respondent was found responsible, as provided in paragraph d, through the institution's judicial or conduct process.

g. The number of cases in the institution's judicial or conduct process that were closed prior to a final determination after the respondent withdrew from the institution and declined to complete the disciplinary process.

h. The number of cases in the institution's judicial or conduct process that were closed because the complaint was withdrawn by the reporting individual prior to a final determination.

The proposed amendment clarifies those reporting requirements.

3. COSTS:

The proposed amendment does not impose any costs on institutions of higher education beyond what is imposed by State statute.

4. MINIMIZING ADVERSE IMPACT:

The Department solicited comment from the four higher education sectors and the New York State Office of Campus Safety on the proposed amendment. Several suggestions were made related to the definitions proposed and clarifications that would provide consistency and accuracy in reporting. Many of those suggestions were incorporated into the proposed amendment. Sector representatives also requested that the timeline for submission of the annual data reports required by the "Enough is Enough" statute should align with the existing timeline for institutions to submit data required by the federal "Clery Act" under Title IX of federal statute, which are required by October 1st of each year. This change was also made.

5. RURAL AREA PARTICIPATION:

Copies of the rule have been provided to Rural Advisory Committee for review and comment.

Job Impact Statement

The purpose of the proposed amendment is to implement Chapter 76 of the Laws of 2015 ("Enough is Enough" statute) by adding a new Part 48 of the Regulations of the Commissioner of Education to establish the annual aggregate data reporting requirements for New York State institutions of higher education.

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

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

School Health Services

I.D. No. EDU-04-17-00012-RP

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

Proposed Action: Amendment of sections 136.1, 136.2, 136.3 and 136.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), 901(1), (2), 902(1), (2), 903(1), (2), (3), 904(1), 906(1), (2), (3), 921(1), (2), 3208(1), (2), (3), (4) and (5); Public Health Law, section 2164(7)

Subject: School Health Services.

Purpose: To conform school health regulations to ch. 58 of the Laws of 2006, ch. 57 of the Laws of 2013, and ch. 373 of the Laws of 2016.

Substance of revised rule (Full text is posted at the following State website: http://www.counsel.nysed.gov/rulesandregs): The Commissioner of Education proposes to amend sections 136.1, 136.2, 136.3, 136.6 of the Regulations of the Commissioner of Education relating to school health services. The following is a summary of the proposed rule:

Paragraph (1) of subdivision (a) of section 136.6 of the Regulations of the Commissioner of Education is amended to update the definition of epinephrine auto-injector device to conform to the definition established by Chapter 373 of the Laws of 2016 (a single-use device used for the automatic injection of a premeasured dose of epinephrine into the human body for the purpose of emergency treatment of a person appearing to experience anaphylactic symptoms approved by the Food and Drug Administration).

Paragraphs (3), (4), (5) and (6) of subdivision (a) of section 136.6 of the Regulations of the Commissioner of Education relating to collaborative agreements with emergency healthcare providers are deleted to conform to the changes made by Chapter 373 of the Laws of 2016.

Subdivision (c) of section of 136.6 Regulations of the Commissioner of Education is amended to remove the requirement that school district, board of cooperative educational services, county vocational education and extension board, charter school, or non-public elementary and secondary school file a copy of the collaborative agreement with the appropriate regional council, in accordance with the provisions of Chapter 373 of the Laws of 2016.

Subdivision (d) of section 136.6 of the Regulations of the Commissioner of Education is renumbered subdivision (c) and amended to provide that in addition to trained school personnel, school personnel directed to use an epinephrine auto-injector device in a specific instance may administer the epinephrine in the event of an emergency, in accordance with the provisions of Chapter 373 of the laws of 2016.

Subdivision (e) of section 136.6 of the Regulations of the Commissioner of Education is deleted in accordance with the provisions of Chapter 373 of the Laws of 2016.

Subdivision (e) of section 136.1 of the Regulations of the Commissioner of Education is amended to update the reference to hearing screening in accordance with current practice.

Subdivision (f) of section 136.1 of the Regulations of the Commissioner of Education is amended to refine and update the definition of treatment within the context of school health services.

Subdivisions (i) and (j) of section 136.1 of the Regulations of the Commissioner of Education are added to include definitions of health certificate and dental health certificate.

Subdivision (b) of section 136.2 of the Regulations of the Commissioner of Education is amended to remove the exemption from providing school health services in the city school districts of the cities of Buffalo and Rochester, in accordance with the provisions of Chapter 58 of the Laws of 2006.

Paragraph (1) of subdivision (d) of section 136.2 of the Regulations of the Commissioner of Education is amended to clarify that it is the duty of the trustees and boards of education to provide both approved and adequate personnel and adequate facilities for treatment;

Subdivision (b) of section 136.3 of the Regulations of the Commissioner of Education is amended to remove the exemption for the city school districts of the cities of Buffalo and Rochester, to require the examination and health history of enrolled students in accordance with the provisions of Chapter 58 of the Laws of 2006. Subdivision (b) of section 136.3 is further amended to adjust the grade levels at which students are required to submit documentation of physical examinations and immunizations.

Subdivision (c) of section 136.3 of the Regulations of the Commissioner of Education is amended to adjust the grade levels at which students are required to submit health certificates and proof of immunization, and prescribes that such certificates must not be on a form prescribed by the Commissioner and outlines the components required to be included in such certificates, including the calculation of body mass index in accordance with Education Law § 903. Subdivision (c) of section 136.3 is further amended to clarify that when the required vision, hearing and scoliosis screenings are completed by a student's health care provider, as documented on the health certificate form prescribed by the Commissioner, such screenings need not be duplicated in school.

Paragraph (2) of subdivision (c) of section 136.3 of the Regulations of the Commissioner of Education is amended to update the immunization requirements to conform to those required by Public Health Law section 2164(7)(a).

Paragraph (3) of subdivision (d) of section 136.3 of the Regulations of the Commissioner of Education is amended to insert the requirement that a health appraisal must include the calculation of body mass index in accordance with Education Law § 903.

Subdivision (e) of section 136.3 of the Regulations of the Commissioner of Education is amended to adjust the required grade levels in which students must receive scoliosis, vision, and hearing screenings.

Subdivision (g) of section 136.3 of the Regulations of the Commissioner of Education is amended to further clarify that the results of all health screenings shall be properly maintained in the student's cumulative health record.

Subdivision (h) of section 136.3 of the Regulations of the Commissioner of Education is amended to clarify which health care professionals may, consistent with their scope of practice outlined in Title VII of the Education Law and within their appropriate scope of practice, exclude from school students with symptoms of communicable or infectious diseases.

Subdivision (i) of section 136.3 of the Regulations of the Commissioner of Education is amended to clarify which health care professionals may, consistent with their scope of practice outlined in Title VII of the Education Law and within their appropriate scope of practice, make health assessments of teachers and any other school employees to protect students and staff from communicable diseases.

Subdivision (k) of section 136.3 of the Regulations of the Commissioner of Education is amended to adjust the grade levels at which school districts shall request dental health certificates. Subdivision (k) is further amended to permit registered dental hygienists to complete the dental health assessment, in accordance with the provisions of Part S of Ch.57 of the Laws of 2013.

Revised rule compared with proposed rule: Substantial revisions were made in section 136.3(b)(1), (c)(1) and (e)(1).

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

Data, views or arguments may be submitted to: Renee Rider, Assistant Commissioner, New York State Education Department, 89 Washington Avenue, Albany, NY 12234, (518) 474-4817, email: regcomments@nysed.gov

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

Revised Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Ed.L.§ 101 charges SED with the general management and supervision of public schools and the educational work of the State.

Ed.L.§ 207 empowers the Board of Regents(Regents) and the Commissioner to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the Department by law.

Ed.L.§ 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education.

Ed.L.§ 901(1) and (2), as amended by Ch.58 of the Laws of 2006, requires school health services to be provided by each school district for all students attending the public schools in this State, except in the city school district of the city of New York.

Ed.L.§ 902(1) and (2) provide for the employment of health professionals by school districts, and requires districts to employ a director of school health services to perform and coordinate the provision of health services in the public schools and to provide health appraisals of students attending its schools.

Ed.L.§ 903(1) requires that health certificates be furnished by each student in the public schools upon entrance into school and in the grades prescribed by the Commissioner in regulations. Section 903(2), as

amended by Ch.57 of the Laws of 2013, requires schools to request that students furnish dental health certificates at the same time a health certificate is required. Section 903(3) provides that failure to furnish health certificates within 30 days of entrance will result in notice to the person in parental relationship to such student that if the certificate is not provided within 30 days of notice, a health appraisal will be made pursuant to the provisions of Article 19.

Ed.L.§ 904(1) provides that the principal or principal's designee shall report to the director of school health services the names of all students who have not furnished health certificates or who are children with disabilities and the director shall cause such students to be examined.

Ed.L§ 905(1) requires screening examinations for vision, hearing and scoliosis at such times and as defined in the regulations of the Commissioner.

Ed.L.§ 906(1), (2) and (3), provides for the exclusion and examination, and examination upon readmittance of students showing symptoms of communicable or infectious disease reportable under the Public Health Law, and for the evaluation of teachers and other school employees and school buildings and premises as deemed necessary to protect the health of students and staff.

Ed.L.§ 911(1) provides that it be the duty of the Commissioner to enforce the provisions of Ed.L.Article19, and the Commissioner may adopt rules and regulations not inconsistent herewith, after consultation with the Commissioner of Health, for the purpose of carrying into full force and effect the objects and intent of such Article.

Ed.L.§ 914(1) provides that each school shall require every child entering or attending school to submit proof of immunization against certain specified diseases.

Ed.L.§ 921(1) and (2), as amended by Ch.57 of the Laws of 2016 authorizes school districts, BOCES, CVEEBs, charter schools, and nonpublic elementary and secondary schools, or any person employed by any such entity, to administer epinephrine auto-injectors in the event of an emergency pursuant to the requirements of Public Health Law§ 3000-c.

Ed.L§ 3208(1-5) provides for attendance and student mental/physical examination requirements.

Public Health Law 2164(7) prescribes the required immunizations for attendance in school.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Regents relating to school health services. The proposed amendment is further necessary to implement and otherwise conform Commissioner's Regulations to Ch.58 of the Laws of 2006, Ch.57 of the Laws of 2013, and Ch.373 of the Laws of 2016.

3. NEEDS AND BENEFITS:

Part 136 of the Commissioner's regulations sets forth the parameters for health services in schools. The Office of Student Support Services works closely with the New York State Department of Health and the New York State Center for School Health to implement these regulations. However, over time, the language surrounding best practices in health care has changed, but the regulations have not kept pace with these changes. The proposed amendments seek to address numerous requests from the field, including parents, healthcare providers, schools, and the New York State Department of Health, for technical amendments and updates to existing regulatory language to improve school health services for students.

Below is a brief outline of the proposed revisions.

§ 136.3: School Health Services

• The proposed amendments discussed in January 2017 made adjustments to the required grade levels in which students must receive hearing screenings, and eliminated the hearing screening for students in grades 7 and 10. However, in response to public comment, in accordance with the recommendations of the American Academy of Pediatrics Bright Futures, and in consultation with the New York State Department of Health, the Department recommends continuing hearing screenings for students in grade 7 and adding a screening in the 11th grade.

• In accordance with the above recommendations, the Department further proposes to add both a physical examination and a vision screening in the 11th grade. As proposed, the regulations did not require a physical exam beyond the 9th grade (most of which are completed while the student is still in eighth grade) which would mean that many students would not have an examination at all during high school. This recommendation is in response to public comment and is aligned with the American Academy of Pediatrics Bright Futures' recommendations and in consultation with the New York State Department of Health.

Implementation:

• The proposed amendments to § 136.1, § 136.2, and § 136.3 were scheduled to take effect on July 1, 2017. However, in response to public comment, the Department has amended the effective date to delay these amendments until July 1, 2018 to enable adequate time for schools, parents, and health care providers to work together to implement the amendments.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: In general, the proposed rule does not impose any costs beyond those required by Education Law Article 19 and those inherent in Ch.373 of the Laws of 2016.

(c) Costs to private regulated parties: none.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any new costs on the State, local governments, private regulated parties or the State Education Department, but merely implements policy enacted by the Regents relating to school health services. The proposed rule is further necessary to implement and otherwise conform Commissioner's Regulations to Ch.58 of the Laws of 2006, Ch.57 of the Laws of 2013, and Ch.373 of the Laws of 2016.

6. PAPERWORK:

Consistent with Ed.L.§ 903, the current regulation outlines the required components of the heath certificate. The proposed amendment requires the health certificate to be on a form prescribed by the Commissioner to ensure clarity and consistency of communication between schools, parents, and healthcare professionals.

The proposed amendment further adjusts the grade levels at which students are required to submit documentation of physical examinations and immunizations. Presently, students are required to produce a physical exam upon entry to school and in prekindergarten or kindergarten (depending on the earliest level of entry offered by such school), 2nd, 4th, 7th and 10th grades. In consultation with DOH and in accordance with the guidelines from Bright Futures, a national health promotion and prevention initiative led by the American Academy of Pediatrics, the revised amendment changes these grade levels to upon entry to school and prekindergarten or kindergarten, 1st, 3rd, 5th, 7th, 9th and 11th grades.

7. DUPLICATION:

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

8. ALTERNATIVES:

The proposed amendment is necessary to implement policy relating to school health services in accordance with Education Law Article 19. No significant alternatives were considered.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the proposed rule by its effective date, which has been extended to July 1, 2018 for the amendments to § § 136.1, 136.2, and 136.3.

Revised Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment merely implements policy enacted by the Regents relating to school health services. The proposed rule is further necessary to implement and otherwise conform Commissioner's Regulations to Ch.58 of the Laws of 2006, Ch.57 of the Laws of 2013, and Ch.373 of the Laws of 2016.

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

Local Government:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 695 school districts within the State.

2. COMPLIANCE REQUIREMENTS:

Part 136 of the Commissioner's regulations sets forth the parameters for health services in schools. The Office of Student Support Services works closely with the New York State Department of Health and the New York State Center for School Health to implement these regulations. However, over time, the language surrounding best practices in health care has changed, but the regulations have not kept pace with these changes. The proposed amendments seek to address numerous requests from the field, including parents, healthcare providers, schools, and the New York State Department of Health, for technical amendments and updates to existing regulatory language to improve school health services for students.

Below is a brief outline of the proposed revisions.

§ 136.3: School Health Services

• The proposed amendments discussed in January 2017 made adjust-

ments to the required grade levels in which students must receive hearing screenings, and eliminated the hearing screening for students in grades 7 and 10. However, in response to public comment, in accordance with the recommendations of the American Academy of Pediatrics Bright Futures, and in consultation with the New York State Department of Health, the Department recommends continuing hearing screenings for students in grade 7 and adding a screening in the 11th grade.

• In accordance with the above recommendations, the Department further proposes to add both a physical examination and a vision screening in the 11th grade. As proposed, the regulations did not require a physical exam beyond the 9th grade (most of which are completed while the student is still in eighth grade) which would mean that many students would not have an examination at all during high school. This recommendation is in response to public comment and is aligned with the American Academy of Pediatrics Bright Futures' recommendations and in consultation with the New York State Department of Health.

Implementation:

• The proposed amendments to § 136.1, § 136.2, and § 136.3 were scheduled to take effect on July 1, 2017. However, in response to public comment, the Department has amended the effective date to delay these amendments until July 1, 2018 to enable adequate time for schools, parents, and health care providers to work together to implement the amendments.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements.

4. COMPLIANCE COSTS:

In general, the proposed rule does not impose any costs beyond those required by Education Law Article 19 and those inherent in Ch.373 of the Laws of 2016.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any technological requirements or costs on school districts.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy relating to school health services in accordance with Education Law Article 19. No significant alternatives were considered. Because the Regents policy and statute upon which the proposed amendment is based applies to all school districts and BOCES in the State, except for the city school district of the City of New York where exempted by statute, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

7. LOCAL GOVERNMENT PARTICIPATION:

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

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Revised Rule Making in the State Register on January 25, 2017, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith. The above revisions to the proposed rule do not require any revisions to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of the Notice of Revised Rule Making in the State Register on January 25, 2017, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The revised rule will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the revised rule that it will have no impact on jobs or employment opportunities, no further measures were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on January 25, 2017, the State Education Department received the following comments:

1. COMMENT:

Commenters expressed concern that adding near vision to the required vision screening is excessive, will require districts to purchase costly equipment, and will take students out of the classroom for longer periods.

DEPARTMENT RESPONSE:

The proposed amendments were made in accordance with the recommendations of Bright Futures of the American Academy of Pediatrics (hereinafter "Bright Futures") and in consultation with the New York State Board for Optometry. Furthermore, Education Law § 905(4) requires all public schools to screen new entrants for near vision within 6 months of entry. Therefore, districts should already possess any necessary screening equipment. The Department does not anticipate that near vision screening will result in a significant increase in the screening time. Additionally, the proposed amendment provides that where documented on the health certificate such screenings are no longer required, which should reduce overall screening time.

2. COMMENT:

Some commenters oppose the standard heath certificate form and asked if physicians are required to use the form. Many physicians require payment for additional forms to be completed, and the existing process is sufficient.

DEPARTMENT RESPONSE:

The proposed amendment is intended to provide clarity and consistency throughout the State. Providers have reported to the Department that many districts refuse their generic form, which then results in a cost to the parent when they return with the form acceptable to the district. This issue would be eliminated by having one form for all districts and physicians. Additionally, this will ensure consistency on the required information, including documentation of vision and other screenings completed by the provider, thereby relieving the schools burden of duplicative screenings.

3. COMMENT:

Several commenters expressed concern about the reduction of hearing screenings a student will receive, no longer including screenings at 7th and 10th grades. Commenters cited research from the World Health Organization, and the increase in hearing deficits related to earphone use.

DEPARTMENT RESPONSE:

The Department proposed the amended screening schedule in accordance with the recommendations of Bright Futures and in consultation with the New York State Board for Speech-Language Pathology and Audiology. In response to public comment, and in light of updated recommendations from Bright Futures, the Department has revised the proposal to continue hearing screenings in grades 7, and to adjust the high school screening from grade 10 to grade 11, which will align with a physical exam in grade 11.

4. COMMENT:

Commenters expressed concern about the continuing requirement to conduct a health appraisal for students who do not provide health certificates. Commenter believes it is costly and overbroad in its expectations for school personnel. Commenter proposed amended language.

DEPARTMENT RESPONSE:

Education Law § 904 requires an examination by health appraisal for students who have not furnished health certificates. Therefore, absent a statutory amendment, this comment is outside the scope of the proposed amendments and no revisions are necessary at this time.

5. COMMENT:

In addition to epinephrine auto-injectors, commenter proposes to permit schools to possess and administer emergency anti-seizure medication.

DEPARTMENT RESPONSE:

The proposed amendments relate only to conforming the emergency use of epinephrine-auto injectors as permitted by Education Law § 921, to the amendments made by Ch. 373 of the Laws of 2016. As such, this comment is outside the scope of the amendments.

6. COMMENT:

Several commenters expressed concerned about the shift in grade levels for health certificates, believing it will be onerous for nurses and confusing for parents. Specifically, commenters were concerned about removing health certificates and screenings from grades 2 and 4. Will pediatricians do these screenings and will they be notified that schools are no longer doing them at grade levels?

DEPARTMENT RESPONSE:

The revised grades for physical examinations and screenings are aligned with the best practice recommendations made by Bright Futures. Because most health insurance providers, including Medicaid, typically adopt the schedules recommended by Bright Futures, this will permit more students to have physical examinations and screenings performed by their own health care provider.

Additionally, since schools will no longer be required to complete screenings that are documented on a health certificate, schools should experience a decrease in the overall number of screenings. The Department will utilize multiple means to communicate the changes in the proposed rule including information on the required physical examination form.

7. COMMENT:

What does it mean when a screening or health certificate is required in pre-kindergarten or kindergarten? How will districts that provide space for community-based pre-kindergarten programs comply?

DEPARTMENT RESPONSE:

The regulation provides that the examination and health history, and the applicable hearing and vision screenings are required upon enrollment in the public school. Therefore, to the extent that pre-kindergarten students are enrolled in the public school, such requirements apply.

8. COMMENT:

Several commenters expressed a desire to align the high school health

examinations, scoliosis and vision screenings during the 10th grade. Alternatively, if one is moved to 9th grade, all should move to 9th grade. However, 9th grade is too early because unless they play a sport or need working papers, many students will not get another physical during high school.

DEPARTMENT RESPONSE:

The grade levels for physical examinations and screenings are aligned with the recommendations made by Bright Futures, the NYS Department of Health (NYSDOH), the American Academy of Orthopaedic Surgeons, the Scoliosis Research Society, the Pediatric Orthopaedic Society of North America, the New York State Board for Optometry, and the New York State Board for Speech-Language Pathology and Audiology.

The Department understands the desire to consolidate screenings in high school; however, the amendments are based upon the best practice recommendations from the above organizations. In response to public comment, in accordance with Bright Futures and in consultation with NYSDOH, the Department has revised the regulation to streamline most of the high school requirements by also including a physical examination, vision screening, and hearing screening in 11th grade. As with the other screenings, where documented on a health certificate, schools need not conduct such screenings.

9. COMMENT:

Commenter, a parent of a child with allergies, supports the amendments. Schools need the flexibility to easily carry and administer life-saving medications.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

10. COMMENT:

Commenter supports changing scoliosis screening to 9th grade for male students and 5th and 7th for female students.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

11. COMMENT:

Commenter suggested adjusting the timeline so that students are screened during the off years from the physical to enable yearly testing between school screenings and physician health examinations. Commenter further suggested adjusting the physical exam grade levels to align with the Tdap and meningococcal vaccinations.

DEPARTMENT RESPONSE:

See responses to Comments #1, 6, 8. Additionally, because the vaccination schedule is established and required by NYSDOH (10 NYCRR 66-1), such comment is outside the scope of these amendments.

12. COMMENT:

A few commenters expressed concern about the timeline for implementation of the proposed amendments, citing confusion for parents and insufficient time for nurses to prepare and plan ahead.

DEPARTMENT RESPONSE:

In response to public comment, the Department has amended the effective date to delay the amendments to § 136.1, § 136.2, and § 136.3 until July 1, 2018 to enable adequate time for schools, parents, and health care providers to work together to implement the amendments.

13. COMMENT:

Commenters sought clarification on the dental certificate requirement.

DEPARTMENT RESPONSE:

The proposed amendments do not alter the requirement for schools to request a dental certificate as required by Education Law § 903(2).

14. COMMENT:

Commenters support a common, consistent physical examination form to be utilized statewide.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

15. COMMENT:

Citing the increasing workload for school nurses and the vast array of responsibilities of a school nurse, commenters seek mandated school nurses and school nurse to student ratios in New York schools.

DEPARTMENT RESPONSE:

The Department recognizes the critical role of school health services, and the duties of school nurses. However, because these amendments only relate to the schedule for screenings and health certificates in accordance with the recommendations of Bright Futures, this comment is outside the scope of the amendment.

16. COMMENT:

Commenter suggested replacing dental health certificates with professional eye exams.

DEPARTMENT RESPONSE:

Education Law § 903(2) requires students to be in fit condition of dental health to attend school as recorded on the dental health certificate. Absent a statutory amendment, the Department is constrained to continue to require schools to request dental health certificates.

17. COMMENT:

Several commenters expressed concern about the amendments to emergency epinephrine auto-injectors and the removal of the collaborative agreement with an emergency healthcare provider. Specifically, commenters were concerned about the lack of available data after the emergency administration of epinephrine to track and monitor its use. Commenters were also concerned about how schools could obtain epinephrine without a collaborative agreement with an emergency healthcare provider.

DEPARTMENT RESPONSE:

The proposed amendments merely conform to the provisions of Chapter 373 of the Laws of 2016, which removed the requirement for schools to have a collaborative agreement with an emergency healthcare provider, and to report any use to such provider.

The Department understands the value of data collection; however, the statute does not require the reporting of emergency epinephrine administration. Although, because an individual who has had epinephrine administered by school personnel should be transported for follow-up treatment in emergency rooms, who then report to NYSDOH, it is likely that NYSDOH can collect data on the number of persons who require epinephrine.

Public Health Law 3000-c continues to provide that a licensed health care provider may write a non-patient specific order for the school (as an eligible entity) to obtain epinephrine auto-injectors from a pharmacy, a practice that schools currently use to obtain epinephrine for the emergency use by trained school personnel.

18. COMMENT:

Commenter supports the technical amendment inserting the professional licensing title, registered professional nurse.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

19: COMMENT:

Commenter suggested amending the definition of epinephrine auto-injector devices approved by the United States Food and Drug Administration.

DEPARTMENT RESPONSE:

The proposed amendments merely conform to the provisions of Chapter 373 of the Laws of 2016, which included the definition of epinephrine auto-injector devices as included in the proposed amendments. Therefore, absent statutory changes, no revisions are needed.

20. COMMENT:

Commenters support the screening recommendations, and encourage hearing screenings to be conducted by the student's healthcare provider. The school nurse role is complementary to that of the medical home and, it is unnecessary to duplicate preventative screening services that can be conducted by a student's healthcare provider.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

21. COMMENT:

Commenters oppose the continued use of the term "passive recipient" when describing the recipients of school health services. Respect for persons requires that we engage students as active participants in their care. The term "passive recipient" should be replaced with "active recipient".

DEPARTMENT RESPONSE:

The Department recognizes that the provision of school health services has evolved. However, because the regulation provides, "wherein the student, for the most part, is a passive recipient" that terms does not foreclose a student's active participation in their care while at school. Therefore, the Department does not believe revisions are necessary.

22. COMMENT:

Commenter supports the updated definition of "treatment" but questioned the extent to which the definition imposes a responsibility on a school nurse for the "care and management" of a student's dental health.

DEPARTMENT RESPONSE:

The definition of treatment is meant to encompass the activities within the scope of school health services, and properly within the scope of practice of a registered professional nurse, and does not expand such scope. Therefore, no revisions are needed.

State Board of Elections

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Administrative Complaint Procedure for Resolution of Violations of Title III Provisions of HAVA

I.D. No. SBE-21-17-00002-P

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

Proposed Action: Amendment of sections 6216.2 and 6216.3 of Title 9 NYCRR.

Statutory authority: Election Law, sections 3-102(1), (16) and 3-105

Subject: Administrative Complaint Procedure for Resolution of Violations of Title III Provisions of HAVA.

Purpose: To streamline the HAVA complaint procedure and clarify that Counsel's Office at SBOE administers the procedure.

Substance of proposed rule (Full text is posted at the following State website:www.elections.ny.gov/NYSBOE/download/law/6216_HAVA_Complaint_DraftReg_04_27_17.pdf): §§ 3-102(16) and 3-105 of the Election Law requires that the State Board of Elections administer an administrative complaint procedure pursuant to Title III of the Help America Vote Act of 2002 (hereinafter HAVA Complaint Procedure). The procedure enables voters to file a formal complaint with the State Board of Elections in writing which is adjudicated through the Board. Once filed, the State Board conducts a hearing on the record. The hearings are conducted by two State Commissioners of opposite parties, or their designees. If the State panel fails to make a determination on a complaint within 90 days, it is referred to an Alternative Dispute Resolution Process (ADR). An ADR decision must be reached within 60 days from the end of the 90 day time period.

The HAVA Complaint procedure is effectuated via 9 NYCRR §§ 6216.2 and 6216.3, adopted on December 27, 2006.

The proposed amendment clarifies that Counsel's Office performs the administrative duties related to the HAVA Complaint procedure, including; reviewing the complaint, accepting the Complaint, assigning a tracking number to the complaint, forwarding the Complaint to the Chief Enforcement Counsel, and scheduling the hearing.

Second, the proposed amendment streamlines the HAVA Complaint procedure. The proposed amendments to the process include:

Section 6216.2(a) provides that Complaint forms shall be made available on the SBOE website;

Section 6216.2(b)(1) permits a voter to use any other writing, other than the formal Complaint form, when filing a formal complaint, provided that the writing contains the same information required by the SBOE Complaint form;

Section 6216.2(b)(3) provides that the Complaint be "reasonably" specific as to times, places, and names of witnesses;

Section 6216.2(c)(4) requires SBOE to serve the Complaint and responsive papers upon the parties;

Section 6216.2(d)(6) permits hearings to be held telephonically; and

Section 6216.2(d)(8) requires that rules of evidence as outlined in the regulations be "substantially" followed at the hearing.

Lastly, the proposal amends section 6216.3, which relates to the alternate dispute resolution requirement for HAVA complaints. The proposal deletes paragraphs (c) and (d) of section 6216.3, which relate to the contracting of an alternative dispute resolution agency. Additionally, section 6216.3 is amended to permit ADR hearings to be held telephonically.

Text of proposed rule and any required statements and analyses may be obtained from: Nicholas R. Cartagena, Esq., New York State Board of Elections, 40 North Pearl Street, Suite 5, Albany, New York 12207, (518) 474-2063, email: nicholas.cartagena@elections.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Election Law § 3-102(1) gives the State Board of Elections the authority to promulgate rules relating to the administration of the election process. Election Law § 3-102(16) and § 3-105 empowers the State Board of Elections to administer an administrative complaint procedure as required by Title three of the Help America Vote Act of 2002.

2. Legislative objectives: The principle purpose of this proposal is to clarify that Counsel's Office at the State Board of Elections (SBOE) administers the complaint procedure for violations of Title III provisions of Help America Vote Act of 2002 (HAVA). Current regulations provide that the former Enforcement Counsel's Office administers the HAVA Complaint procedure.

Chapter 55 of the Laws of 2014 resulted in a reorganization of SBOE. The reorganization included a new joint Counsel's' Office, which was the combination of the former Enforcement Counsel Office and the former Special Counsel Office, as well as the creation of the Chief Enforcement Counsel. This proposal clarifies that the new joint Counsel's Office administers the HAVA Complaint procedure.

Additionally, the proposal streamlines the complaint procedure. The proposal provides that the SBOE serve the Complaint and responsive papers upon the parties, permits appearances to be made telephonically at hearings, and modifies certain requirements in the Complaint process that may be considered onerous. Lastly, these amendments also modify certain requirements upon SBOE when contracting with an Arbitration Agency.

3. Needs and benefits: This proposal removes potential uncertainty in relation to the entity responsible for administering the HAVA Complaint procedure. Further, this proposal streamlines the HAVA Complaint procedure, which simplifies the administration of the process and makes the process more accessible to voters.

4. Costs: The proposed amendment is cost neutral.

5. Local government mandates: There are no additional responsibilities imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This proposal imposes no new reporting or regulatory filing requirements.

7. Duplication: This proposal does not impose any duplicative regulatory burden or reporting requirements.

8. Alternatives: As stated in the legislative objectives and needs and benefits sections, the purpose of this proposal is to clarify that the Counsel's Office of the State Board of Elections administers the HAVA Complaint procedure, and to streamline the HAVA Complaint procedure in an effort to make the procedure more accessible to voters. The alternative is to take no action; however, there may continue to be uncertainty regarding which entity administers the HAVA Complaint procedure, and the process could arguably continue to be burdensome to voters.

9. Federal standards: This rulemaking is unrelated to any Federal rule or standard.

10. Compliance schedule: Compliance can be immediate upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

1. Effect of rule: County boards of elections will be affected by the proposed amendment. There are 58 county boards of elections.

2. Compliance requirements: Small businesses and local governments have no compliance, record keeping or any other affirmative requirement imposed by the proposed amendment related to their operations.

3. Professional services: The proposed amendment imposes no requirement or need for professional services by small businesses or local governments in the performance of their operations.

4. Compliance costs: The proposed amendment carries no operational compliance cost for small business or local government operations. The proposed amendment creates no additional requirements for lawful compliance with the Election Law.

5. Economic and technological feasibility: The proposed amendment creates no economic or technical burden for small business or local governments.

6. Minimizing adverse impact: The proposed amendment creates no adverse impacts on small businesses or local governments.

7. Small business and local government participation: No small business or local governments participated in the development of the proposed amendment. We will address any comments or feedback from small businesses and/or local governments during the public comment period.

8. For rules that either establish or modify a violation or penalties: The proposed amendment does not establish or modify a violation or penalty.

9. (IF APPLICABLE) Initial review of the rule, pursuant to SAPA section 207 as amended by L.2012, ch. 462: Not applicable.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: County boards of elections will be affected by the proposed amendment. There are 44 county boards of election districts that contain rural areas. Additionally, current regulations provide that the State Board of Elections contract with an arbitration agency having a panel of at least two arbitrators able to perform hearings within each of the six regions currently established in New York State by the Election's Commissioners' Association of New York State. The proposed amendment eliminates this requirement that, arguably, could adversely impact rural areas as arbitration hearings could be held outside the voter's region; however, this is mitigated by proposing that hearings may be conducted telephonically.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements on the county boards of election.

3. Costs: The proposed amendment does not impose any additional costs on county boards of elections. On the contrary, savings may be had in travel costs in instances when a county board of elections appear telephonically at hearings.

4. Minimizing adverse impact: The proposed amendment allows for parties, including county boards of elections and rural residents, to appear at hearings telephonically, which mitigates the elimination of the requirement that an arbitration panel have at least two arbitrators able to perform hearings within each of the six regions currently established in New York State by the Election's Commissioners' Association of New York State.

5. Rural area participation: Copies of the proposed amendments have been provided to county boards of elections for review and comment.

6. (IF APPLICABLE) Initial review of the rule, pursuant to SAPA section 207 as amended by L.2012, ch. 462: Not applicable.

Job Impact Statement

Under SAPA 201-a(2)(a), when it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities, the agency may file a Statement in Lieu of. This rulemaking, as is apparent from its nature and purpose, will not have an adverse impact on jobs or employment opportunities. The proposed amendment makes several technical amendments to the administrative complaint procedure related to Title III of the Help America Vote Act of 2002. This rulemaking imposes no regulatory burden on any facet of job creation or employment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Amending 6201.2 and 6201.3 to Update and Provide Clarity on How Fair Campaign Code Procedures Are Administered

I.D. No. SBE-21-17-00004-P

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

Proposed Action: Amendment of sections 6201.2 and 6201.3 of Title 9 NYCRR.

Statutory authority: Election Law, sections 3-102(1), 3-102(17) and 3-106

Subject: Amending 6201.2 and 6201.3 to update and provide clarity on how Fair Campaign Code Procedures are administered.

Purpose: To update 6201.2 and 6201.3 to update and clarify procedures and to reflect standard for poll release in Board Op. 1984 #1.

Text of proposed rule: Part 6201.2 and 6201.3 of 9 NYCRR are amended to read as follows:

§ 6201.2 Use of public opinion polls

No candidate, political party or committee shall attempt to promote the success or defeat of a candidate by, directly or indirectly, disclosing or causing to be disclosed, the results of a poll relating to a candidate for such office or position, unless within 48 hours after such disclosure, they provide the following information concerning the poll to the board or officer with whom statements or copies of statements of campaign receipts and expenditures are required to be filed by the candidate to whom such poll relates:

(a) The name of the person, party or organization that contracted for or who commissioned the poll and/or paid for it.

(b) The name and address of the organization that conducted the poll.

(c) The numerical size of the total poll sample, the geographic area covered by the poll and any special characteristics of the population included in the poll sample.

(d) The exact wording of the questions asked in the poll and the sequence of such questions *to the extent results of such questions were disclosed or to the extent such questions were preparatory to the questions asked that were released and could have influenced poll respondents answers to the poll questions released*.

(e) The method of polling—whether by personal interview, telephone, mail or other.

(f) The time period during which the poll was conducted.

(g) The number of persons in the poll sample; the number contacted who responded to each specific question; the number of persons contacted who did not so respond.

(h) The results of the poll *relative to the questions required to be disclosed pursuant to paragraph d of this subdivision*.

§ 6201.3 Procedure in fair campaign code proceedings

(a) Initiation of proceeding.

(1) A proceeding under the fair campaign code (hereinafter "code") shall be commenced by the New York State Board of Elections when:

(i) the board receives a written signed complaint alleging the commission or omission of acts, in violation of the code; the county boards of elections are advised to forward any complaints they may receive to the State Board of Elections; or

(ii) the State Board staff proposes to the board an investigation of an alleged violation of the code.

(2) A complaint shall be filed by mailing to, or by personally serving, the State Board of Elections at 40 North Pearl Street, Suite 5, Albany, NY 12207-2729. A duplicate copy of the complaint shall be mailed to or personally served upon the candidate or the candidate's representative (hereinafter "respondent"). Proof of service of the complaint upon the respondent must be filed not later than three days after service of the complaint upon the respondent. This requirement is waived when the respondent is unknown.

(b) Form of complaint.

(1) A complaint shall be based on personal knowledge and belief and be specific as to times, places and names of witnesses to the acts charged as violations of the code. If a complaint is based upon information and belief, the complainant shall state the source of the information and belief. Copies of all documentary evidence available to the complainant shall be attached to the complaint. Evidence deemed by the complainant to be of a confidential nature need not be sent to the respondent, so long as an explanation is made to the board. *The complainant shall designate an e-mail address to which all future service upon the complainant shall be made.*

(2) A respondent shall file a signed answer, after service upon the respondent of the complaint. Such an answer shall be based on personal knowledge and belief and be specific as to times, places and names of witnesses to acts relevant to the complaint. Copies of all documentary evidence available to the respondent shall be annexed to the answer. If an answer is based on information and belief, the respondent shall state the source or sources of the information and belief. An answer shall be filed by [certified] mail*, e-mail* or by personally serving the State Board of Elections at 40 North Pearl Street, Suite 5, Albany, NY 12207-2729 and the complainant. An answer to the complaint must be made by the respondent within [10] *7* days after receipt of the complaint, *except if such complaint relates to the release of a poll that occurred within thirty days before an election, an answer must be made within 3 days after receipt of the complaint.* Proof of service of the answer upon the complainant must be filed not later than three days after service of the answer upon the complainant. *The Answer shall designate an e-mail address to which all future service upon the complainant shall be made.*

(c) [Answer] *Hearing*.

[(1)] If after receipt and preliminary review of a complaint and answer alleging a violation of the code, or following commencement of an investigation initiated by the board, where the board determines a hearing shall be held, the board shall send notice, by [certified] mail *and e-mail whenever possible*, to the complainant and to any person, organization or committee whose conduct is complained of [or whose conduct is under investigation]. Such notice shall specify when and where a hearing is held. Such hearing shall be conducted by [enforcement counsel] *a hearing officer* of the State Board of Elections. A report with [counsel's] *the hearing officer's* recommendation shall be [made] *delivered to the office of counsel, and counsel shall provide such report* to the Board, which shall render a final decision. *All steps in this process shall be completed as soon as possible. The Board shall be presented with such findings within forty-eight hours of the hearing officer delivering such report to the co-counsels of the Board.*

[(2) A respondent shall file an answer, sworn to or affirmed (within seven days or such shorter period as the board may for good reason require) after service upon him of the notice of hearing. Such an answer shall, if possible, be based on the personal knowledge and belief and be specific as to times, places and names of witnesses to acts relevant to the com-plaint. Copies of all documentary evidence available to the respondent shall be annexed to the answer. If an answer is based on information and belief, the respondent shall state the source or sources of his information and belief. An answer shall be filed by certified mail, or by personally serving the State Board of Elections at 40 North Pearl Street, Suite 5, Albany, NY 12207-2729.]

(d) Scope of poll disclosure disputes.

When there is an allegation that relevant poll questions and results required by section 6201.2 were not disclosed as required, the hearing officer, to resolve such matter, may require the respondent to produce for confidential review by the hearing officer additional poll questions and results. The hearing officer shall recommend in the report to the commissioners whether any additional questions and results must be released to comply with the disclosure requirements of 6201.2. After receiving the

hearing officer report, the commissioners may, upon a majority vote, require the public disclosure of additional questions and results. Unless the commissioners vote to release such additional poll questions and results, such information shall be kept confidential. Poll results subject to disclosure pursuant to this subdivision shall be publicly available no later than twenty-four hours after such determination.

(e) Hearing officer assignment.

A hearing officer shall be assigned to a complaint made under this Part by the co-executive directors or their designees through a random selection process. All hearing officers appointed by the state board of elections pursuant to 6218.2 (b) shall comprise those eligible for assignment.

Text of proposed rule and any required statements and analyses may be obtained from: Brian L. Quail, Esq., New York State Board of Elections, 40 North Pearl Street, Ste 5, Albany, New York 12207-2729, (518) 474-2063, email: brian.quail@elections.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Election Law § 3-102(1) and § 3-102(17) give the State Board of Elections the authority to promulgate rules relating to the administration of the election process. Election Law § 3-106 provides for a fair campaign code, procedures and standard for which are the object of this regulation.

2. Legislative objectives: Owing to the creation of the office of enforcement counsel in 2014 (Chapter 55 of Laws of 2014), procedures of the fair campaign code related to the assignment of duties for fair campaign code hearings is necessary. The regulation is also updated to incorporate the standard related to poll disclosure provided for by Board Opinion 1984-1.

3. Needs and benefits: This proposal provides clarity about the application of the fair campaign code processes given the State Board of Elections present internal configuration.

4. Costs: The proposed amendment is cost neutral.

5. Local government mandates: There are no additional responsibilities imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This proposal imposes no new reporting or regulatory filing requirements.

7. Duplication: This proposal does not impose any duplicative regulatory burden or reporting requirements.

8. Alternatives: The primary alternative to this regulation is to leave the present regulation as is, which will cause confusion and delay in processing matters under the fair campaign code.

9. Federal standards: This rulemaking is unrelated to any Federal rule or standard.

10. Compliance schedule: Compliance can be immediate upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

Under SAPA 202-b(3)(a), when a rule does not impose an adverse economic impact on small business or local government and the agency finds it would not impose reporting, recordkeeping, or other compliance requirements on such entities, the agency may file a Statement in Lieu of. This rule will not impact small business operations or local government functions. This rule implements revisions to the fair campaign code procedures already provided by regulation, none of which are applicable to local governments or small businesses. It imposes no additional compliance, regulatory or reporting requirements on local governments or small businesses.

Rural Area Flexibility Analysis

Under SAPA 202-bb(4)(a), when a rule does not impose an adverse economic impact on rural areas and the agency finds it would not impose reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas, the agency may file a Statement in Lieu of. This rule has statewide application, amending procedural elements of the fair campaign code. The proposed rule does not create any new reporting, recordkeeping or other routine compliance requirements. Accordingly, this rule has no adverse impact.

Job Impact Statement

Under SAPA 201-a(2)(a), when it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities, the agency may file a Statement in Lieu of. This rulemaking, as is apparent from its nature and purpose, will not have an adverse impact on jobs or employment opportunities. The proposed amendment provides for a changes to the fair campaign code procedures. This rulemaking imposes no regulatory burden on any facet of job creation or employment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Designation of Treasurer Removal Committee and Related Procedures

I.D. No. SBE-21-17-00005-P

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

Proposed Action: Addition of section 6200.7(c) to Title 9 NYCRR.

Statutory authority: Election Law, sections 3-102(1), 3-102(17), 14-102(3) and 14-104

Subject: Designation of treasurer removal committee and related procedures.

Purpose: To implement the process of treasurer removal provided for by part C of chapter 286 of the Laws of 2016.

Text of proposed rule: A new subdivision (c) is added to section 6200.7 to read as follows:

(c) (1) Designation of Treasurer Removal Committee. A treasurer removal committee may only be established for single authorized candidate committees or multi-candidate authorized committees. A party or constituted committee may not designate a treasurer removal committee.

A candidate who is the sole authorizing candidate of a political committee may designate a treasurer removal committee for such political committee.

A treasurer removal committee for a political committee authorized by more than one candidate is designated when all candidates authorizing such political committee make a joint designation; provided, however, the removal of a treasurer by such committee shall not be cancelled by a subsequent authorization of that treasurer by one or more other candidates.

The designation of the treasurer removal committee shall be in a writing duly filed with the appropriate filing officer, and such designation may be likewise amended or revoked at any time in the same manner as the original designation.

(2) Powers of Treasurer Removal Committee. A treasurer removal committee shall have at least three members. The treasurer removal committee may at any time remove the treasurer and/or appoint a new treasurer, pursuant to section 14-104 of the election law. Such removal and/or appointment shall be made in a writing signed by a majority of the treasurer removal committee and shall be filed forthwith with the appropriate filing officer. If the removal of a treasurer does not coincide with the appointment of a new treasurer, as provided by law, no officer, member or agent of the political committee shall receive any receipt, transfer or contribution, or make any expenditure or incur any liability until the new treasurer and depository are chosen and indicated on a form filed with the appropriate filing officer.

(3) Responsibilities of Removed Treasurer. A copy of the writing removing and/or appointing a treasurer shall be provided by the treasurer removal committee to the removed treasurer. Within three business days of receiving such notification, the removed treasurer shall: (i) make and file a statement of receipts and expenditures with the appropriate filing officer covering the time period from the last disclosure report filed and the date of removal; (ii) make and file any necessary disclosure reports or amendment of disclosure reports due as a result of any outstanding deficiency notices received from the State Board of Elections Compliance Unit pursuant to Election Law § 3-104-a; (iii) surrender the records, property and funds of the political committee in his or her possession to the new treasurer; (iv) make copies of the records of the political committee required to be retained by the treasurer and retain such copies for the applicable five year period in accordance with Election Law § 14-118(1); (v) take all necessary steps to permit the new treasurer to access the records, property and funds of the committee in the possession of any third parties. The removal notice shall state the requirements of this paragraph clearly and concisely and shall be provided on a form prescribed by the state board. On or after ten days after receiving notification of removal of a treasurer, the State Board of Elections shall cancel the filing authorization pin previously provided to such treasurer.

(4) Responsibilities of New Treasurer. Within five business days of appointment, the new treasurer shall file any forms with the appropriate filing officer that are required to be filed by new treasurers, and shall from the time he or she accepts such appointment be solely responsible to perform the duties and functions of treasurer for the political committee.

(5) Assumption of Responsibilities. The removal of a treasurer and the appointment of a new treasurer shall take effect immediately upon the filing of the required forms with the appropriate filing officer, except that the removed treasurer shall be required to meet the requirements of

paragraph three hereof. The failure of the removed treasurer to meet the obligations of such paragraph shall not impair or preclude the appointment of the new treasurer or the authority of the new treasurer to exercise the obligations and authority of that position.

(6) Forms. The Compliance Unit of the State Board of Elections shall publish forms required for the implementation of this section.

Text of proposed rule and any required statements and analyses may be obtained from: Brian L. Quail, Esq., New York State Board of Elections, 40 North Pearl Street, Ste 5, Albany, New York 12207-2729, (518) 474-2063, email: brian.quail@elections.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Election Law § 3-102(1) and § 3-102(17) give the State Board of Elections the authority to promulgate rules relating to the administration of the election process. Election Law § 14-102[3] authorizes the State Board of Elections to authorizes the promulgation of regulations related to accounting methods related to filings required by the Election Law, and Election Law 14-104[1], as amended by Part C of Chapter 286 of the Laws of 2016, provides for treasurer removal committees as part of campaign finance procedures.

2. Legislative objectives: The principle purpose of this proposal is to provide a procedure for the appointment and function of treasurer removal committees as provided for by Part C of Chapter 286 of the Laws of 2016. The regulation provides the mechanism of appointment, manner of action by the treasurer removal committee, and provides rules applicable to campaign finance filings that occur as a result of the transition of treasurers, including a statement of the obligation of the new and former treasurers.

3. Needs and benefits: This proposal effectuates the treasurer removal committee process provided for by Part C of Chapter 286 of the Laws of 2016. The benefit of the regulation is an orderly process for the appointment of and the actions of the treasurer removal committee. Absent such a regulation there would be no orderly application of the law.

4. Costs: The proposed amendment is cost neutral.

5. Local government mandates: There are no additional responsibilities imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This proposal imposes no new reporting or regulatory filing requirements, except to the extent a candidate desires to exercise the option to appoint a treasurer removal committee and such committee decides to remove a treasurer. There is no requirement in law or regulation mandating the use of this mechanism to remove a treasurer.

7. Duplication: This proposal does not impose any duplicative regulatory burden or reporting requirements.

8. Alternatives: The primary alternative to this regulation is to have no regulation at all. This option is neither useful to the regulated campaign finance community nor to the State Board of Elections. The regulation provides a process to effectuate the appointment and actions of the treasurer removal committee provided for by law.

9. Federal standards: This rulemaking is unrelated to any Federal rule or standard.

10. Compliance schedule: Compliance can be immediate upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

Under SAPA 202-b(3)(a), when a rule does not impose an adverse economic impact on small business or local government and the agency finds it would not impose reporting, recordkeeping, or other compliance requirements on such entities, the agency may file a Statement in Lieu of. This rule will not impact small business operations or local government functions. This rule implements a treasurer removal committee appointment and action process pursuant to Part C of Chapter 286 of the Laws of 2016. It imposes no additional compliance, regulatory or reporting requirements on local governments or small businesses.

Rural Area Flexibility Analysis

Under SAPA 202-bb(4)(a), when a rule does not impose an adverse economic impact on rural areas and the agency finds it would not impose reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas, the agency may file a Statement in Lieu of. This rule has statewide application, creating a treasurer removal committee appointment and action process pursuant to Part C of Chapter 286 of the Laws of 2016. The proposed rule does not create any new reporting, recordkeeping or other routine compliance requirements other than to define how a treasurer removal committee provided for by law will operate. Accordingly, this rule has no adverse impact.

Job Impact Statement

Under SAPA 201-a(2)(a), when it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities, the agency may file a Statement in Lieu of. This rulemaking, as is apparent from its nature and purpose, will not have an adverse impact on jobs or employment opportunities. The proposed amendment provides for a treasurer removal committee appointment and action process as provided for by Part C of Chapter 286 of the Laws of 2016. This rulemaking imposes no regulatory burden on any facet of job creation or employment.

Department of Financial Services

EMERGENCY RULE MAKING

Business Conduct of Mortgage Loan Servicers

I.D. No. DFS-21-17-00003-E
Filing No. 303
Filing Date: 2017-05-04
Effective Date: 2017-05-07

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

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

Statutory authority: Banking Law, art. 12-D

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

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

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

Subject: Business conduct of mortgage loan servicers.

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

Substance of emergency rule (Full text is posted at the following State website: http://www.dfs.ny.gov/legal/regulations/emergency/banking/emergbanking.htm): Section 419.1 contains definitions of terms that are used in Part 419 and not otherwise defined in Part 418, including "Servicer", "Qualified Written Request" and "Loan Modification".

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 1, 2017.

Text of rule and any required statements and analyses may be obtained from: Hadas A. Jacobi, New York State Department of Financial Services, One State Street, New York, NY 10004-1417, (212) 480-5890, email: hadas.jacobi@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Legislative Objectives.

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

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

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

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

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

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

3. Needs and Benefits.

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

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

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

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

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

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

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

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

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

4. Costs.

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

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

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

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

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

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

5. Local Government Mandates.

None.

6. Paperwork.

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

7. Duplication.

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

8. Alternatives.

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

9. Federal Standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies, and there are no comprehensive federal rules governing mortgage loan servicing. Federal laws such as the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and regulations adopted thereunder, 24 C.F.R. Part 3500, and the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., govern some aspects of mortgage loan servicing, and there have been some recent amendments to those laws and

regulations regarding mortgage loan servicing. For example, Regulation Z, 12 C.F.R. section 226.36(c), was recently amended to address the crediting of payments, imposition of late charges and the provision of payoff statements. In addition, the recently enacted Dodd-Frank Wall Street Reform and Protection Act of 2010 (Dodd-Frank Act) establishes requirements for the handling of escrow accounts, obtaining force-placed insurance, responding to borrower requests and providing information related to the owner of the loan.

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

10. Compliance Schedule.

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

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

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

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

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

3. Professional Services:

None.

4. Compliance Costs:

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

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

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

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

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impacts:

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

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

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

Types and Estimated Numbers:

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

Compliance Requirements:

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

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

Part 419 implements the provisions of the Mortgage Lending Reform Law of 2008 by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the stan-

dards for handling complaints, payments of taxes and insurance, crediting borrower payments, late payments, account statements, delinquencies and loss mitigation and fees. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Costs:

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

Minimizing Adverse Impacts:

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

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

Rural Area Participation:

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

Job Impact Statement

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

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

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

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Charges for Professional Health Services

I.D. No. DFS-39-16-00007-RP

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

Proposed Action: Amendment of Part 68 of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 2601, 5221 and art. 51

Subject: Charges for Professional Health Services.

Purpose: Limit reimbursement of no-fault health care services provided outside NYS to highest fees in fee schedule for services in NYS.

Text of revised rule: Section 68.6 is amended to read as follows:

Section 68.6. Health services performed outside New York State.

(a) (1) If a professional health service reimbursable under [section 5102(a)(1) of the] Insurance Law *section 5102(a)(1)* is performed outside [New York] *this* State*,* the [permissible charge] *amount that the insurer shall reimburse* for [such] *the* service shall be *the lower of the amount charged by the provider and* the prevailing fee in the geographic location of the provider *with respect to services:*

(i) that constitute emergency care;

(ii) provided to an eligible injured person that is not a resident of this State; or

(iii) provided to an eligible injured person that is a resident of this State who, at the time of treatment, is residing in the jurisdiction where the treatment is being rendered for reasons unrelated to the treatment.

(2) For purposes of this subdivision, emergency care means all medically necessary treatment initiated within 48 hours of a motor vehicle accident for a traumatic injury or a medical condition resulting from the accident, which injury or condition manifests itself by acute symptoms of sufficient severity such that absence of immediate attention could reasonably be expected to result in: death; serious impairment to bodily functions; or serious dysfunction of a bodily organ or part. Medically necessary treatment shall include immediate pre-hospitalization care, transportation to a hospital or trauma center, emergency room care, surgery, critical and acute care. Emergency care extends during the period of initial hospitalization until the patient is discharged from the hospital.

(b) Except as provided in subdivision (a) of this section, if a professional health service reimbursable under Insurance Law section 5102(a)(1) is performed outside this State with respect to an eligible injured person that is a resident of this State, the amount that the insurer shall reimburse for the service shall be the lowest of:

(1) the amount of the fee set forth in the region of this State that has the highest applicable amount in the fee schedule for that service;

(2) the amount charged by the provider; and

(3) the prevailing fee in the geographic location of the provider.

(c) In this section, if the jurisdiction in which the treatment is being rendered has established a fee schedule for reimbursing health services rendered in connection with claims for motor vehicle-related injuries and the fee schedule applies to the service being provided, the prevailing fee shall be the amount prescribed in that jurisdiction's fee schedule for the respective service.

Revised rule compared with proposed rule: Substantial revisions were made in section 68.6(a)(1), (2), (b) and (c).

Text of revised proposed rule and any required statements and analyses may be obtained from Hoda Nairooz, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5595, email: hoda.nairooz@dfs.ny.gov

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

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

Revised Regulatory Impact Statement

1. Statutory authority: Sections 202 and 302 of the Financial Services Law, and Sections 301, 2601, 5221, and Article 51 of the Insurance Law.

Insurance Law Section 301 and Financial Services Law Sections 202 and 302 authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law, and effectuate any power granted to the Superintendent under the Insurance Law.

Insurance Law Section 2601 prohibits insurers from engaging in unfair claim settlement practices and requires insurers to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

Insurance Law Section 5221 specifies the duties and obligations of the Motor Vehicle Accident Indemnification Corporation with respect to the payment of no-fault benefits to qualified persons.

Article 51 of the Insurance Law contains the provisions authorizing the establishment of a no-fault reparations system for persons injured in motor vehicle accidents, and Section 5108 specifically authorizes the Superintendent to adopt or promulgate fee schedules for health care benefits payable under the no-fault system.

2. Legislative objectives: Chapter 892 of the Laws of 1977 recognized the necessity of establishing schedules of maximum permissible charges for professional health services payable as no-fault insurance benefits in order to contain the costs of no-fault insurance. To that end, in accordance with Insurance Law section 5108(b), the Superintendent adopted those fee schedules that are promulgated by the Chairman of the Workers' Compensation Board (the "Chairman"). In addition, the Superintendent, after consulting with the Chairman and the Commissioner of Health, established fee schedules for those services for which schedules have not been prepared and established by the Chairman.

3. Needs and benefits: The current rule provides that the maximum permissible charge for health care services rendered outside this State to a person eligible for New York no-fault benefits shall be the prevailing fee in the geographic location of the provider. The proposed rule limits insurers' reimbursement of no-fault health care services provided outside the State at the election of a New York State eligible injured person to the lowest of (1) the amount of the fee in the region in New York State that has the highest applicable amount in the fee schedule for that service; (2) the amount the provider charged; and (3) the prevailing fee in the geographic location of the provider. If the jurisdiction where the out-of-state provider renders treatment has established a fee schedule for services rendered in connection with motor vehicle-related injuries, the prevailing fee shall be the amount prescribed in that fee schedule for the respective service. This limit on reimbursement does not apply to services provided out-of-state that would constitute emergency care, that is provided to a non-resident of this State, or provided to a resident of this State who, at the time of treatment, is residing in the jurisdiction where the treatment is being rendered for reasons unrelated to the treatment.

This amendment is necessary because under the current regulation, there has been a marked increase in the submission of over-inflated claims from out-of-state providers, largely because of the lack of a uniform interpretation of the prevailing fees outside the State. No-fault claimants are being referred to certain health care providers outside New York, usually in New Jersey, who take advantage of the absence of specific fee schedules and submit excessive charges under exaggerated claims, well above the corresponding New York State fee schedules applicable to those health care services rendered. Since basic personal injury protection coverage under no-fault is only $50,000, the higher the bills, the sooner the injured person will find coverage exhausted. This results in no-fault benefits available to injured persons being depleted more quickly, to their detriment.

Representatives of both the insurance industry and the medical profession have conveyed to the Department that amending the current regulation is necessary in order to close these loopholes that have resulted in increased no-fault claim bills. In addition, numerous arbitrators that serve on the Department's no-fault arbitration panel have indicated that this issue has generated a significant number of disputes due to the significant disparity between the excessive fees being charged by out-of-state health care providers and those permitted under the current rule. By setting a maximum fee that out-of-state health care providers may receive as reimbursement for no-fault-related health services, this amendment should lead to reduced arbitration and litigation costs for insurers and self-insurers, which are typically passed to consumers in the form of higher premiums, as well as help to stem the rapid depletion of no-fault benefits available to eligible injured persons.

4. Costs: This rule imposes no compliance costs upon state or local governments. However, the rule will impact out-of-state health care providers who will now be reimbursed for health services pursuant to the applicable fee schedule prescribed in the proposed rule.

5. Local government mandates: This rule does not impose any requirement upon a city, town, village, school district, or fire district. However, local governments who are self-insurers for no-fault coverage shall only be required to reimburse out-of-state health care providers at the rates prescribed in the proposed rule, rather than the subjective prevailing rate in the geographic location of the out-of-state provider.

6. Paperwork: This rule does not impose any additional paperwork on any persons affected by the rule.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: In order to effectuate the cost savings goals of New York's no-fault laws, the Department has determined that there are no other viable alternatives to this rule.

9. Federal standards: There are no minimum federal standards for the same or similar subject areas. The rule is consistent with federal standards or requirements.

10. Compliance schedule: The rule will be effective 90 days after publication of the notice of adoption in the State Register, so as to provide enough lead time for insurers, self-insurers and out-of-state licensed health care providers to obtain copies of the applicable fee schedule and implement the rule.

Revised Regulatory Flexibility Analysis and Rural Area Flexibility Analysis

A revised Regulatory Flexibility Analysis for Small Businesses and Local Governments ("RFA") and Rural Area Flexibility Analysis ("RAFA") are not required because the revisions to the proposed regulation do not change the conclusions set forth in the previously published RFA and RAFA.

Revised Job Impact Statment

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

Assessment of Public Comment

The Department received eight comments from various property/casualty insurers and trade associations comprised of New York State automobile insurers in response to its publication of the proposed rule in the New York State Register.

All the commentators applauded the Department for its proposed amendments to Insurance Regulation 83 because of the ongoing abuse of the no-fault system with respect to out-of-state providers who, taking advantage of current provisions in the regulation, submit grossly inflated bills for services rendered, thus quickly depleting the $50,000 no-fault coverage limit available to an eligible injured party ("EIP"). Commentators assert further that this abuse drives up insurance costs and result in numerous fee disputes in arbitration and the courts.

Summaries of the comments on the proposal and the Department's responses thereto are as follows.

Proposed 11 NYCRR Section 68.6(a)(1) (Definition of "prevailing fee")

Comments

Two commentators asserted that the absence of what constitutes the prevailing fee is a problem insurers are currently facing. One commentator recommends that Section 68.6(a)(1) be amended to state that the reimbursement shall be "the fee schedule as it applies to auto injury or Workers Compensation claims. If no such fee schedule exists, then the amount to reimburse shall be the otherwise prevailing fee in the geographic region of the provider."

Department's Response

The Department has amended paragraph (a)(1) and subsection 68.6(c) to clearly define the amount that the insurer is obligated to reimburse an out-of-state provider, as well as clarified the meaning of "prevailing fee." However, worker's compensation fee schedules would be inapplicable because, unlike New York, not every jurisdiction has adopted its worker's compensation fee schedule to apply to motor vehicle no-fault claims. If a state did so adopt the schedule, it would apply.

Proposed 11 NYCRR Section 68.6(a)(1)(ii) and (iii) (Services for which the proposed reimbursement is eligible)

Comments

Some commentators asserted that eligible injured persons that are not "residents" of New York or those who are outside New York for a continuous period of "at least 14 days" requires clarification. The commentators asserted that residency would need to be defined, that the proposed rule as written may create another loophole for those who can "create residency" or assert that they were visiting with relatives when the sole purpose of the visit is to obtain treatment in a jurisdiction that has a higher reimbursement rate for services, and that the burden would be placed on insurers to disprove residency. Two commentators suggested that the common law definition of residency (evidence of an intent to remain in a particular location coupled with some degree of permanence) apply. Another commentator suggested that either the exception in (iii) be eliminated or be amended to state "… an eligible injured person who RESIDES outside this state for a continuous period of at least 14 days." [Emphasis in original.]

Department's Response

The purpose of this amendment to Insurance Regulation 83 is to curb the abusive practice of steering New York-resident EIPs to out-of-state providers for treatment solely because of higher reimbursement rates than the New York fee schedule allows. EIPs are encouraged into engaging in this practice with the promise that the greater the amount of treatment the higher the bodily injury award. The amendment was not intended to apply where the EIP legitimately requires or seeks treatment out-of-state, such as the case for an insured's teenaged son (or daughter) attending college outside New York. As such, the Department rejects eliminating or broadly negating the provisions proposed in the amendment. However, the Department agrees that subparagraph 68.6(a)(1)(iii) should be amended to clarify

to whom the provision will apply. As such, the revised proposal states: "… provided to an eligible injured person that is a resident of this State who, at the time of treatment, is residing in the jurisdiction where the treatment is being rendered for reasons unrelated to the treatment."

Proposed 11 NYCRR Section 68.6(a)(2) (Definition of "emergency care")

Comments

Some commentators asserted that the definition of "emergency care" is overly broad and invites more litigation in the no-fault process. More specifically, some commentators disagreed that medical care initiated at a hospital within "120 hours" constitutes "emergency care." They assert that this timeframe is a "seemingly longer period than what one would anticipate is immediate need for medical attention." They recommended that the timeframe be reduced to 48 hours. A few of the commentators also asserted that references to "acute symptoms" and "serious dysfunction" require clarification and interpretation of those terms will require insurers to hire medical experts to determine what particular type of health services qualifies.

Department's Response

The Department agrees that the 120-hour time frame should be decreased to 48 hours, and also revised the definition of emergency care to clarify that emergency care extends from the period of initial hospitalization through the discharge of the person from the hospital. The Department disagrees that references to "acute symptoms" and "serious dysfunction" are unclear in the context of emergency care and does not believe that interpretation of those terms will lead to increase litigation and cause insurers any additional expenses to interpret the meaning of those terms.

Proposed 11 NYCRR Section 68.6(c) (maximum amount that insurers shall be obligated to reimburse)

Comments

Two commentators asserted that the provision as written is vague and will invite litigation with respect to an analysis of the respective state's law because in some states it may not be "illegal" to charge more than a fee schedule permits. One commentator recommended that the provision be amended to state that the maximum reimbursement either be the amount permitted on the highest fee schedule in New York State or the fee schedule rate in the jurisdiction where the services were performed; or in the absence of a fee schedule in the foreign jurisdiction, the lesser of the fee schedule permitted in New York or "the usual and customary reasonable reimbursement rate in the geographic location where the service was performed."

Department's Response

The Department agrees with the comments that subdivision 68.6(c) was vague and revised the subdivision to clarify the meaning of "prevailing fee" when the provider is located in a jurisdiction that has established a fee schedule in connection with claims for motor vehicle-related injuries.

Amended No-fault form NF-1

Comment

One commentator noted that an out-of-state provider may balance bill an eligible injured person for the amount not reimbursed pursuant to Insurance Law Section 5102, and for which an insurer has no obligation to pay. The commentator suggested that the no-fault form NF-1 (the no-fault application cover letter) be amended to advise EIPs that non-emergency treatment rendered outside New York State will be reimbursed at the New York fee schedule, and that the injured party may be billed for any amount in excess of the amount reimbursable under the fee-schedule.

Department's Response

The Department disagrees with this proposal. Form NF-1 is a cover letter attached to the no-fault application, and its sole purpose is to advise the EIP of his/her entitlements under no-fault. It would be strange to include language on Form NF-1 regarding out-of-state fee reimbursement amounts when no mention is even made on the form regarding in-state reimbursement amounts. Furthermore, if the Department were to amend this form, it would necessitate an amendment to Insurance Regulation 68 and not Insurance Regulation 83, which is the subject of this proposal. Insurers, however, are free to notify EIPs on a separate form of the possibility of being balanced billed for which the EIP would solely be responsible after the insurer has discerned that treatment is being sought out-of-state.

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Life Insurance and Annuity Non-Guaranteed Elements

I.D. No. DFS-48-16-00006-RP

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

Proposed Action: Addition of Part 48 (Regulation 210) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 1106, 1113, 3201, 3203, 3209, 3219, 3220, 3223, 4216, 4221, 4223, 4224, 4231, 4232, 4238, 4239, 4240, 4511, 4513, 4518 and art. 24

Subject: Life Insurance and Annuity Non-Guaranteed Elements.

Purpose: To establish standards for the determination and readjustment of non-guaranteed elements for life insurance and annuities.

Substance of revised rule (Full text is posted at the following State website: http://www.dfs.ny.gov): Section 48.0 sets forth the scope and purpose of the rule: to establish standards for the determination and any readjustment of certain non-guaranteed elements in life insurance policies and annuity contracts, or certificates thereunder, delivered or issued for delivery in this State, where those elements may vary at the insurer's or fraternal benefit society's discretion. The section also finds that a violation of Part 48 would constitute a trade practice constituting a determined violation, as defined in section 2402(c) of the Insurance Law, in violation of section 2403.

Section 48.1 provides definitions applicable to the rule.

Section 48.2 sets forth standards and procedures for the determination and any readjustment of non-guaranteed elements.

Section 48.3 requires notification to certain life insurance policy and annuity contract owners of non-guaranteed elements at the time of issue and prior to any readjustment.

Section 48.4 requires insurers and fraternal benefit societies to maintain actuarial memoranda for certain life insurance policies and annuity contracts, and to file with the Superintendent documentation used in adverse readjustment of non-guaranteed elements for certain life insurance policies, and to maintain records documenting compliance with the rule.

Revised rule compared with proposed rule: Substantial revisions were made in Part 48.

Text of revised proposed rule and any required statements and analyses may be obtained from: William B. Carmello, New York State Department of Financial Services, One Commerce Plaza, 19th floor, Albany, NY 12257, (518) 474-7929, email: William.Carmello@dfs.ny.gov

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

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

Revised Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority to promulgate 11 NYCRR 48 (Insurance Regulation 210) derives from Financial Services Law ("FSL") sections 202 and 302, and Insurance Law sections 301, 1106, 1113, 3201, 3203, 3209, 3219, 3220, 3223, 4216, 4221, 4223, 4224, 4231, 4232, 4238, 4239, 4240, 4510, 4511, 4513, 4518 and Article 24.

FSL section 202 establishes the office of the Superintendent of Financial Services ("Superintendent") and designates the Superintendent as the head of the Department of Financial Services.

FSL section 302 and Insurance Law section 301 authorize the Superintendent to effectuate any power accorded to the Superintendent by the Insurance Law, Banking Law, Financial Services Law, or any other law of this State, and to prescribe regulations interpreting the Insurance Law, among other things.

Insurance Law section 1106 provides that no foreign or alien insurer may be licensed to do any kind of insurance business, or combination of kinds of insurance business, that are not permitted to be done by domestic insurers under the Insurance Law.

Insurance Law section 1113 sets forth the kinds of insurance that may be authorized in this State, including life insurance and annuities.

Insurance Law article 24 prohibits unfair methods of competition and unfair or deceptive acts or practices. A violation of section 4224 is a defined violation under Article 24. The Superintendent may also find in accordance with section 2405 that a particular practice is such an unfair or deceptive method, act or practice. This regulation puts regulated entities on notice that if the entity violates this part, that the Superintendent will consider such activity to be such an unfair or deceptive method act or practice.

Insurance Law section 3201 requires the prior approval of any life, annuity, accident and health, and credit unemployment policy form.

Insurance Law sections 3203, 3219, 3220 and 3223 set forth the required standard provisions for life insurance policies and annuity contracts.

Insurance Law section 3209 mandates disclosure requirements for the sale of life insurance, annuities and funding agreements and authorizes the Superintendent to promulgate regulations to implement the provisions of the section.

Insurance Law sections 4216 and 4238 set forth certain requirements for issuing group life insurance and group annuities. Sections 4216(c)(2) and 4238(d) establish certain requirements for group life insurance poli-

cies and group annuity contracts that provide for readjustment of the rate of premium.

Insurance Law sections 4221 and 4223 establish minimum nonforfeiture benefits for life insurance and annuities.

Insurance Law section 4224 proscribes unfair discrimination and other prohibited practices by insurers.

Insurance Law section 4231 establishes the rule for the distribution of surplus through the payment of dividends to eligible life insurance policyholders. Section 4231(g)(1)(D) establishes certain requirements for individual life insurance policies that provide for the prospective readjustment of the rate of premium. Section 4231(g)(1)(E) establishes certain requirements for any insurance policy, annuity or pure endowment contract, or funding agreement that provides for readjustment in the rate of premium, stipulated contribution, consideration, or deposit.

Insurance Law section 4232 establishes certain requirements for annuities and life insurance policies that provide for additional amounts to be credited to the contract or policy. Section 4232(a)(2) establishes certain requirements for annuities subject to Insurance Law section 4223 that credit additional amounts. Section 4232(b)(2) and (4) establish certain requirements for individual life insurance policies that credit additional amounts.

Insurance Law section 4239 authorizes the Superintendent to promulgate by regulation standards for the allocation and reporting of income and expenses of life insurers.

Insurance Law section 4240 authorizes a life insurer to issue variable products and to maintain the funds that support variable products (as well as other products) within separate accounts.

Insurance Law section 4510 sets forth the required and prohibited provisions for life insurance policies issued by fraternal benefit societies.

Insurance Law section 4511 sets forth the requirements and exceptions to which life insurance certificates and annuity contracts issued by fraternal benefit societies shall be subject.

Insurance Law section 4513 requires an annuity certificate or contract issued by a fraternal benefit society to conform to all applicable rules and regulations prescribed by the Superintendent.

Insurance Law section 4518 allows additional amounts of benefits, in addition to minimum benefits guaranteed, to be credited to individual life insurance policies issued by fraternal benefit societies.

2. Legislative objectives: Insurance Law sections 4216(c)(2), 4231(g)(1)(D), 4231(g)(1)(E), 4232(a)(2), 4232(b)(2), 4232(b)(4), 4238(d), and 4518 establishes minimum requirements for the determination and readjustment of non-guaranteed elements in life insurance policies and annuity contracts, including any certificates thereunder. The Legislature enacted these provisions to help ensure that any determination or readjustment is made equitably and with full and adequate disclosure. This rule establishes necessary safeguards for the adequate protection of insureds.

3. Needs and benefits: This rule addresses a number of issues that have been highlighted by company announcements, media commentary, and complaints received by the Department of Financial Services (the Department) regarding the determination and readjustment of non-guaranteed elements in life insurance policies, particularly with respect to universal life, indeterminate premium term, and whole life insurance, and annuity contracts. Policies lapsed or were about to lapse, in large part because premiums being paid were based on the current interest rate and charges under the policy at the time the policy was issued, and the interest rate under the policy decreased over time while the charges increased. The rule should assist consumers to better understand - at the time of purchase and upon any adverse readjustment of non-guaranteed elements - how life insurance policies and certain annuity certificates and contracts with non-guaranteed elements subject to change at the discretion of the insurer or fraternal benefit society operate, and thereby reduce consumer dissatisfaction and the number of lapsed policies. The rule accomplishes this by requiring additional disclosures at the time the policy, contract or certificate is issued and by requiring notice to be provided in advance of any adverse change in the current scale of non-guaranteed elements, in order to give the owner enough time to address any projected insufficiency.

4. Costs: Adverse readjustments to non-guaranteed elements, if any, are made at the discretion of the insurers and fraternal benefit societies subject to this rule, thereby making it difficult to establish a cost impact on insurers. Additional costs associated with mailing notices to consumers and submitting required documentation with the Department will occur upon adverse readjustment to non-guaranteed elements. However, because adverse readjustment of non-guaranteed elements typically is infrequent, the Department expects that any such costs to insurers and fraternal benefit societies will not be significant.

The statute already requires board-approved written criteria with regard to many insurance and annuity products, and insurers and fraternal benefit societies already utilize the services of qualified actuaries, so no new costs of significance should be incurred. The regulation minimizes the impact of mailing costs because many notice requirements may be included in existing mailings.

The Department may incur costs for under this rule, but any additional costs incurred by the Department should be minimal and the Department expects to absorb the costs in its ordinary budget.

The rule does not apply to other state agencies or local governments and accordingly there are no costs to the state or local governments.

5. Local government mandates: The rule imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: Most of the required additional disclosure to consumers may be included in disclosure documents that insurers and fraternal benefit societies are already required to provide to consumers. Most of the additional documentation that the rule requires insurers and fraternal benefit societies to file with the Department may be included with their policy form filings. However, any adverse readjustment of non-guaranteed elements of life insurance policies or certain annuity contracts or certificates will impose new paperwork requirements.

7. Duplication: The rule does not duplicate any existing state or federal laws or regulations.

8. Alternatives: When initially developing this rule in 2008, the Department conducted outreach to the insurance industry, which offered no viable alternatives and indicated that it was "unaware of any problems in the marketplace involving the determination of discretionary amounts." However, in the intervening years, the largest volume of life insurance-related consumer complaints received by the Department involved changes to non-guaranteed elements and implementation of these rules are critical to help life insurance annuity consumers. The Department considered not implementing the rule, but rejected this alternative for the reasons stated herein. However, the Department considered the comments and made adjustments to the proposal as appropriate. As a result of public comment to the original proposal, the Department has also made further revisions, as discussed in detail in the Assessment of Public Comment.

9. Federal standards: There are no federal standards in this subject area.

10. Compliance schedule: The rule will become effective 180 days after publication in the State Register. Six months should be sufficient time for insurers and fraternal benefit societies to comply with regulation. Since the regulation provides that the insurer or society provide 60-day notice to consumers with respect to any adverse changes in the non-guaranteed elements of life insurance policies or certain annuity contracts or certificates, this effectively provides insurers and societies 60 days to come into compliance with such notice requirements, which the Department believes to be sufficient time.

Revised Regulatory Flexibility Analysis

Changes made to the last published Proposed New 11 NYCRR 48 (Insurance Regulation 210) have no bearing on the last published Regulatory Flexibility Analysis for Small Businesses and Local Governments. Therefore, no changes have been made to the RFA.

Revised Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurers and fraternal benefit societies affected by this rule do business in every county in this state, including rural areas as defined in State Administrative Procedure Act section 102(10).

2. Reporting, recordkeeping and other compliance requirements, and professional services: This new part requires insurers and fraternal benefit societies to file with the Department of Financial Services ("Department") documentation that standards for any adverse readjustment of non-guaranteed elements for certain life insurance policies and annuity contracts are being met. It requires disclosure of the non-guaranteed elements and any adverse readjustment to the consumer for certain life insurance policies and annuity contracts. It requires recordkeeping by the insurer of compliance with the part and requires the use of professional services, namely, a qualified actuary, in the determination of the non-guaranteed elements.

3. Costs: Readjustments to non-guaranteed elements, if any, are made at the discretion of the insurers and fraternal benefit societies subject to this rule, thereby making it difficult to establish a cost impact on insurers. Additional costs associated with mailing notices to consumers and submitting required documentation with the Department will occur upon adverse readjustment to non-guaranteed elements. However, because readjustment of non-guaranteed elements typically is infrequent, the Department expects that any such costs to insurers and fraternal benefit societies will not be significant.

The statute already requires board-approved written criteria with regard to many insurance and annuity products, and insurers and fraternal benefit societies already utilize the services of qualified actuaries, so no new costs of significance should be incurred. The regulation minimizes the impact of mailing costs because many notice requirements may be included in existing mailings.

4. Minimizing adverse impact: The Department finds that this rule does not impose any additional burden on insurers and fraternal benefit societies located in rural areas. This rule applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State. As explained under Costs immediately above, the rulemaking should not have any adverse impact on rural areas.

5. Rural area participation: When initially developing this rule in 2008, the Department conducted outreach to the insurance industry, which includes insurers and fraternal benefit societies located in rural areas. Entities in rural areas will have an opportunity to participate in the rulemaking process once the proposed rule is published in the State Register and posted on the Department's website.

Revised Job Impact Statement

Changes made to the last published Proposed New 11 NYCRR 48 (Insurance Regulation 210) have no bearing on the last published Job Impact Statement. Therefore, no changes have been made to the JIS.

Assessment of Public Comment

The Department of Financial Services ("Department") received significant comments on proposed rule 11 NYCRR 48 from 11 parties, including life insurers and trade associations, summarized as follows.

Some commenters recommended that annuities be excluded from the scope of the regulation because it could be disruptive to the annuity marketplace and they do not believe that there has been a demonstrated problem with the readjustment of non-guaranteed elements in annuities. The Department acknowledges that the problems uncovered over the years have primarily, but not exclusively, involved life insurance and has substantially revised the proposed rules for annuities to limit reporting on annuities to an annual reporting to the Department of adverse changes in non-guaranteed elements that took place during the prior year, as well as the 60-day notice to policyholders of adverse changes in non-guaranteed elements. The Department believes that this reporting is necessary to protect annuitants' interests.

One commenter recommended that participating policies be excluded from the scope of the regulation rather than just the dividend provisions, whereas another commenter recommended that all aspects of participating policies should be subject to the regulation, including dividend provisions. The Department continues to believe that dividend provisions should not be subject to the regulation since the regulation is intended to address non-guaranteed elements that are based on expectations of future performance rather than results from past performance. However, there is no reason to exempt a participating policy in its entirety when it has one or more non-guaranteed elements determined based on expectations of future performance, e.g., the cost of insurance charges in a participating universal life insurance policy.

One commenter recommended that variable policies be excluded from the scope of the regulation, but the Department has the same concerns about variable products as it does about fixed products, i.e., that consumers be treated fairly when insurers change the non-guaranteed elements, e.g., cost of insurance charges.

One commenter recommended that only group business subject to individual rules should be subject to the regulation. The Department narrowed the scope of the regulation with respect to group business but some groups not subject to individual rules are still subject to the regulation if the Department continues to have concerns about fair treatment of the participants. For example, the regulation would still be applicable to certain group annuities subject to ERISA that are not subject to individual standards in which case the insurer would be required to report annually on adverse changes to non-guaranteed elements.

Some commenters recommended clarification as to whether the regulation applied to in-force policies or just policies sold after the effective date. One commenter recommended that the regulation should apply to only policies sold after the effective date. Some commenters recommended applying the regulation to previously applied changes in non-guaranteed elements. The Department believes it is important that the regulation is applied to any changes to non-guaranteed elements made after the effective date of the regulation even for policies issued prior to the effective date, but changes made prior to the effective date should be subject to whatever standards existed at the time of the change. Clarification to this effect has been made.

Some commenters recommended clarification of the application of the regulation to indexed products. The Department made revisions to the regulation to make those clarifications.

Some commenters recommended narrowing the definition of board-approved criteria to remove items such as marketing objectives, which typically do not need board approval. The Department made the recommended revision.

Some commenters expressed concern that the definition of class of policies might lead to confusion in applying the regulation. No revision was made to the definition. The Department acknowledges that a policy might be in one class with respect to one assumption, for example, the mortality assumption, and a different class with respect to another assumption, for example, the expense assumption, since there would generally be more policyholders with similar expectations as to expense costs in comparison with the number of policyholders with similar expectations as to mortality.

One commenter recommended changing the definition of experience factor to indicate that the list of factors is not exhaustive. No revision was made because the Department does not want to include factors that are not listed in the applicable laws.

Some commenters expressed concern that the definition of pricing cell could result in too many required calculations. No revision was made to the definition. The Department believes the regulation's definition of pricing cell in conjunction with the regulation's definition of class of policies should ensure fair treatment of policyholders within a given pricing cell.

Some commenters recommended expanding the definition of qualified actuary. The Department revised the definition to include an associate of the Society of Actuaries.

One commenter recommended that the regulation have no rules applicable to setting initial non-guaranteed elements but instead focus exclusively on revisions of non-guaranteed elements. The Department believes it is important for the initial scale of non-guaranteed elements be reasonable and equitable.

One commenter recommended deleting the requirement that assignment of policies into classes be consistent with advertising material provided to the policy owner. The Department sees no reason for there to be an inconsistency.

Some commenters questioned the requirement that policies with dissimilar guarantees be placed in separate classes for determining non-guaranteed elements. The Department believes significant differences in guarantees warrants separate classes.

One commenter recommended clarifying that companies are not required to make changes. However, certain sections of the law require non-guaranteed elements to be based on reasonable assumptions. If an assumption is no longer reasonable it needs to be changed, which might mean one or more non-guaranteed elements would change. The regulation does permit thresholds for making changes but those thresholds must be applied fairly for both increases and decreases in non-guaranteed elements. Accordingly, this revision was not made.

One commenter questioned the need for different experience factors for different types of policies in the redetermination of non-guaranteed elements per section 48.2(b). The differences are due to different assumptions applicable to different types of policies in the Insurance Law. The commenter also questioned why morbidity was not listed as a factor: the reason is that relevant laws do not include morbidity in the listed assumptions.

One commenter requested with respect to section 48.2(b) that insurers be able to look back only to the most recent prior change in non-guaranteed elements when making a new change, rather than looking back to the non-guaranteed elements in effect at the time the policy was issued. This revision was made.

Several commenters made recommendations about the role of profit margins in readjusting non-guaranteed elements. One commenter recommended deleting reference to profit margin. The Department believes in order to ensure that changes to non-guaranteed elements are based solely on changes in expected future experience, the profit margin must be fixed. Otherwise, if an insurer may change the profit margin, the various sections of the law requiring reasonable assumptions and equitable treatment of policyholders could be easily violated and bait and switch pricing could occur. Two commenters suggested that, instead of requiring that the profit margin at a given policy year be fixed, the regulation should require only that the present value of profits from the time of a change in non-guaranteed elements be fixed. The Department's concern about this approach is if profit margins are increased at certain durations and reduced at other durations, some policyholders could be harmed.

One commenter recommended that the insurer be permitted to use the most recent profit objective where the insurer did not know the original profit margins. However, in those cases, the insurer should be able to back into the profit margins based on the original non-guaranteed elements and the original experience assumptions. Accordingly, the Department did not make the change. Two commenters recommended permitting the Department to allow an increase in profit margins if there was a concern about the financial condition of the insurer. This revision was made.

Several commenters requested that the Department delete the requirement that reinsurance and other third party agreements be ignored when revising non-guaranteed elements. The Department believes that basing changes to non-guaranteed elements on actions by a third party is not acceptable if the actions, such as premium increases, are not consistent with the experience, e.g., mortality, anticipated by the direct insurer.

Two commenters expressed concerns when an insurer is acquired by another insurer about the requirement that the acquiring insurer's

procedures for changing non-guaranteed elements should not be less favorable than the original insurer's procedures. The Department believes using a less favorable procedure would be unfair to policyholders and annuitants. Language was added, however, to allow an exception where necessary due to the financial condition of the original insurer, if approved by the Superintendent.

Two commenters recommended deleting the requirement that the insurer must review the anticipated experience factors for existing business whenever the non-guaranteed elements for new business are changed. The Department decided the requirement that the anticipated experience factors for existing business be reviewed at least every five years would be sufficient. Accordingly, the revision was made.

One commenter recommended deleting section 48.2(g), which permits certain simplifications and thresholds for making revisions to non-guaranteed elements within the board-approved criteria as unnecessary and giving the implication that anything other than what is in the regulation would not be permitted. No revision was made because the Department believes items such as thresholds for making changes should be approved by the board.

Two commenters recommended eliminating the rule requiring a limit on passing high unit costs on to policyholders due to low sales volume. The Department believes passing on the impact of low sales volume is unfair and inconsistent with the requirements in the law that the changes be based on expectations of future experience rather than the impact of past experience.

One commenter recommended that changes to cost of insurance rates in universal life insurance policies should be based solely on changes in anticipated mortality experience. The Department believes that the Insurance Law permits changes in any non-guaranteed element to be based on changes in any of the assumptions listed in the law. Accordingly, no change was made.

One commenter recommended that insurers should not be required to disclose current non-guaranteed elements to policyholders. The Department believes that it is important that policyholders and annuitants know the non-guaranteed elements that are expected to apply to their policies. This will allow them to track the actual credits and charges over time and compare them to what was originally expected.

Several commenters stated that the policy form requirements in the proposed regulation would be overly burdensome. The Department considered the comments and those requirements were removed.

One commenter recommended that the notice to policyholders of changes in non-guaranteed elements should only apply to adverse changes and should not apply to adverse changes in interest crediting rates. The Department made the revision so that the disclosure only applies to adverse changes with the exception of interest crediting rates. For interest crediting rates, adverse changes do not need to be disclosed in advance if the change is based solely on changes in expected investment income or hedging costs.

One commenter recommended that the regulation be revised to require Department approval of changes in non-guaranteed elements. Some commenters commented that the advance filing of changes in non-guaranteed elements is tantamount to rate regulation. Another commenter recommended that there be no advance filing with the Department of adverse changes. The Department believes prior approval is not necessary to ensure fair treatment of policyholders but advance notice of adverse changes is important because it helps avoid situations where improper changes in non-guaranteed elements results in fines and the need for the insurer to make restitution to harmed policyholders.

Some commenters requested that the Department not require the actuarial memorandum regarding pricing to be filed with the policy form filing, but instead be available upon request of the Department. The requested revision was made. Some commenters expressed concern about the need to ensure confidentiality due to the proprietary nature of the information that may be contained in the actuarial memorandum. In accordance with Public Officers Law Section 89, an insurer may request confidentiality of records at the time that it submits the records to the Department.

One commenter questioned the need for an actuarial memorandum for annuities. The Department believes a disciplined process for making changes to non-guaranteed elements for annuities is important to ensure fair treatment of contract holders. Some commenters commented that the information required for the actuarial memorandum is too detailed. The Department believes the level of detail required by the regulation is necessary and appropriate for the Superintendent to evaluate the information.

One commenter recommended deleting the requirement that the actuarial memorandum describe the investment strategy. The Department believes this is important information to have to ensure that policyholders are treated fairly.

Several commenters recommended shortening the time for notification to the Department of adverse changes in non-guaranteed elements from 120 days. Most of the concern seemed to center around changes in interest crediting rates. As indicated above, the advance notice requirement was removed for annuities and, for life insurance, only changes in interest crediting rate that are not related to expected investment income would need to be reported in advance. As for other adverse changes, the 120 day period was chosen so that any concerns the Department might have could be resolved prior to the time of advance notification to policyholders, which is 60 days.

One commenter expressed concern about the 15 day advance notice for changes in non-guaranteed elements on new policies. The Department has removed that requirement.

One commenter expressed concern about the requirement to provide the board criteria and other information within 30 days of adoption of the criteria. This requirement was removed. The Department will request the board criteria on an as-needed basis.

One commenter requested a delay in the effective date of the regulation from 120 days to one year after publication. Given the various changes made to the regulation in response to comments received, the Department believes a change to 180 days after publication should be sufficient.

Department of Health

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Physician and Pharmacies; Prescribing, Administering and Dispensing for the Treatment of Narcotic Addiction

I.D. No. HLT-21-17-00001-EP
Filing No. 301
Filing Date: 2017-05-03
Effective Date: 2017-05-03

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

Proposed Action: Amendment of section 80.84 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3308(2)

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

Specific reasons underlying the finding of necessity: Drug addiction and accidental overdoses due to opioid prescription medication and heroin are at an all-time high in New York State and across the nation. The Drug Addiction Treatment Act of 2000 (DATA 2000) and New York State regulations currently permit qualified physicians to prescribe or dispense buprenorphine for the treatment of individuals with substance use disorder (SUD). Buprenorphine has been shown to be an effective treatment option for opioid dependence, providing a safe, controlled level of medication to overcome the use of a problem opioid. Recently enacted federal law and regulations allow for the expanded access to buprenorphine. However, to implement this in New York State, the Department's regulations must be amended.

In September 2016, the federal Substance Abuse and Mental Health Services Administration (SAMHSA) adopted a new rule that increased the number of patients that a practitioner can treat for opioid addiction in an office-based practice setting. Further, on July 22, 2016, the Comprehensive Addiction and Recovery Act of 2016 (CARA) was signed into law by President Obama, extending prescribing privileges to nurse practitioners and physician assistants to treat patients for opioid addiction with buprenorphine. Regulations in 10 NYCRR Part 80 are now outdated because they refer to a patient limit of thirty and restrict prescribing privileges to physicians.

According to the New York State Office of Alcohol and Substance Abuse Services (OASAS) data, more than 107,000 people were treated for opioid addiction in 2015, with approximately 1,540 physicians certified to prescribe buprenorphine. It is clear that increased access to treatment is necessary, based upon the ratio of certified physicians to patients suffering from SUD. Expanding the authority to treat patients with SUD to physician assistants (PAs) and nurse practitioners (NPs), will greatly improve access for thousands of individuals across the state.

To ensure that individuals addicted to opioids have immediate access to treatment from authorized providers, including PAs and NPs, the Commissioner of Health has determined it necessary to file these regulations

on an emergency basis. State Administrative Procedure Act § 202(6) empowers the Commissioner to adopt emergency regulations when necessary for the preservation of the public health, safety or general welfare and that compliance with routine administrative procedures would be contrary to the public interest. Removing the outdated legal obstacles in the current regulations would immediately allow experienced practitioners to treat addiction.

Subject: Physician and Pharmacies; Prescribing, Administering and Dispensing for the Treatment of Narcotic Addiction.

Purpose: To allow any authorized practitioner to prescribe, administer and dispense buprenorphine for the treatment of narcotic addiction.

Text of emergency/proposed rule: Section 80.84 is amended as follows:

Section 80.84 [Physicians] *Practitioners* and pharmacies; prescribing, administering and dispensing for the treatment of narcotic addiction.

Pursuant to the provisions of the federal Drug Addiction Treatment Act of 2000 (DATA 2000) (106 P.L. 310, Div. B, Title XXXV, Section 3502(a)), an authorized [physician] *practitioner* may prescribe, administer or dispense an approved controlled substance, and a licensed registered pharmacist may dispense an approved controlled substance, to a patient participating in an authorized controlled substance maintenance program approved pursuant to Article 32 of the Mental Hygiene Law for the treatment of narcotic addiction.

(a) An approved controlled substance shall mean the following controlled substance which has been approved by the Food and Drug Administration (FDA)*, or its successor agency,* and the New York State Department of Health for the treatment of narcotic addiction:

(1) buprenorphine

(b) An authorized [physician] *practitioner* is a [physician] *practitioner* specifically registered with the Drug Enforcement Administration to prescribe, administer or dispense an approved controlled substance for the treatment of narcotic addiction, and approved for such purpose pursuant to the provisions of Article 32 of the Mental Hygiene Law.

(1) The total number of such patients of an authorized [physician] *practitioner* at any one time shall not exceed [30] *the limit established by DATA 2000 and the Department of Health and Human Services (HHS) Substance Abuse and Mental Health Services Administration (SAMHSA), or its successor agency*.

(2) An authorized [physician] *practitioner* prescribing an approved controlled substance for the treatment of narcotic addiction, in addition to preparing and signing an official New York State prescription *or an electronic prescription* in accordance with Section 3332 of the Public Health Law and Section 80.69 of this Part, shall also include his/her unique DEA identification number on the prescription.

(3) An authorized practitioner may dispense an approved controlled substance for the treatment of narcotic addiction in accordance with Section 3331 of the Public Health Law and Section 80.71 of this Part.

(c) A pharmacist may dispense an approved controlled substance for the treatment of narcotic addiction pursuant to a prescription issued by an authorized [physician] *practitioner*. Such dispensing shall be in accordance with Section 3333 of the Public Health Law and Section 80.74 of this Part.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire July 31, 2017.

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

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:

Section 3308(2) of the Public Health law authorizes and empowers the Commissioner to make any regulations necessary to supplement the provision of Article 33 of the Public Health Law in order to effectuate their purpose and intent.

Legislative Objectives:

The legislative purpose of Article 33, and its associated regulations, is to combat illegal use of and trade in controlled substances and to allow legitimate use of controlled substances in health care authorized by the article or other law. This amendment will provide for increased access to treatment for persons addicted to opioids.

Needs and Benefits:

The rise of heroin and pharmaceutical opioid use has increased the need and demand for treatment throughout New York State. Deaths in New York have risen 50 percent in the last five years due to opioid overdose. Many of these deaths can be attributed to untreated opioid use disorder.

Statistics published in the "2015 New York State Opioid Poisoning, Overdose and Prevention Report to Governor Cuomo and the NYS Legislature" provide significant information of the widespread epidemic that has reached this state. According to the Report:

In 2009, there were 1,538 reported deaths from unintentional drug poisonings in NYS. Toxicology tests identified heroin in 242 (16 percent) of these deaths and opioid analgesics in 735 (48 percent). In 2013, the latest full year for which data are available, the number of reported drug overdose deaths increased to 2,175, a 41 percent increase from 2009. The number of heroin-related deaths increased in 2013 to 637, and opioid analgesics related deaths rose to 952, increases of 163 percent and 30 percent from 2009, respectively. Opioid-related emergency department visits increased 73 percent from 2010 to 2014, 75,110 opioid-related inpatient hospital admissions were reported in 2014, an increase of 3 percent from 2010, and 118,875 (42 percent) of the 281,800 admissions to NYS certified substance abuse treatment programs in 2014 included "any opioid" as the primary, secondary or tertiary drug problem, up 19 percent from 2010 (100,004).

(See 2015 New York State Opioid Poisoning, Overdose and Prevention Report to Governor Cuomo and the NYS Legislature, page 1, available at: https://www.health.ny.gov/diseases/aids/general/opioid_overdose_prevention/docs/annual_report2015.pdf)

Under the federal Drug Addiction Treatment Act of 2000 (DATA 2000), qualified physicians are authorized to treat patients with opioid dependency, including heroin, with buprenorphine. Prior to the legislation the only treatment option for patients dependent on opioids was in a methadone treatment clinic. DATA 2000 increased the accessibility of treatment for opioid use disorder, or more commonly referred to as, opiate addiction, in a community setting.

Many patients with substance use disorders, especially those living in rural areas, are underserved due to the lack of authorized physicians under DATA 2000. In July 2016, to address this issue, President Obama signed the Comprehensive Addiction and Recovery Act of 2016 (CARA) into law. CARA allows nurse practitioners and physician assistants to treat patients dependent on opioids with buprenorphine in an office-based setting. (See P.L. 114-198.) However, the Department's regulations, which were drafted in 2004, do not currently allow for this expanded field of providers and should be amended.

Further, to address the rapidly growing need to treat opioid use disorder in the office-based setting nationwide, the Department of Health and Human Services (HHS) recently adopted a rule to lift the limits on the number of patients doctors can treat with buprenorphine from 100 to 275. The rule increased access to medication-assisted treatment (MAT), which includes opioid treatment programs (OTPs). (See 81 FR 44711.) MAT combines medications, such as buprenorphine, and behavioral therapy to treat substance use disorders. With the adoption of this new federal rule, the Department's regulations refer to the now outdated prescribing limits.

The Department is proposing amendments to Section 80.84 to ensure consistency with these federal laws and regulations.

Costs:

Costs to Regulated Parties:

The amendment would not impose costs to regulated parties. The regulations simply increase access to treatment for persons addicted to opioids.

Costs to State Government:

There will be no additional costs to state government as a result of the proposed amendment.

Costs to Local Governments:

There will be no additional costs to local government as a result of the proposed amendment.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

This amendment will not impose any program, service, duty, additional cost, or responsibility on any county, city, town, village, school district, fire district, or other special district.

Paperwork:

The proposed amendments would not increase paperwork requirements.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

The Department could choose to retain existing standards. This option was rejected because the discrepancy between federal and State standards would confuse practitioners and defeat the purpose of CARA, which is to expand access to treatment of people addicted to opioids.

Federal Standards:

The regulatory amendment does not exceed any minimum standards of the federal government.

Compliance Schedule:

This regulation will become effective upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis
No regulatory flexibility analysis is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis
No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no other compliance costs imposed on public or private entities in rural areas as a result of the amendments.

Job Impact Statement
No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have an adverse impact on jobs and employment opportunities.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Pole Attachment Rates

I.D. No. PSC-21-17-00011-P

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

Proposed Action: The Commission is considering a petition from the New York Municipal Power Agency to increase its proxy pole attachment rate used by its municipal utility members.

Statutory authority: Public Service Law, sections 65, 66 and 119-a

Subject: Pole Attachment Rates.

Purpose: To consider an update to the proxy pole attachment rate used by New York Municipal Power Agency's municipal utility members.

Substance of proposed rule: The Commission is considering the petition of the New York Municipal Power Agency made on April 24, 2017, to increase its pole attachment proxy rate used by its municipal utility members. The proposed annual pole attachment proxy rate would increase from $8.51 to $14.04, per equivalent pole, and is based on the currently-effective pole attachment rate of New York State Electric & Gas Corporation. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(17-E-0243SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Compensation for Distributed Generation Systems Located at Farms

I.D. No. PSC-21-17-00012-P

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

Proposed Action: The Commission is considering a petition filed by Dairy Farmers of America, Agri-Mark Dairy Cooperative, and Vanguard Renewables on May 5, 2017 requesting the creation of a Farm Distributed Generation program.

Statutory authority: Public Service Law, sections 5(1)(b), (2), 65(1), (2), (3), 66(2) and (5)

Subject: Compensation for distributed generation systems located at farms.

Purpose: To consider appropriate compensation and policies for distributed generation systems located at farms.

Substance of proposed rule: The Public Service Commission (Commission) is considering the petition for Farm Distributed Generation From Farm Digesters, filed by Dairy Farmers of America, Agri-Mark Dairy Cooperative, and Vanguard Renewables on May 5, 2017. The petition requests that the Commission create a Farm Distributed Generation program to permit farm digesters to provide renewable energy to local businesses in a manner similar to the Community Distributed Generation Program. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the relief requested in the petition and may resolve related matters.

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

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(15-E-0751SP6)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Establishment and Implementation of Earnings Adjustment Mechanisms

I.D. No. PSC-21-17-00013-P

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

Proposed Action: The Commission is considering a petition filed by Orange and Rockland Utilities, Inc. to establish and implement Earnings Adjustment Mechanisms.

Statutory authority: Public Service Law, sections 5(1), 65(1), 66(1) and (12)

Subject: Establishment and implementation of Earnings Adjustment Mechanisms.

Purpose: To consider the establishment and implementation of Earnings Adjustment Mechanisms.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed by Orange and Rockland Utilities, Inc. (the Company) on February 13, 2017, to establish and implement Earnings Adjustment Mechanisms (EAMs) in accordance with the Commission's Order Adopting a Ratemaking and Utility Revenue Model Policy Framework in Case 14-M-0101. The Company proposes EAMs related to 1) System Efficiency; 2) Energy Efficiency; 3) Distributed Generation Interconnection; and 4) Advanced Metering Infrastructure Customer Engagement. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the petition proposed 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-M-0429SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Grandfathering Provisions for Sites Served by Multiple Remote Net Metered Projects

I.D. No. PSC-21-17-00014-P

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

Proposed Action: The Commission is considering a petition filed by ForeFront Power LLC on May 5, 2015 requesting modification of certain grandfathering provisions established in an October 16, 2015 Order.

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

Subject: Grandfathering provisions for sites served by multiple remote net metered projects.

Purpose: To consider appropriate grandfathering provisions for sites served by multiple remote net metered projects.

Substance of proposed rule: The Public Service Commission (Commission) is considering the petition filed by ForeFront Power LLC, on May 5, 2017, to modify the Commission's October 16, 2015 Order. The petition requests that the Commission modify the grandfathering rules for sites served by multiple remote net metering projects with a total capacity greater than 2 megawatts (MW) established in the Commission's October 16, 2015 Order Directing Modification to Remote Net Metering Tariffs and Making Other Findings. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the relief requested in the Petition and may resolve related matters.

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

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

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

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

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

(15-E-0267SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Expansion of Energy Efficiency and Advanced Metering Infrastructure Programs, and Implementation of NWA Framework

I.D. No. PSC-21-17-00015-P

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

Proposed Action: The Commission is considering a petition filed by Orange and Rockland Utilities, Inc. for an incremental Energy Efficiency Program, full deployment of Advanced Metering Infrastructure and a framework for implementation of Non-Wires Alternative projects.

Statutory authority: Public Service Law, sections 5(1), 65(1), 66(1) and (12)

Subject: Expansion of Energy Efficiency and Advanced Metering Infrastructure Programs, and implementation of NWA framework.

Purpose: To consider expanded Energy Efficiency and AMI programs and framework for implementing NWA projects and related cost recovery.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed by Orange and Rockland Utilities, Inc. (the Company) on February 13, 2017, to implement the expansion of programs and cost recovery for (1) an incremental Energy Efficiency Program for all the Company's customers; (2) the full deployment of Advanced Metering Infrastructure (AMI) in the Company's service territory, which includes an AMI Customer Engagement Plan and AMI Rate Pilot Program; and (3) a framework for the implementation of Non-Wires Alternative (NWA) projects. The Company also seeks approval for cost recovery associated with (1) an incremental Energy Efficiency Program directed to the Company's low income customers; and (2) incremental low income credits. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the petition proposed 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.

(17-M-0178SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Compensation for Distributed Energy Resources Through the Value Stack Methodology

I.D. No. PSC-21-17-00016-P

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

Proposed Action: The Commission is considering the implementation of the Phase One Value Stack in accordance with its March 9, 2017 Order and the Implementation Proposals filed by the utilities on May 1.

Statutory authority: Public Service Law, sections 5(1)(b), (2), 65(1), (2), (3), 66(2) and (5)

Subject: Compensation for distributed energy resources through the Value Stack methodology.

Purpose: To implement appropriate compensation methodologies for distributed energy resources.

Substance of proposed rule: The Public Service Commission is considering the implementation of the Phase One Value Stack in accordance with its March 9, 2017 Order on Net Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters (Order) and the Implementation Proposals filed by Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation on May 1, 2017. Issues for consideration include identification of, calculation of, and compensation for components of the Value Stack, including Demand Reduction Values, Locational System Relief Values, Capacity Values, and Environmental Values, use of average generation profiles, cost allocation and recovery methodologies, including accounting transactions and ratemaking treatment, managing billing and tracking bill credits, reporting procedures, and tariffs for Value Stack compensation. The full text of the order and proposals 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 proposals made in the Order and in the Implementation Proposals and may resolve related matters.

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

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

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

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

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

(15-E-0751SP4)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition to Defer Incremental Vegetation Management Funding and Relief of 2016 SAIFI Negative Revenue Adjustment

I.D. No. PSC-21-17-00017-P

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

Proposed Action: The Commission is considering a petition filed by Central Hudson Gas & Electric Corporation to defer incremental funding associated with its distribution hazard tree program, electric transmission trimming program and performance metric violation.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Petition to defer incremental vegetation management funding and relief of 2016 SAIFI negative revenue adjustment.

Purpose: To consider the petition for deferral accounting and relief of 2016 SAIFI negative revenue adjustment.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Central Hudson Gas & Electric Corporation (Company) on May 5, 2017, to defer incremental funding associated with the Company's distribution hazard tree program and electric transmission trimming program. The Company also seeks relief from the 2016 System Average Interruption Frequency Index service quality performance metric violation. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(17-E-0250SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Proposed Agreement for the Provision of Water Service by Saratoga Water Services, Inc.

I.D. No. PSC-21-17-00018-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 petition of Saratoga Water Services, Inc. for a waiver of the Company's tariff and approval of the terms of a service agreement.

Statutory authority: Public Service Law, sections 4(1), 20(1) and 89-b

Subject: Proposed agreement for the provision of water service by Saratoga Water Services, Inc.

Purpose: To consider a waiver and approval of terms of a service agreement.

Text of proposed rule: The Commission is considering a petition in which Saratoga Water Services, Inc. (Saratoga) seeks issuance of an Order: (a) approving the terms and conditions of a certain "Agreement For The Provision of Water Service" dated August 3, 2016 (Agreement) between Saratoga and The Luther Forest Corporation as being in the public interest; (b) determining that the provision of water service by Saratoga in accordance with the terms set forth in the Agreement is in the public interest; (c) waiving Saratoga's tariff provisions to the extent they are inconsistent with the Agreement; and (d) waiving the applicability of the provisions of 16 NYCRR Parts 501 and 502 to the extent they are inconsistent with the Agreement. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-W-0489SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity and Waiver Request

I.D. No. PSC-21-17-00019-P

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

Proposed Action: The Public Service Commission is considering a Notice of Intent of Maple East Residence, L.P., to submeter electricity at 918 East New York Avenue, Brooklyn, New York and a waiver request of 16 NYCRR section 96.5(k)(3).

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

Subject: Notice of Intent to submeter electricity and waiver request.

Purpose: To consider the Notice of Intent to submeter electricity at 918 East New York Avenue, Brooklyn, NY and waiver request.

Substance of proposed rule: The Commission is considering the Notice of Intent of Maple East Residence, L.P. (Owner), filed on April 12, 2017, to submeter electricity at 918 East New York Avenue, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission is also considering the Owner's request for a waiver of 16 NYCRR § 96.5(k)(3), which requires proof that an energy audit has been conducted when 20 percent or more of the residents receive income-based housing assistance. The full text of the Notice of Intent and waiver request 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-0196SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Mitigation of Distributed Energy Resource Project Costs and Bill Impacts

I.D. No. PSC-21-17-00020-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 methods for mitigation of bill impacts and DG project costs as discussed in the Value of Distributed Generation Order issued March 9, 2017, including increasing project size limits and developing consolidated billing.

Statutory authority: Public Service Law, sections 5(1)(b), (2), 65(1), (2), (3), 66(2) and (5)

Subject: Mitigation of distributed energy resource project costs and bill impacts.

Purpose: To implement policies that mitigate costs of distributed energy resource projects.

Substance of proposed rule: The Public Service Commission is considering methods for mitigation of bill impacts and distributed generation (DG) project costs as discussed in the March 9, 2017 Order on Net Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters (Order) in Case 15-E-0751. As discussed in the Order, methods for cost mitigation under consideration include increasing the project size limit from 2 megawatts (MW) to 5 MW and directing the development of utility consolidated billing. The full text 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 proposals made in the Order and may resolve related matters.

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

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

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

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

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

(15-E-0751SP5)

Workers' Compensation Board

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Paid Family Leave

I.D. No. WCB-08-17-00010-RP

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

Proposed Action: Amendment of sections 355.2, 355.4 and 355.8, Parts 360, 361 and 376; addition of section 355.9 and Part 380 to Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117, 221, 226 and 205

Subject: Paid Family Leave.

Purpose: Identify requirements and process for implementation of paid family leave program.

Substance of revised rule (Full text is posted at the following State website: wcb.ny.gov): Section 355.2(c) is amended to explicitly exclude certain persons under the Black Car Operator's Fund and the New York Jockey Injury Fund from the definition of employee.

Sections 355.4 and 355.8 are amended to include standards for benefits at least as favorable in plans providing for paid family leave.

A new section 355.9 has been added to include paid family leave definitions.

A new subpart 380-1 clarifies applicability.

Subpart 380-2 has been added to describe eligibility for paid family leave and the types of qualifying events necessary to take paid family leave. Qualifying events for paid family leave include leave to care for a child after birth or placement for adoption or foster care within the first 12 months after the birth or placement; for a qualifying exigency arising from the service of a family member in the armed forces of the United States; or to care for a family member with a serious health condition as defined in section 355.9.

Section 380-2.5 provides that employees working 20 or more hours per week become eligible after 26 consecutive weeks of work, and employees who work less than 20 hours a week become eligible on the 175th day of work, and describes the rate of paid family leave for part-time workers, as well as establishing 26 weeks as the maximum amount of disability and paid family leave benefits that may be taken in a year.

Section 380-2.6 provides for an optional waiver for an employee whose regular work schedule never achieves the 26 weeks or 175 days in a 52 consecutive week period required to become eligible for paid family leave.

Subpart 380-3 has been added to explain the notice requirements for taking paid family leave. If the leave is foreseeable, the employee is required to give the employer at least 30 days advance notice – if they fail to do so, the self-insured employer or carrier may file a partial denial of the family leave claim for up to 30 days. If notice is not practicable, the employee must notify the employer as soon as it is practicable.

A new subpart 380-4 describes the notice of claim and certification requirements for a paid family leave claim, including medical certification and HIPAA authorization. For leave taken to care for a family member with a serious health condition, the employee must obtain medical certification from the health provider with information about the patient's health condition, and the estimation of frequency and duration of leave necessary, among other information. For a qualifying exigency, the employee must provide a copy of the military member's active duty orders and/or other documentation supporting the leave.

For leave to bond with a child, the birth mother must provide a birth certificate or documentation of pregnancy or birth from a health care provider including the mother's name and birth or due date. A second parent must provide a birth certificate, documentation from a health care provider, voluntary acknowledgment of paternity or court order of filiation. An adoptive parent must submit documentation showing an adoption is in process, or documentation illustrating the leave is to further the adoption. A foster parent must submit a letter from the county or city department of social services or local volunteer agency.

A new subpart 380-5 provides information about filing a claim, as well as the payment and denial process of a paid family leave claim, including uninsured employers. The employee must complete the Request for Paid Family Leave on the form designated by the carrier, and, if the carrier allows it, may file the claim in advance if the leave is foreseeable. The carrier will provide the employee with contact information and any missing information, and within 18 days will pay or deny a completed claim. Section 380-5.5 also provides that when the employer is uninsured, such claims will be paid from the Special Fund for Disability Benefits. Part 380-5.6 provides a framework for method of payment of claims.

Subpart 380-6 has been added to explain the benefit rate and use of accruals by an employee in conjunction with paid family leave.

Subpart 380-7 has been added to detail employer obligations under paid family leave, including collecting contributions, continuing health insurance (as long as the employee continues contributing to the cost as before paid family leave), and maintaining paid family leave insurance coverage as an individual business owner. Employers may deduct contributions before paid family leave becomes effective, and must post a notice concerning paid family leave. Subpart 380-7 also provides information about continuing deductions while an employee is out on leave.

A new subpart 380-8 provides for reinstatement of the employee to the same or a comparable job upon returning from paid family leave, as well as a process for discrimination or retaliation claims if reinstatement is denied after being formally requested by the employee. The Board will schedule hearings to determine a discrimination case.

Subpart 380-9 has been added to provide a process for disputes related to paid family leave. Any claim-related dispute arising under the paid family leave statute will be eligible for, and subject to, arbitration. This Subpart outlines the arbitration process and fee structure, including requiring a $25 filing fee by the initiating party which is refundable by the carrier should the employee prevail. It also provides that all disputes shall be resolved by desk arbitration unless the arbitrator finds further development of the record necessary.

Subpart 380-10 has been added to provide for public employers that

opt-in for voluntary coverage for paid family leave. A public employer may opt-in for paid family leave only. It outlines a process for providing coverage for public employees who are or are not represented by an employee organization as described in section 212-b. Subpart 380-10 also provides that if the public employer already offers disability leave benefits and wishes to provide paid family leave benefits, both must be offered under a single insurance policy.

Subpart 361 is amended to provide that Article 9 benefits (both disability and paid family leave) to employees will meet the requirements of the Superintendent of Financial Services.

Part 361.1 has been amended to provide for including paid family leave in the self-insurance regulations, including the option for self-insurers under section 204 to also self-insure for paid family leave or purchase a paid family leave policy from an insurance carrier.

Part 361.2 has been amended to make clear that self-insurers are responsible for covering the cost of paid family leave if it exceeds the statutory maximum contribution which may be collected from employees.

Part 361.3 has been amended to indicate that the security deposit for a self-insurer for both paid family leave and disability benefits will be combined, and outlines the process for the surety bond.

Part 361.4 has been amended to include clarifying information about self-insurer reports to be submitted to the Department of Financial Services, and outlines what information will be required in those reports.

Part 361.5 has been amended to restrict the use of third-party administrators to those licensed by the Workers' Compensation Board.

Parts 361.6 and 361.7 have been amended to fix capitalization and numeration.

Part 376 has been amended to change chairman to Chair, and to reflect the minimum amount of deposit for disability benefits only.

Revised rule compared with proposed rule: Substantial revisions were made in section 355.2, Subparts 380-2, 380-5, 380-6, 380-7, 380-8, 380-9 and Part 361.

Text of revised proposed rule and any required statements and analyses may be obtained from Heather MacMaster, Workers' Compensation Board, 328 State Street, Office of General Counsel, Schenectady, NY 12305-2318, (418) 486-9564, email: regulations@wcb.ny.gov

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

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

Revised Regulatory Impact Statement

A revised Regulatory Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text still seek to implement the paid family leave program in a way that accomplishes the goals highlighted in the Regulatory Impact Statement. These changes, while some of them are substantial, do not affect the meaning of any statements in the document.

Revised Regulatory Flexibility Analysis

A revised Regulatory Flexibility Analysis is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text still seek to implement the paid family leave program in a way that accomplishes the goals highlighted in the Regulatory Impact Statement. These changes, while some of them are substantial, do not affect the meaning of any statements in the document.

Revised Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas

The proposed regulations apply to all covered employers, including those in rural areas. Regardless of geographical area of New York State, if the employer has one or more employees on each of at least 30 days plus four weeks in any calendar year, the paid family leave statute requires that they must offer paid family leave coverage.

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

The same compliance requirements apply to rural employers, employees and carriers as in metropolitan areas. Covered employers must provide paid family leave coverage to their employees. This is done through the New York State Insurance Fund, a licensed New York State insurance carrier, or through self-insurance if certain requirements are met and the Board approves. Other than purchasing a paid family leave insurance policy from a licensed New York State insurance carrier, no special professional services should be required by rural or any other areas. The covered employers must also provide either an update to employee handbooks or provide written guidance regarding paid family leave benefits to their employees. Paid family leave is funded by employees through a modest deduction from each employee's paycheck. Employees who take paid family leave are also entitled to reinstatement to their same or comparable job upon returning to work under the proposed regulations.

Failure by the employer to provide paid family leave benefits to its employees renders them fully and directly liable to their employees for the benefits, and may subject the employer to a fine of up to one-half of a per centum of weekly payroll for the period the employer was without coverage, and an additional sum of not more than 500 dollars.

3. Costs

The costs to carriers, employers and employees across the state will be minimal, and the proposed regulations do not impose additional costs beyond what is set forth in the paid family leave statute that became effective on April 1, 2016. Additionally, paid family leave is an employee funded insurance product, so the employer may collect contributions from all its employees to pay the premiums for the insurance product. The cost is shared among employees, so the contribution is a modest deduction from each employee's paycheck.

Insurance carriers will incur administrative costs associated with creating and carrying paid family leave insurance policies, as every carrier who offers short-term Disability Benefits is also required to offer paid family leave coverage. However, it is expected that the insurance carriers should recover those costs through the premiums charged for the coverage and paid by the employee contributions. There will be administrative costs associated with arbitration – the filing party will be responsible for a 25 dollar filing fee (the employee can be reimbursed if they prevail on the claim) and the carrier responsible for the arbitration fee for disputes: up to 350 dollars for desk arbitrations, which are the majority of arbitrations, or 450 if an oral arbitration is deemed necessary.

4. Minimizing adverse impact

The proposed regulations aim to minimize adverse impact for businesses and employees alike, by providing leave that allows employees to balance work and life. Employees pay for the insurance product through payroll deductions, but that cost is shared by all eligible employees, thus minimizing the burden on employees. In turn, employers do not have to pay for the benefit. Paid family leave provides an opportunity for financial security for employees while taking care of a family member in need, and also is expected to promote greater job satisfaction and thus employee retention when it becomes clear that they do not need to sacrifice their job in order to take care of important family obligations outside of the workplace. Overall, these benefits are expected to offset the compliance costs and any adverse impact on rural areas.

To further minimize any adverse impact on rural and other areas, the proposed regulations will be phased in over the course of a few years instead of all at once. The maximum benefit rate, as well as maximum benefit time, will range from 50 to 67% of average weekly wage and eight to 12 weeks from 2018 to 2021.

5. Rural area participation

Comments were received from the Business Council of New York State and the AFL-CIO regarding the impact on all of their constituents including those in rural areas.

Revised Job Impact Statement

1. Nature of Impact

The Paid Family Leave Act and proposed Part 380 of Title 12 of the NYCRR is not expected to have a negative impact on jobs in New York State. It is expected that job satisfaction will increase and employers will reap the benefits of that increase. Employees will be able to take family leave to care for a family member without the fear of losing their job. As has been the experience in other states that have adopted a paid family leave benefit, providing employees the flexibility of this benefit results in better employee retention and increased job satisfaction. The proposed regulations were drafted to minimize adverse impact on jobs in New York State and provide for a smooth implementation of the paid family leave statute.

2. Categories and Numbers Affected

Virtually every New York State private employer will be affected by the Paid Family Leave Act and the supporting regulations. However, by allowing employees to take this leave without fear of losing their jobs, it is anticipated that this will actually be a benefit to the employer. Employees in New York are also affected by the paid family leave regulations. Instead of possibly having to choose between taking leave to care for a family member and maintaining employment, the proposed regulations will allow a better balance of work and life responsibilities, leading to greater job satisfaction and job retention.

3. Regions of Adverse Impact

The Paid Family Leave Act and its supporting regulations will be implemented state-wide. Paid Family Leave is provided in an insurance product, and does not create a burden on employers or jobs in general. Accordingly, there are no specific regions of adverse impact. One possible adverse impact is that the employee taking leave will be absent from their job for a period of time. However, the benefit of being able to take paid family leave to care for family members, and the security of being able to return to work after leave, is expected to offset this impact and lead to greater job satisfaction and thus increased employee retention. This has

been the experience reported by employers in other states that have adopted a paid family leave program.

4. Minimizing Adverse Impact

The statute provides, and the regulations support, a gradual phase-in of the family leave benefit. The maximum benefit duration is limited to 12 weeks when fully implemented, but to further minimize any adverse impact, the first year the benefit duration will be limited to eight weeks, then 10, then fully phased in at 12 in 2021. Similarly, the maximum benefit amount will be phased in at 50% of the average weekly wage in stages up to the full amount of 67% in 2021.

Also minimizing this possible adverse impact of having employees out on leave is the expected enhancement of life for New York State employees (and in turn, New York State employers) – when work and life balance can be met, and family members can be taken care of by employees without fear of losing employment, it is assumed that greater job satisfaction will result, and employees will be satisfied and stay at their current employment. This benefit has been reported by employers in other states that have adopted paid family leave.

Assessment of Public Comment

The Chair and Board received approximately 117 formal written comments. Approximately 42 were form letters from employee advocacy groups. Approximately 14 were from individual employees, and the remaining 61 comments were submitted by associations representing businesses, insurance carriers, law firms, unions, and employees

All of the comments received were reviewed and assessed. The comments break down into several groups: 1) those addressing definitions and eligibility; 2) those addressing the administration of benefits; and 3) insurance carrier compliance and arbitration procedures. The full Assessment of Public Comment summarizing, analyzing, and responding to the comments received exceeds 2,000 words. This document is a summary of the full Assessment of Public Comment. A copy of the full assessment is posted on the Board's website at wcb.ny.gov.

A comment was received from an employee advocacy group suggesting that the definition of "wages" be amended to allow wages for tipped workers to be used when calculating their average weekly wage. Accordingly, section 355.9(19) has been amended to cross-reference section 357.1 of 12 NYCRR to explicitly provide that tips be included in the average weekly wage calculation.

The Board received several form letter comments requesting the removal of section 380-2.4(d), the provision permitting employers to begin taking payroll deductions for employee contributions beginning July 1, 2017, because it conflicts with WCL § 209(1), which states that employees shall contribute the cost of providing family leave benefits beginning January 1, 2018. However, WCL § 209(3)(b) states "no employer shall be required to fund any portion of the family leave benefit" and establishes June 1, 2017, as the date the superintendent of financial services shall set the maximum employee contribution, while reserving September 1 as the date setting the rates for every year thereafter. The Board believes the statute clearly envisions permitting employers to collect employee contributions after the superintendent of financial services has set the rates on June 1, 2017, "consistent with the principle that employees should pay the total costs of family leave premiums (WCL§ 209(5))." The Board believes Section 380-2.4(d) accurately reflects the legislative intent of the statute, so no changes to the regulations have been made.

The Board received comments requesting the definitions of part-time and full-time employees be amended to account for employees with compressed work schedules that work longer hours but fewer days. Section 203 of the WCL requires employees to become eligible for family leave after either 26 weeks or 175 days of work, depending on their schedule. Paragraphs (a) and (b) of section 380-2.5 have been amended to apply the 26 week eligibility criteria to employees who work 20 or more hours per week, and the 175 day eligibility criteria to those who work less than 20 hours per week.

The Board received several form letter comments requesting section 380-2.5(b)(i) be removed because it reduces the amount of leave available to part-time employees. This section only adjusts the benefit amount so that payments are calculated based on the number of days worked per week. This section has been amended to conform to the changes to section 380-2.5(a) and (b), discussed above, concerning the eligibility criteria for employees.

The Board received comments which asked for the regulations to be amended to clarify whether leave designated by an employer as FMLA leave for an employee's own serious health condition affects their PFL leave balance, and if FMLA leave for bonding is concurrent with family leave. Section 380-2.5(f)(1) (now 380-2.5(g)(1)), in accordance with section 206(4) of the WCL, permits an employer to designate an employee's PFL leave as concurrent with FMLA leave. The Board has amended section 380-2.5(f) (now 380-2.5(g)) to also state that an employer may not count FMLA designated leave for an employee's own serious health condition as family leave. Furthermore, if an employer designates a period of leave to be covered by the FMLA for a reason which the employee is also eligible to take family leave benefits under section 204 of the Workers' Compensation Law, and the employee declines to apply for payment under section 380-5.1, the employer may count the period against the employee's maximum leave in a 52 consecutive week period under section 204(2)(a) of the WCL. Section 380-6.2 has also been amended to clarify that the use of paid time off accruals during family leave by an employee of an FMLA covered employer is governed by the FMLA.

The Board received comments opposing the ability of an employee to waive PFL coverage and opt out of the employee contribution under section 380-2.6. The purpose of the waiver is to allow those employees that will not become eligible for PFL within a reasonable amount of time to avoid paying for a benefit they will not receive. The Board recognizes the need for clarity, and has amended this section to explicitly permit employees that will be employed for fewer than 26 consecutive weeks or 175 days in a 52 week period to waive coverage. The Board will develop a waiver form.

The Board received comments asking for section 380-2.9 to provide more detail about how a collectively bargained plan can take the place of an employer plan. WCL § 211(5) describes this process. Such plans must provide benefits as least as favorable as those provided in the statute. Section 380-2.9 has been amended to explicitly state that a collectively bargained plan may allow employees to establish their eligibility for benefits while working for multiple employers.

The Board received comments from insurance carriers and various advocacy groups regarding the requirement in the proposed regulations that certifications from medical providers of a family member's serious health condition include the ICD-10 code for the diagnosed condition. These groups identified various concerns, ranging from possible delays caused by incomplete forms, to health privacy concerns. While section 380-4.2(a)(3) requires certification of a serious health condition from a health provider, in light of these comments, this section has been amended to remove the provision requiring that the ICD-10 code be included as part of that certification.

A comment from insurance carriers requested that employees submitting pre-filed applications for family leave more than 30 days in advance of their need for foreseeable leave (i.e. birth of a child), be responsible for keeping copies of their application until all necessary supporting information is available. Carriers commented that it would be overly burdensome to retain copies of incomplete applications and send applicants a list identifying the missing information. The Board has taken these concerns into account, and the regulations no longer require the carrier to send the employee the request for paid family leave in addition to a list of the missing information.

The Board received a comment from an insurance carrier asking that section 380-5.3(b) be amended to allow carriers to provide contact information for the applicable office instead of an individual contact person in their response to a pre-filed claim. The Board has amended section 380-5.3(b)(3) to allow the notice to include contact information for the applicable office.

Two comments from insurance carriers expressed concern that that section 380-5.4(e) directly conflicts with parts (b) and (c) of that section. However, the Board believes that these sections make clear that an employer's refusal to comply does not constitute a valid reason for denial of a claim. The purpose of section 380-5.4(e) is to make clear that if the employer is not cooperative in the process, the carrier must reach out to the employer in order to complete the request for paid family leave and may not penalize the employee for the employer's lack of cooperation.

The Board received several comments from insurance carriers expressing concern that complying with section 380-5.4(h) will be overly burdensome and prohibitively expensive. The Board will translate the request for paid family leave forms and instructions in seven languages, and has updated the regulation to take into account these concerns.

The Board received several comments from various associations and insurance carriers concerning the method of benefit payments in the proposed regulations. There were also concerns expressed about the ability of carriers to comply with the requirement of providing local access for ATMs and an accurate list of locations. The Board has taken these comments into account and has amended the provisions accordingly. Additionally, carriers are not required to provide payment by debit card or direct deposit. However, if the self-insured employer offers different methods of payment to their employees taking paid family leave, then the same payment provisions apply to the self-insured employer.

One comment requested the addition of a provision that the carriers specifically state the basis for their denial of a request for paid family leave. The Board has included language to require that the carriers specifically state the basis of a denial of a request for paid family leave.

One comment expressed concern that the proposed regulations only partially reproduced the relevant statutory penalties. Since penalties are in the statute, the Board has removed them from the regulations altogether to eliminate any confusion.

One comment requested that the regulations explicitly state that PFL contributions are required while the employee is out on either disability or paid family leave. Section 380-7.2 has been amended to add that an employer may continue to deduct employee contributions while an employee is receiving benefits under WCL section 204.

One comment from an industry association requested that the regulations explicitly permit the contributions for the paid family leave benefit to be calculated with Workers' Compensation, Disability and other similar benefits provided under a collective bargaining agreement with a single contribution rate. Employee contributions for statutory workers' compensation coverage is prohibited by law. The regulations are otherwise silent on how contributions are to be collected. The Board does not believe the regulations should address this specifically, but the collective bargaining sections of the regulations have been updated for clarification.

The Board received a comment from insurance carriers objecting to the requirement in section 380-7.8(d) that carriers provide proof of cancellation to the Board before each denial. This provision has been updated to clarify the intent of the Board that attaching proof of cancellation to each denial is not required.

The Board received a comment requesting that the SIC industry code of the employer be requested rather than NAICS. The Board is conforming to the Department of Financial Services' regulations and only requiring the SIC code.

The Board received several form letter comments suggesting the removal of the requirement that workers file a formal request for reinstatement within 120 days of the alleged violation as a precondition to filing a complaint, including a suggestion that the formal request for reinstatement be optional, or that the deadline for filing such a request be extended to match the statute's deadline of two years. The Board has updated the regulation to eliminate the 120 day requirement for the formal request for reinstatement. However, no change has been made to the requirement that the employee file a formal request for reinstatement prior to submitting a complaint.

The Board received a comment from an arbitration association stating that the language allowing an arbitrator and dispute resolution forum to become parties to a court proceeding relating to the arbitration award should be removed under the common law principle of arbitral immunity. The Board has removed this language and updated the regulations to reflect the common law principle of arbitral immunity.

The Board received a comment concerning public employers who choose not to provide PFL coverage and their ability to continue to voluntarily provide disability coverage under Department of Financial Service's regulations. Public employers will continue to be able to purchase policies that only provide disability coverage.

The Board received several comments from small employers and individuals expressing concerns about the adverse effect of paid family leave on small employers. The statute defines a covered employer as an employer with one or more employees, and this cannot be modified by regulation. Therefore, no change has been made.