

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Incorporate by Reference in 1 NYCRR the 2018 Edition of National Institute of Standards and Technology (“NIST”) Handbook 133

I.D. No. AAM-21-18-00032-P

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

Proposed Action: This is a consensus rule making to amend section 221.11 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 179

Subject: Incorporate by reference in 1 NYCRR the 2018 edition of National Institute of Standards and Technology (“NIST”) Handbook 133.

Purpose: To incorporate by reference in 1 NYCRR the 2018 edition of NIST Handbook 133.

Text of proposed rule: Section 221.11 of 1 NYCRR is amended to read as follows:

221.11 Test procedures, magnitude of permitted variations.

(a) The test procedures for testing packaged commodities shall be those contained in National Institute of Standards and Technology Handbook 133, [2014] 2018 Edition, Checking the Net Contents of Packaged Goods, as adopted by the 102nd National Conference on Weights and Measures. The document is available from the National Conference on Weights and Measures, 1135 M Street, Suite 110, Lincoln, NE 68508, or the Superintendent of Documents, U.S. Government Printing Office, Washington, DC

20402. It is available for public inspection and copying in the office of the Director of Weights and Measures, 10B Airline Drive, Albany, NY 12235 or in the office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, NY 12231.

(b) The magnitude of variations permitted under section 221.10 of this Part shall be those contained in the procedures and tables of National Institute of Standards and Technology Handbook 133, [2014] 2018 Edition, Checking the Net Contents of Packaged Goods, as adopted by the [95th] 102nd National Conference on Weights and Measures.

Text of proposed rule and any required statements and analyses may be obtained from: Mike Sikula, Director, Bureau of Weights & Measures, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-3146, email: Mike.Sikula@agriculture.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Consensus Rule Making Determination

The proposed rule will amend 1 NYCRR section 221.11 to incorporate by reference the 2018 edition of National Institute of Standards and Technology Handbook 133 in place of the 2014 edition which is presently incorporated by reference. Handbook 133 contains test procedures that are used by state regulatory officials to determine whether the actual contents of a packaged commodity is sufficiently consistent with the declaration of net contents set forth on its label.

The proposed rule is non-controversial. The 2018 edition of Handbook 133 has been adopted or is in use in the great majority of states; manufacturers of packaged commodities located in New York already, therefore, conform their operations to the provisions of this document in order to sell such commodities in interstate commerce. The proposed rule will not, therefore, have any adverse impact upon regulated businesses and is, therefore, non-controversial.

Job Impact Statement

The proposed rule will not have an adverse impact on jobs or on employment opportunities.

The proposed rule will incorporate by reference in 1 NYCRR section 221.11 the 2018 edition of National Institute of Standards and Technology Handbook 133 (henceforth, “Handbook 133 (2018 edition)”) which contains test procedures for weights and measures officials to determine whether the net weight declarations on labels of packaged commodities are accurate. The 2014 edition of Handbook 133 is presently incorporated by reference and Handbook 133 (2018 edition) differs substantively from the 2014 edition only to the extent that the 2018 edition provides new or revised procedures for determining the accuracy, quality, or weight of Borax audit tests, fresh and frozen chitterlings, peat moss, mulch and soils, fresh oysters, firewood, and polyethylene sheeting.

Handbook 133 (2018) edition has been adopted by or is in use in the great majority of states; manufacturers of packaged commodities located in New York already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce.

The proposed rule will not, therefore, have any adverse impact upon jobs or employment opportunities.

Office of Alcoholism and Substance Abuse Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Credentialing of Addictions Professionals

I.D. No. ASA-21-18-00025-P

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

Proposed Action: Repeal of Part 853; and addition of new Part 853 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07, 19.09, 19.40, 32.01 and 32.07

Subject: Credentialing of Addictions Professionals.

Purpose: Repeal obsolete rules; update process of credentialing addictions professionals.

Substance of proposed rule (Full text is posted at the following State website: <https://www.oasas.ny.gov/>): The Proposed Rule repeals Part 853 and replaces with a new Part 853 relating to credentialing of addiction professionals. The proposed rule streamlines credentialing regulations to a more accessible page length by posting lists of required coursework on the agency website and consolidating repetitive provisions; clarifies the role of the Credentials Board; adds an option to hold a credential in inactive status for a period of years; clarifies the process of reviewing complaints and subsequent investigations; addresses issues regarding status of credentials during investigation, hearing and penalty processes; updates descriptions of misconduct and ethical violations; and discontinues the gambling counselor credential in the context of staffing changes due to the increase in State Education Department licensed professionals completing the gambling treatment training approved by the Office and the NYS Council on Problem Gambling.

§ 853.1 Legal base. Sets forth the legal basis for the provisions of this Part.

§ 853.2 Applicability. Any person who initiates an application for a new credential or designation, or to renew or re-activate an existing or inactive credential or designation.

§ 853.3 Definitions. Definitions significant to this Part include "active application period," "approved work setting," "credentialed professional," "dual relationship," "addiction services," "qualified prevention supervisor," "renewal period," "scope of practice" and "staff exclusion list."

§ 853.4 Credentials Board. Scope and functions of the credentials board consistent with statutory role of advising commissioner on the process of credentialing.

§ 853.5 Minimum qualifications for all credentials. Includes age (18), NY state residency, minimum educational requirements, and criminal history review.

§ 853.6 Credentialing applications. Minimum application criteria for all types or stages (initial, renewal, extension, inactive) of credential applications regarding character evaluations, education and work experience, contact information, fees, and circumstances under which an application may be denied.

§ 853.7 Additional qualifications to become a Credentialed Alcoholism and Substance Abuse Counselor (CASAC) or CASAC-Trainee. Core competencies, education, training and work experience, and examination.

§ 853.8 Additional qualifications to become a Credentialed Prevention Professional (CPP) or Credentialed Prevention Specialist (CPS). Performance domains, education, training and work experience, and examination.

§ 853.9 Additional qualifications to receive a Gambling designation. Requirements for a CASAC, CPP or CPS to acquire an additional "designation"; defines "qualified problem gambling professional"; status of previously credentialled problem gambling counselors (CPGC).

§ 853.10 Issuance and registration of credentials. Date of issue, expiration dates, registry maintained by the Office, and required criminal history information review.

§ 853.11 Credential renewal; inactive status. Requirements and process for renewal; status of expired credentials or inactive status; conditional renewals for active military service.

§ 853.12 Reciprocity. Applicable only to CASAC and CPS credentials; issuance and renewal of credential based on reciprocity.

§ 853.13 Misconduct. All credentialed professionals must abide by the

Canon of Ethical Principles or Professional Code and Ethical Standards applicable to their professions as well as the Justice Center's Code of Conduct for Custodians (when employed). Defines what constitutes misconduct subject to penalties or other remedial actions consistent with statute, scope of practice, and codes of conduct.

§ 853.14 Complaints and investigations. Process for Office receipt and review of complaints; subsequent investigations; relationship to Justice Center investigations; notice provisions.

§ 853.15 Penalties. Options available to the commissioner include administrative reprimand, suspension or revocation, and fines; criteria for consideration of penalty.

§ 853.16 Summary action and other remedial actions. Consistent with statutory authority the commissioner may take summary action to suspend any credential in the interest of public safety and may revoke credentials issued to persons who have been placed on the staff exclusion list. Other remedial actions include dismissal with guidance or annulment of erroneously issued credentials.

§ 853.17 Notifications; right to a hearing. Due process provisions.

§ 853.18 Application following revocation. Criteria to request permission to apply for a new credential after a credential has been revoked; request may not be submitted until five (5) years or more after the effective date of the revocation.

§ 853.19 Canons of Ethical Principles, Ethical Standards, and Code of Conduct. Canons of Ethical Principles applies to CASACS and prevention professionals; Ethical standards applies to Gambling credentials and designations; Code of Conduct is a Justice Center requirement for custodians in OASAS programs.

§ 853.20 Severability. Declares provisions of this Part to be severable.

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

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. Statutory Authority:

(a) Section 19.07(a) of the Mental Hygiene Law charges the Office of Alcoholism and Substance Abuse Services (OASAS or "Office") with assuring the development of comprehensive plans, programs and services for research, prevention, care, treatment, rehabilitation, education and training related to substance use disorder and compulsive gambling.

(b) Section 19.07(d) of the Mental Hygiene Law directs the Office to foster programs for the training and development of persons capable of providing substance use disorder and gambling addiction services; to establish minimum qualifications for credentialed professionals; to issue credentials to persons who meet such qualifications; and to suspend or revoke such credentials for good cause.

(c) Section 19.20 of the Mental Hygiene Law authorizes the Office to receive and review criminal history information from the Justice Center related to employees or volunteers of treatment facilities certified, licensed or operated by the Office.

(d) Section 19.20-a of the Mental Hygiene Law authorizes the Office to receive and review criminal history information from the Justice Center related to persons seeking to be credentialed by the Office or applicants for an operating certificate issued by the Office.

(e) Section 32.01 of the Mental Hygiene Law authorizes the Commissioner of the Office to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

(f) Section 32.02 of the Mental Hygiene Law authorizes the Commissioner of the Office to adopt regulations necessary to ensure quality services to those suffering from problem gambling disorder.

(g) Section 554 of the Executive Law (Chapter 501 of the Laws of 2012), requires custodians, as defined in Part 836 of this Title, in programs licensed, certified or operated by the Office, to adhere to the code of conduct for custodians developed by the Justice Center.

(h) The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) establishes the Justice Center and requires criminal history information reviews be conducted for applicants for any credential issued by the Office pursuant to this Part.

(i) Section 495 of the Executive Law (Chapter 501 of the Laws of 2012) establishes the "Register of Substantiated Category One Cases of Abuse and Neglect" maintained by the Justice Center.

(j) Article 23-A of the Corrections Law is applicable to any application for a credential by a person who has previously been convicted of one or more criminal offenses in New York or in any other jurisdiction.

2. Legislative Objectives: Articles 19 and 32 of the Mental Hygiene Law authorize the promulgation of rules and regulations to regulate and

assure the consistent quality of services provided within the state to persons suffering from chemical abuse or dependence, their families and significant others, as well as those who are at risk of becoming chemically dependent. The Office is also directed to foster programs for the training and development of persons capable of providing substance use disorder and gambling addiction services; to establish minimum qualifications for credentialed professionals; to issue credentials to persons who meet such qualifications; and to suspend or revoke such credentials for good cause. 14 NYCRR Part 853 establishes the process for credentialing treatment professionals and criteria for maintaining professional standards including compliance with codes of conduct.

3. Needs and Benefits: The proposed rule is intended to enable the Office to more thoroughly and efficiently monitor the quality and competency of its credentialed professionals and enable providers of services to persons seeking treatment for addiction disorders to secure appropriate and properly trained individuals to staff their facilities and programs. The regulation is consolidated to a more accessible page length by posting lists of required coursework on the agency website and consolidating repetitive provisions; updated to clarify the role of the Credentials Board; adds an option to hold a credential in inactive status for a period of years; clarifies the process of reviewing complaints and subsequent investigations; addresses issues regarding status of credentials during investigation, hearing and penalty processes; updates descriptions of misconduct and ethical violations; and discontinues the gambling counselor credential in the context of staffing changes due to the increase in State Education Department licensed professionals completing the gambling treatment training approved by the Office and the NYS Council on Problem Gambling. The Behavioral Health Services Advisory Council recommended advancement of this rule on April 26, 2018.

The proposal accomplishes updates due to implementation obstacles that have come to light regarding consistently tracking status of credentials issued, complaint review, investigation and penalties. The proposal also makes the regulation more "user friendly" by consolidating repetitive provisions, making it easier to update coursework requirements by posting them on the agency website, and incorporating the option of a gambling designation for the more numerous credentials and consistent with the increase in State Education licensed professionals who have completed the gambling treatment training recognized by the Office and the Council for Problem Gambling.

4. Costs: No additional administrative costs to the agency are anticipated since review of applications for credentials is an existing function. No additional costs to programs/providers are anticipated since their obligations for supervision are not changed.

5. Paperwork: The proposed regulation will not require any additional paperwork and may reduce paperwork due to documentation accessible on the agency website.

6. Local Government Mandates: This regulation imposes no new mandates on local governments operating certified OASAS programs even if they employ OASAS credentialed professionals.

7. Duplication: This proposed rule does not duplicate any State or federal statute or rule.

8. Alternatives: Continue with outdated regulations that are not consistent with current standards. The new rule does not reduce standards but consolidates language into a more concise regulation and adds options to credentialed professionals to expand their expertise and/or stay involved in the profession.

9. Federal Standards: This regulation does not conflict with federal standards.

10. Compliance Schedule: This rulemaking will be effective upon publication of a Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

OASAS has determined that the rule will not impose any adverse impact on small businesses or local governments. This proposed rulemaking does not affect businesses or local governments as it streamlines and clarifies the application and administrative review process of obtaining a credential issued by the Office.

The proposed rule will be posted on the agency website. Agency review process involves input from trade organizations representing providers in diverse geographic locations, local governments, and other behavioral health providers.

Rural Area Flexibility Analysis

OASAS has determined that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This proposed rulemaking does not affect businesses or local governments in any geographic area, including rural areas, since it streamlines and clarifies the application and administrative review process of obtaining a credential issued by the Office.

The proposed rule will be posted on the agency website. Agency review

process involves input from trade organizations representing providers in diverse geographic locations, local governments, and other behavioral health providers.

Job Impact Statement

No change in the number of jobs and employment opportunities is anticipated as a result of the proposed new regulation because the amendments either clarify or streamline existing applicant and Office administrative actions. The Office will not need to hire additional staff or reduce staff size; the proposed changes will not adversely impact jobs outside of the agency; the proposed changes will not result in the loss of any jobs within New York State.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Appeals, Hearings and Rulings

I.D. No. ASA-21-18-00026-P

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

Proposed Action: Amendment of Part 831 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07, 19.09, 19.40, 32.01 and 32.07

Subject: Appeals, Hearings and Rulings.

Purpose: Protect patient confidentiality, update due process provisions, technical amendments.

Text of proposed rule: 14 NYCRR Part 831 is amended to read as follows:

§ 831.1 Applicability.

If the Commissioner gives notice of any action pursuant to provisions of this [Title] *Chapter* for which an opportunity to be heard is provided, the provisions of this Part shall apply. Notice shall include the time within which a hearing must be requested.

§ 831.2 Request for hearing, scheduling and notice.

(a) If the party provided notice as described in section 831.1 of this Part desires a hearing, such party shall submit a written request for a hearing to the Commissioner within [10 business days] *thirty (30) days of the date of mailing* [receipt] of the notice.

(b) [Within 20 days of receipt of a request for hearing, the Commissioner shall provide notice to the requesting party of the date and location of the hearing, to be held without undue delay.] *The Commissioner shall acknowledge receipt of a request for a hearing, in writing to the requesting party, within twenty (20) days of receipt of such request. Without undue delay thereafter, the Commissioner shall provide notice to the requesting party of the date and location of the hearing.*

(c) Notice of the hearing shall be served on the party, either by hand delivery, certified mail or other verifiable written communication, at least 10 days before the scheduled hearing date and shall specify the time and place of the hearing, the names of the person who will conduct the hearing, and include a basis for action taken. If required by law or by consent or permission, a written answer shall be provided at least three days before the scheduled hearing date.

§ 831.3 Rights of parties.

(a) Each party shall have the right to be represented by counsel.

(b) Upon request of any party, the Hearing Officer may permit discovery which shall be limited to the production of documents and other tangible things.

(c) Any party may request that the Hearing Officer recuse [him/herself] *themselves* from the proceeding when the party believes that the Hearing Officer has a conflict of interest which would render [him/her] *them* unable to provide a fair and impartial recommendation to the Commissioner. The Hearing Officer's [refusal] *recusal* determination shall be final. If a Hearing Officer recuses [him/herself] *themselves*, the Commissioner shall appoint a new Hearing Officer and promptly reschedule the hearing.

(d) Each party shall have the right to present evidence and cross-examine witnesses.

§ 831.4 Conduct of hearing.

(a) Presentation of case. (1) The Office shall have the right to present its [prima facie] case first and shall also have the right to rebuttal, at the conclusion of the other party's case, [at] *in the course of* which any and all witnesses and/or other evidence pertinent to the case may be additionally presented.

(2) The party requesting the hearing shall present its case at the conclusion of the [prima facie] case presented by the [office] *Office*.

(b) Burden of Proof. The burden of proof shall be on the party requesting the hearing to show by a preponderance of the evidence that the Commissioner's decision is not in conformity with the standards and criteria set forth in the applicable laws and provisions of this Title.

(c) Hearings shall be [open] *closed* to the public *due to the protection of patients' rights* unless otherwise ordered by the Commissioner or Hearing Officer [due to the protection of patient's rights] or upon a showing of other compelling reasons.

(d) The Hearing Officer shall not communicate *ex parte*, either directly or indirectly, in connection with any issue [that relates] *relating* to the merits of a pending adjudicatory proceeding *in which they are the Hearing Officer* unless all parties have first been given notice of the intended communication and an opportunity to participate.

§ 831.5 Powers of hearing officers.

(a) The Hearing Officer shall have the power to administer oaths and affirmations, issue subpoenas and otherwise control the conduct of the hearing.

(b) The Hearing Officer shall not be bound by the rules of evidence observed by courts, except that the rules of privilege recognized by law shall be respected.

(c) The Hearing Officer, with the consent of all parties, may waive any time requirement provided for in this Part.

(d) The Hearing Officer may consult on questions of law with the [office's] *Office's* counsel or another designated Office attorney, provided that said attorney has not been engaged in investigative or [prosecuting] *prosecutorial* functions in connection with the proceeding under consideration or a factually related adjudicatory proceeding.

§ 831.6 Post-hearing Procedure.

(a) The Hearing Officer shall fix the time [, not to exceed 15 days] from the date [of] the hearing transcript *becomes available*, within which the parties may provide the Hearing Officer with written memoranda in support of their positions.

(b) Within 20 days of the date fixed for submission of written memoranda, the Hearing Officer shall submit a final report of findings and recommendations to the Commissioner with the entire record of the hearing.

(c) The Commissioner shall render a final decision in writing within 10 days of receipt of the Hearing Officer's report. In the event that the Commissioner renders a final decision that conflicts with the Hearing Officer's recommendations, the Commissioner shall set forth the reasons for the decision.

§ 831.7 Verbatim record.

(a) A verbatim [recording] *record* of the [proceedings] *hearing* shall be made by whatever means the Office deems appropriate.

(b) A transcription of the [recording] *hearing* shall be made available to any party requesting it upon payment [of the party] of the cost of transcription *by the requesting party*. If more than one party requests the transcript, the cost will be allocated among the parties.

(c) The [office] *Office* may waive the transcript cost [on] *upon* a showing of hardship *by the requesting party*. Requests for transcripts and for waiver of transcript costs must be made in writing to the Commissioner and must be submitted no later than the first day of the hearing.

§ 831.8 Hearing record.

The hearing record shall [include:] *consist of* the notice of proposed action, the request for the hearing, the notice of hearing [including the report of finds], motions submitted and rulings thereon, the [recording of transcript] *transcription* of the testimony taken at the hearing, exhibits, stipulations and memoranda of law filed in connection with the hearing, the Hearing Officer's report of findings and recommendations to the Commissioner, and the Commissioner's final ruling.

§ 831.9 Administrative appeals.

(a) Where an opportunity for an administrative appeal is afforded pursuant to the provisions of this [Title] *Chapter*, the provisions of this [Section] *section* shall apply.

(b) All requests for administrative appeals shall be in writing and delivered by [registered] *certified* mail, *return receipt requested*, to the Commissioner within thirty (30) [business] days of receipt of the applicable agency decision.

(c) A request for an administrative appeal shall include a written detailed statement of the factual issues in dispute.

(d) Administrative appeals shall be based upon the written submissions of the party requesting the appeal and any relevant agency documentation. The burden of proof on appeal shall be on the party requesting the appeal to demonstrate that the agency's action is not in conformance with the applicable [regulatory standards] *statutes or regulations*.

(e) [The Commissioner may, in his or her sole discretion, hold a conference including all relevant parties.] *A conference including all relevant parties may be held at the sole discretion of the Commissioner.*

(f) Within thirty (30) business days of receipt of the request for administrative appeal, or within fifteen (15) days after the conference as set forth in subdivision (e) of this [Section] *section*, the Commissioner will issue a final determination in writing. Formal notification of the determination shall be sent to the party requesting the appeal by certified mail, return receipt requested.

(g) The determination after administrative review of the appeal shall be final and is not subject to further administrative review.

§ 831.10 Declaratory Rulings.

(a) Pursuant to section 204 of the administrative procedure law, persons may petition the Office for a declaratory ruling on the applicability of any regulation or statute enforceable by the Office.

(b) Procedure. Petitions must be in writing and addressed to Counsel, New York State Office of Alcoholism and Substance Abuse, 1450 Western Ave., Albany, NY 12203, by certified mail, return receipt requested. Petitions must contain the following:

(1) name and address of petitioner;

(2) a statement requesting a declaratory ruling, specifying the rule or statutory provision for which the declaratory ruling is requested;

(3) a statement of relevant facts and circumstances, and full disclosure of petitioner's interest; and

(4) verification under oath by petitioner of all facts and assertions therein.

(c) Ruling. Counsel shall issue and mail to petitioner, certified mail, return receipt requested, a declaratory ruling within 60 days of the receipt of a completed petition, or a statement declining to issue a declaratory ruling. Rulings shall be available for public inspection at the Office.

(d) Conditions. No correspondence or opinion issued by the Office shall be construed as a declaratory ruling unless it is identified as a declaratory ruling and is issued in response to a petition pursuant to [with] this section.

(e) Nothing in this section shall be construed to prohibit the determination of the validity or applicability of the regulation in any other action or proceeding in which its invalidity or inapplicability is asserted, and nothing in this section shall be construed to limit any rights which may exist under article seventy-eight of the civil practice law and rules.

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

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. Statutory Authority:

(a) Section 19.07(a) of the Mental Hygiene Law provides that the Office of Alcoholism and Substance Abuse Services (OASAS or "Office") is charged with the responsibility for assuring the development of comprehensive plans, programs and services in the areas of research, prevention, care, treatment, rehabilitation, education and training of persons who abuse or are dependent on alcohol and/or substances and their families.

(b) Section 19.07(d) of the Mental Hygiene Law directs the Office to foster programs for the training and development of persons capable of providing alcoholism and/or substance abuse services, including the issuance of credentials to persons who meet minimum qualifications set by the Office; and to suspend or revoke such credentials for good cause.

(c) Section 19.09 of the Mental Hygiene law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

(d) Section 31.04(c)(7) of the Mental Hygiene law provides for determining the validity or applicability of any regulation pursuant to a petition for declaratory judgment.

(e) Section 32.01 of the Mental Hygiene Law authorizes the Commissioner of the Office to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

(f) Section 32.05 of the Mental Hygiene Law provides that no substance use disorder services may be established without the approval of the Commissioner.

(g) Section 32.07(a) of the MHL authorizes the Commissioner to adopt regulations to effectuate the provisions and purposes of Article 32 of the MHL.

(h) Section 32.21 of the MHL provides the Commissioner with the authority to suspend, revoke or limit operating certificates and imposition of fines.

(i) Article 3 of the State Administrative Procedure Act (SAPA) authorizes agencies that conduct adjudicatory proceedings to adopt rules providing for procedures on adjudicatory proceedings and appeals.

(j) Section 305 of SAPA authorizes each agency conducting adjudicatory proceedings to adopt rules providing for discovery and depositions to the extent and manner appropriate to its proceedings.

(k) Section 204 of SAPA authorizes agencies to prescribe by rule the procedure for submission, consideration and disposition of petitions for declaratory rulings.

2. Legislative Objectives: Articles 19 and 32 of the Mental Hygiene Law authorize the promulgation of rules and regulations to regulate and

assure the consistent quality of services provided within the state to persons suffering from chemical abuse or dependence, their families and significant others, as well as those who are at risk of becoming chemically dependent.

14 NYCRR Part 831 establishes the requirements for hearings, scheduling and notices. These revisions ensure that patients records are protected, clarify scheduling and due process provisions.

3. Needs and Benefits: This is a discretionary rule revision to bring current practice into regulation. The proposed rule amends Part 831 to properly protect confidentiality of patient records from inadvertent public disclosure in the context of administrative hearings, conforms scheduling and due process provisions. It makes other technical amendments including use of gender pronouns, capitalizations and internal citations. The Behavioral Health Services Advisory Council recommended advancement of this proposal on April 26, 2018.

4. Costs: No additional administrative costs to the agency are anticipated since the rulemaking does not change existing processes to require additional staff or paperwork.

5. Paperwork: The proposed regulation will not require any additional paperwork.

6. Local Government Mandates: This regulation imposes no new mandates on local governments since the rulemaking applies only to actions of the Office.

7. Duplication: This proposed rule does not duplicate any State or federal statute or rule.

8. Alternatives: Continue with outdated regulations that are not consistent with current standards. The new rule does not reduce standards but clarifies existing standards and processes.

9. Federal Standards: This regulation does not conflict with federal standards.

10. Compliance Schedule: This rulemaking will be effective upon publication of a Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

OASAS has determined that the rule will not impose any adverse impact on small businesses or local governments. This proposed rulemaking does not affect businesses or local governments as it addresses internal processes of the Office related to administrative hearings. The proposed rule will be posted on the agency website. Agency review process involves input from trade organizations representing providers in diverse geographic locations, local governments, and other behavioral health providers.

Rural Area Flexibility Analysis

OASAS has determined that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This proposed rulemaking does not affect businesses or local governments in any geographic area, including rural areas, since it applies only to administrative practice of the Office related to administrative hearings.

The proposed rule will be posted on the agency website. Agency review process involves input from trade organizations representing providers in diverse geographic locations, local governments, and other behavioral health providers.

Job Impact Statement

No change in the number of jobs and employment opportunities is anticipated as a result of the proposed rulemaking because the amendments apply only to internal processes of the Office related to administrative hearings. The Office will not need to hire additional staff or reduce staff size; the proposed changes will not adversely impact jobs outside of the agency; the proposed changes will not result in the loss of any jobs within New York State.

Proposed Action: This is a consensus rule making to repeal section 18.10; amend sections 18.7, 18.14, 18.16 and 18.17 of Title 2 NYCRR.

Statutory authority: State Finance Law, section 179-m

Subject: Adjustments to merchandise/invoice receipt dates.

Purpose: To correct internal regulatory inconsistencies relating to adjustments to merchandise/invoice receipt dates.

Text of proposed rule: 18.7 Comptroller audit.

(a) The MIR date shall be determined in accordance with subdivision (c) of this section whenever the Comptroller in the course of [his] *an* audit determines that there is reasonable cause to believe that, as a substantive matter, payment may not properly be due to the contractor, in whole or in part.

(b) Whenever the Comptroller makes the determination set forth in subdivision (a) of this section, [he] *the Comptroller* shall send the [contractor written] *agency* notice of such determination, unless [he] *the Comptroller* suspects illegal or similar activity on the part of the contractor which would make such notice inappropriate, in which event [he] *the Comptroller* shall make a dated written record of such determination in [his] *the Comptroller's* files. The [written] notice shall include a request for all information and material which the Comptroller deems necessary to determine whether or not payment is properly due [, and a copy of such notice shall be sent to the agency]. Promptly upon completion of [his] *an* audit, the Comptroller shall notify the [contractor and] *agency* of the results of [his] *such* audit unless [he] *the Comptroller* suspects illegal activity, in which event [he] *the Comptroller* shall make a dated written record of [his] *such* audit conclusions for [his] *the Comptroller's* file.

(c) Period of adjustment.

Where, after an audit pursuant to subdivision (a) of this section, the Comptroller determines that all or a portion of the amount claimed by the contractor is, in fact, due, the MIR date of the invoice shall be the original MIR date increased by a number of days equal to the number of days from the date that the Comptroller sends the [contractor] *agency* [written] notice required by subdivision (b) of this section, or in the case of suspected fraud, from the date the Comptroller enters the written determination required by subdivision (b) in[his] *the Comptroller's* files, to the date that the Comptroller sends [written] notice to the [contractor] *agency* of the resolution of the matter.

Section 18.10 of Part 18 of Title 2 NYCRR is REPEALED.

18.14 Notice of defects.

(a) Each State agency shall have 15 calendar days after receipt of an invoice by the State agency at its designated payment office, *or in the case of an invoice received from a small business, 7 calendar days*, to notify the contractor of (1) defects in the delivered goods, property or services, (2) defects in the invoice, or (3) suspected improprieties of any kind.

(b) Except as provided in subdivision (c) of this section, when a State agency notifies a contractor of such defects or suspected improprieties, and the contractor thereafter submits a corrected invoice or delivers corrected goods or services, the MIR date shall be the date upon which the corrected invoice or corrected goods or services are received by the agency. If a corrected invoice or corrected goods or services are not required, the MIR date shall be the date upon which the agency determines that the suspected improprieties have been resolved.

(c) If a State agency fails to notify a contractor of such defects or suspected improprieties within 15 calendar days, *or 7 calendar days if such contractor is a small business*, of receipt of an invoice, the MIR date, as determined by subdivision (b) of this section, shall be adjusted to an earlier date, by a number of days equal to the number of days in excess of 15, *or 7 if payment is for a small business*, that the State agency took after receipt of an invoice to notify the contractor of the defects or suspected improprieties.

18.16 Receipt of an approvable voucher.

(a) [The date of receipt of an approvable voucher by the Comptroller shall be the date on which an approvable voucher is received by the Office of the State Comptroller at 110 State Street, Albany, NY or at a location offsite from such address where there is an audit unit designated by the Comptroller to review such voucher. In any case where, after receipt of an approvable voucher, an MIR date is adjusted pursuant to sections 18.7-18.14 of this Part, the date of receipt of an approvable voucher shall be increased by a number of days equal to the adjustment provided by sections 18.7-18.14 of this Part.

(b) All approvable vouchers which are sent to the State Comptroller must be addressed to the Office of the State Comptroller, Receiving Unit, Document Control Section, Bureau of the Contract and State Expenditures, 110 State Street, Albany, NY 12236-0001] *Unless otherwise directed in the Comptroller's Guide to Financial Operations (GFO), vouchers requiring the Comptroller's approval shall be transmitted electronically to the Comptroller's office through the Statewide Financial System (SFS)* except where an offsite location has been authorized by the Comptroller to review such vouchers in which case the [approvable] vouchers may be [addressed

Department of Audit and Control

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Adjustments to Merchandise/invoice Receipt Dates

I.D. No. AAC-21-18-00037-P

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

or] delivered to such location. *The date of OSC receipt of an approvable voucher is the first business day after agency submission of an approvable voucher in SFS.*

(b) In any case where, after receipt of an approvable voucher, an MIR date is adjusted pursuant to sections 18.7-18.14 of this Part, the date of receipt of an approvable voucher shall be increased by a number of days equal to the adjustment provided by sections 18.7-18.14 of this Part.

18.17 Unapprovable vouchers.

(a) In any case where the Comptroller determines that a voucher delivered to [his] *the Comptroller's* offices is not an approvable voucher because of a defect in the invoice or the voucher submitted by [the contractor or] the agency, [he] *the Comptroller* shall either:

(1) [make the appropriate adjustment to the invoice or voucher] *reject the voucher and return it to the agency;* or

(2) [reject the voucher and return it to the agency] *make the appropriate adjustment to the voucher.*

(b) [Where an unapprovable voucher is corrected, as described in paragraph (a)(1) of this section, the MIR date shall not be changed, but the Comptroller may make an appropriate adjustment to the date of receipt of an approvable voucher.

(c) (1) Where the Comptroller rejects a voucher [he] *the Comptroller* shall, on the same day that he returns the voucher to the agency, [send notification to the [contractor] agency that the voucher has been rejected[and returned to the agency]for further information.

(2) Where a voucher is rejected pursuant to paragraph (a)(2) of this section because of a defect in the invoice submitted by the contractor, upon correction of the invoice, the MIR date of the corrected invoice shall be determined pursuant to section 18.14 of this Part.

(3) Where a voucher is rejected pursuant to paragraph (a)(2) of this section because of an error in the voucher submitted by the agency, the MIR date shall not be changed, but the date of receipt of an approvable voucher shall be the date that the voucher, properly adjusted, is received by the Comptroller.

(c) Where an unapprovable voucher is corrected, as described in paragraph (a)(2) of this section, the MIR date shall not be changed, but the Comptroller may make an appropriate adjustment to the date of receipt of an approvable voucher.

Text of proposed rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Consensus Rule Making Determination

This is a consensus rulemaking proposed for the purpose of addressing inconsistencies between certain Prompt Payment Processing Regulations set forth in Chapter 1, Part 18 of Title 2 of the New York Codes, Rules and Regulations and the Payments of Vendor Claims And Statutory Expenditures set forth in Chapter 1, Part 6 of Title 2 of the New York Codes, Rules and Regulations and certain provisions of Article 11-A of the State Finance Law. These technical amendments relate to the Comptroller's audit of payments to contractors, the submission of vouchers electronically and approval thereof, and statutory timeframes. The amendments further remove a regulation relating to provisions that are no longer set forth in statute. It has been determined that no person is likely to object to the adoption of the rule as written.

Department of Civil Service

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Civil Service publishes a new notice of proposed rule making in the *NYS Register*.

Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-18-17-00008-P	May 3, 2017	May 3, 2018

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Jurisdictional Classification

I.D. No. CVS-21-18-00001-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Information Technology Services," by increasing the number of positions of Assistant Public Information Officer from 1 to 3 and Secretary from 3 to 4.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Jurisdictional Classification

I.D. No. CVS-21-18-00002-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Criminal Justice Services," by deleting therefrom the position of Supervisor Forensic Laboratory Accreditation Program (1) and by adding thereto the positions of Laboratory Accreditation Specialist 2 (1), øLatent Print Laboratory Director (1) and Supervisor Forensic Services (DNA) (1).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov
Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-21-18-00003-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by adding thereto the position of Interpretive Program Assistant (1).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-21-18-00004-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Economic Development, by deleting therefrom the positions of øJob Training Partnership Specialist 1 (2) and øJob Training Partnership Specialist 2 (2) and by increasing the number of positions of Associate Agency Services Analyst from 5 to 7 and Senior Certification Analyst from 10 to 16.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-21-18-00005-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by increasing the number of positions of Minority Business Specialist 1 from 1 to 2 and øSecretary 2 from 5 to 7.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov
Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Jurisdictional Classification

I.D. No. CVS-21-18-00006-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of State, by adding thereto the position of Minority Business Specialist 1 (1).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Jurisdictional Classification

I.D. No. CVS-21-18-00007-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of General Services," by deleting therefrom the positions of Empire State Fellow (120).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov
Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Jurisdictional Classification

I.D. No. CVS-21-18-00008-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Information Technology Services," by adding thereto the positions of Agency Emergency Management Coordinator (ITS) (1), Information Systems Auditor 1 (ITS) (10), Information Systems Auditor 2 (ITS) (5) and Information Systems Auditor 3 (ITS) (2).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel,

NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov
Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**PROPOSED RULE MAKING
 NO HEARING(S) SCHEDULED**

Jurisdictional Classification

I.D. No. CVS-21-18-00009-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Health, by adding thereto the position of Assistant Counsel (1).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**PROPOSED RULE MAKING
 NO HEARING(S) SCHEDULED**

Jurisdictional Classification

I.D. No. CVS-21-18-00010-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Corrections and Community Supervision, by increasing the number of positions of øAssistant Counsel from 5 to 8, Assistant Parole Services Program Specialist from 10 to 18 and øParole Services Program Specialist from 7 to 8.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**PROPOSED RULE MAKING
 NO HEARING(S) SCHEDULED**

Jurisdictional Classification

I.D. No. CVS-21-18-00011-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by adding thereto the positions of Contract Management Specialist 1 (Market Analysis) (1) and Contract Management Specialist 2 (Market Analysis) (13).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel,

NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov
Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-21-18-00012-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Gaming Commission," by adding thereto the positions of Minority Business Specialist 1 (1) and Minority Business Specialist 2 (1).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-21-18-00013-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Education Department under the subheading "New York State Higher Education Services Corporation," by deleting therefrom the position of øAffirmative Action Administrator 2 (1); in the Executive Department under the subheading "Office of Information Technology Services," by deleting therefrom the positions of øDirector Information Technology Services 1 (1) and by decreasing the number of positions of øManager Information Technology Services 2 from 2 to 1; in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by deleting therefrom the positions of Immigrant Community Specialist 1 (1) and Immigrant Community Specialist 2 (5); in the Executive Department under the subheading "Office of General Services," by adding thereto the position of øAffirmative Action Administrator 2 (1); in the Department of Financial Services, by adding thereto the positions of øDirector Information Technology Services 1 (1) and øManager Information Technology Services 2 (1); and, in the Department of State, by adding thereto the positions of Immigrant Community Specialist 1 (1) and Immigrant Community Specialist 2 (5).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-21-18-00014-P

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

Proposed Action: Amendment of Appendices 1 and 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the exempt and non-competitive classes.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of General Services," by deleting therefrom the position of Regional Director Public Buildings Management and by increasing the number of positions of Building Superintendent from 12 to 13; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by deleting therefrom the position of Agency Emergency Management Coordinator (OCFS) (1) and by adding thereto the position of Agency Emergency Management Coordinator (1); and, in the Department of Labor under the subheading "State Insurance Fund," by deleting therefrom the position of Director Training 2 (1) and by adding thereto the position of Associate Director Training 2 (1).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Jurisdictional Classification

I.D. No. CVS-21-18-00015-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the New York State Bridge Authority, by adding thereto the position of Compliance Specialist 1 (1).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Jurisdictional Classification

I.D. No. CVS-21-18-00016-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by adding thereto the positions of DHSES Logistics Manager (1), DHSES Logistics Specialist (6) and DHSES Logistics Supervisor (3).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Jurisdictional Classification**I.D. No.** CVS-21-18-00017-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify positions in the exempt class.**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Health, by increasing the number of positions of Assistant Public Information Officer from 3 to 6.**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov**Data, views or arguments may be submitted to:** Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov**Public comment will be received until:** 60 days after publication of this notice.**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Jurisdictional Classification**I.D. No.** CVS-21-18-00018-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To delete positions from the exempt class.**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Alcoholic Beverage Control," by deleting therefrom the position of Director, Alcoholic Beverage Control Licensing Operations; in the Executive Department under the subheading "Gaming Commission," by deleting therefrom the positions of Deputy Director Audits Investigations and Licensing and Secretary NYS Racing and Wagering Board; in the Executive Department under the subheading "Office of General Services," by deleting therefrom the position of Empire State Plaza Promotion Manager; in the Executive Department under the subheading "Office of Information Technology Services," by deleting therefrom the position of Director Wagering Systems; in the Executive Department under the subheading "Division of Veterans' Affairs," by

deleting therefrom the position of Assistant Deputy Director, Veterans' Affairs Field Operations; in the Executive Department under the subheading "Statewide Financial System," by deleting therefrom the positions of Director Statewide Financial System and Manager Information Services; in the Department of Labor under the subheading "Workers' Compensation Board," by deleting therefrom the positions of Assistant Director of Workers' Compensation Inspectional Services, Director of Workers' Compensation Inspectional Services and Workers' Compensation Fraud Inspector General; in the Department of Family Assistance under the subheading "Office of Children and Family Services," by deleting therefrom the position of Planning Coordinator, Family and Children Services; and, in the Department of State under the subheading "Joint Commission on Public Ethics," by deleting therefrom the positions of Information Technology Specialist (JCOPE) and Training Assistant.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov**Data, views or arguments may be submitted to:** Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov**Public comment will be received until:** 60 days after publication of this notice.**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Jurisdictional Classification**I.D. No.** CVS-21-18-00019-P

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

Proposed Action: Amendment of Appendices 1 and 2 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify positions in the exempt class and to delete positions from the non-competitive class.**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Labor under the subheading "Administration - General," by increasing the number of positions of Special Assistant from 17 to 22; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Labor, by deleting therefrom the positions of Assistant to Deputy Commissioner of Labor (4) and Assistant to Executive Deputy Commissioner of Labor (1).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov**Data, views or arguments may be submitted to:** Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov**Public comment will be received until:** 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Jurisdictional Classification

I.D. No. CVS-21-18-00020-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Civil Service under the subheading "Public Employment Relations Board," by deleting therefrom the position of Assistant Trial Examiner (1) and by adding thereto the positions of Assistant Trial Examiner.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Jurisdictional Classification

I.D. No. CVS-21-18-00021-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Corrections and Community Supervision, by increasing the number of positions of Affirmative Action Administrator 2 from 5 to 7.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Jurisdictional Classification

I.D. No. CVS-21-18-00022-P

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

Proposed Action: Amendment of Appendices 1 and 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the exempt class and to delete a position from the non-competitive class.

Text of proposed rule: Amend Appendix 1 of the Rules for Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office for People with Developmental Disabilities," by deleting therefrom the positions of Assistant Chief Investigations (OPWDD) (5) and by adding thereto the positions of Assistant Chief Investigations (6); and

Amend Appendix 2 of the Rules for Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office for People with Developmental Disabilities," by decreasing the number of positions of Internal Investigator 1 (OPWDD) from 65 to 64.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov
Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-21-18-00023-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office of Alcoholism and Substance Abuse Services," by increasing the number of positions of Special Assistant from 7 to 8.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-21-18-00024-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Environmental Conservation, by adding thereto the position of Public Information Specialist 1 (Digital Content) (1).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Education Department

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Reports of Incidents of Harassment, Bullying And/or Discrimination Pursuant to the Dignity for All Students Act (DASA)

I.D. No. EDU-21-18-00039-EP

Filing No. 452

Filing Date: 2018-05-08

Effective Date: 2018-05-08

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

Proposed Action: Addition of section 100.2(kk)(1)(x) to Title 8 NYCRR.

Statutory authority: Education Law, sections 11(1-7), 13(1), 14(3), 15(not subdivided), 16(not subdivided), 101(not subdivided), 207(not subdivided), 305(1), (2), 2854(1)(b); L. 2010, ch. 482

Finding of necessity for emergency rule: Preservation of general welfare.
Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Regents policy to add a new subparagraph (x) to include illustrative examples of the types of incidents of harassment, bullying and/or discrimination which shall be reported to the principal, superintendent or designee and may constitute a violation of the Dignity for All Students Act (DASA).

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 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the September 17-18, 2018 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 October 3, 2018, the date a Notice of Adoption would be published in the State Register. However, the proposed rule would further illustrate the types of incidents of harassment, bullying and/or discrimination which shall be reported to the principal, superintendent or designee when reported to or witnessed by a school employee. Therefore, emergency action is necessary at the May 2018 Regents meeting for the preservation of the general welfare in order to ensure that incidents of harassment, bullying and/or discrimination which may constitute a violation of the Dignity for All Students Act are promptly reported to the principal, superintendent or designee.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the September 17-18, 2018 Regents meeting, which is the first scheduled meeting after expiration of the 60-day public comment period prescribed in SAPA for State agency rule makings.

Subject: Reports of Incidents of Harassment, Bullying and/or Discrimination Pursuant to the Dignity for All Students Act (DASA).

Purpose: To provide illustrative examples to the field to aid in the continued implementation of DASA.

Text of emergency/proposed rule: Paragraph (1) of subdivision (kk) of section 100.2 of the Regulations of the Commissioner of Education is amended by adding a new subparagraph (x) as follows:

(x) *For purposes of this section, a "report of harassment, bullying, and/or discrimination" means a written or oral report of harassment, bullying, and/or discrimination that could constitute a violation of the Dignity for All Students Act (article 2 of the Education Law). Such a report may include, but is not limited to, the following examples:*

(a) *a report regarding the denial of access to school facilities, functions, opportunities or programs including, but not limited to, restrooms, changing rooms, locker rooms, and/or field trips, based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or*

(b) *a report regarding application of a dress code, specific grooming or appearance standards that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or*

(c) *a report regarding the use of name(s) and pronoun(s) or the pronunciation of name(s) that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or*

(d) *a report regarding any other form of harassment, bullying and/or discrimination, based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex.*

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 5, 2018.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, New York State Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Data, views or arguments may be submitted to: Renee Rider, Associate Commissioner, NYSED, Office of School Operations and Management Services, 89 Washington Avenue, 319M EB, Albany, NY 12234, (518) 474-4817, email: REGCOMMENTS@nysed.gov

Public comment will be received until: 60 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 11, as added by section 2 of Chapter 482 of the

Laws of 2010 (Dignity for All Students Act – DASA) establishes definitions for purposes of the new Article 2 of the Education Law added by such statute.

Education Law section 13, requires school districts to create policies, procedures and guidelines intended to create a school environment that is free from harassment, bullying and discrimination, including provisions related to making and receiving reports of harassment, bullying and discrimination and the investigation of such reports.

Education Law section 14, requires the Commissioner to promulgate regulations to assist school districts in implementing DASA.

Education Law section 15, requires the Commissioner to create a procedure under which material incidents of harassment, bullying or discrimination on school grounds or at a school function are reported to the State Education Department at least on an annual basis. The procedure shall provide that such reports shall, wherever possible, also delineate the specific nature of such incidents of harassment, bullying or discrimination.

Education Law section 16, under certain specified conditions, immunity from civil liability on persons reporting discrimination or harassment of students by a school employee or student. The statute further provides that no school district or employee shall take, request or cause a retaliatory action against a person, acting reasonably and in good faith, who makes such report or who initiates, testifies, participates or assists in any formal or informal proceeding under Education Law Article 2.

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

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

Education Law section 305(1) empowers the Commissioner of Education to be the chief executive officer of the State system of education and the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Board of Regents. Education Law section 305(2) authorizes the Commissioner to have general supervision over all schools subject to the Education Law.

Education Law section 2854(1)(b) provides that charter schools shall meet the same health and safety, civil rights, and student assessment requirements applicable to other public schools, except as otherwise specifically provided in Article 56 of the Education Law.

2. LEGISLATIVE OBJECTIVES:

Consistent with the above statutory authority, the proposed rule is necessary to implement Regents policy and the Dignity for All Students Act to further clarify reports of incidents of harassment, bullying and/or discrimination pursuant to DASA.

3. NEEDS AND BENEFITS:

In 2010, DASA added a new Article 2 to the Education Law to require, among other things, school districts to create policies and guidelines to be used in school training programs to discourage harassment, bullying, and/or discrimination and to enable school personnel to prevent and respond to discrimination or harassment. DASA became effective on July 1, 2012, and was later amended to include cyberbullying, effective July 1, 2013. Subsequently, the Department worked with key stakeholders through the DASA Task Force to develop and implement guidance and regulations to assist schools in implementing the provisions of the law. Since the adoption of Commissioner's Regulations to implement DASA, the Department has worked to provide training to the field, updates to the DASA website, and several guidance documents.

DASA continues to be a powerful tool used to address bullying, discrimination, and harassment in our schools and to ensure that all students are educated in a safe and supportive school environment. However, the issues faced by students and schools in this area continue to evolve. The Department is committed to working with stakeholders to ensure that all students have the opportunity to learn and to attend school free from bullying, harassment, and/or discrimination.

To that end, in July 2015, the Department issued guidance, entitled "Creating a Safe and Supportive School Environment for Transgender and Gender Nonconforming Students", to assist school districts in fostering an educational environment for all students that is safe and free from harassment, bullying, and discrimination — regardless of sex, gender identity, or expression — and to facilitate compliance with local, state, and federal laws concerning bullying, harassment, discrimination, and student privacy. At the time the guidance document was issued, the Department received national recognition for the proactive nature of the guidance to protect transgender and gender non-conforming students. In May 2016, this work was highlighted by the United States Department of Education as a sample policy designed to address bullying, discrimination, and/or harassment of transgender and gender non-conforming students.

In August 2016, Commissioner Elia, in partnership with Attorney General Schneiderman, issued a memorandum, guidance, and model materials to assist school districts in complying with DASA. That guidance provided school districts with model forms to assist with investigating and verifying reports of bullying, harassment, and/or discrimination.

In October 2017, the Office of the State Comptroller (OSC) issued an audit report entitled "Implementation of the Dignity for All Students Act". While OSC noted the efforts made by the Department to provide professional development and technical assistance and the efforts of school districts throughout the State to comply with DASA, OSC's findings also revealed a need to provide additional guidance and training to the field, particularly in the area of identifying, documenting, investigating, and reporting DASA incidents.

In February 2017, the Commissioner again issued a joint memorandum with the Attorney General to remind school districts of the obligation to protect transgender students from bullying, discrimination, and harassment in their schools and at all school functions, despite actions taken by the United States Department of Education (USDOE) and the United States Department of Justice (USDOJ) to rescind previously issued guidance surrounding the protection of transgender and gender non-conforming students. In response to USDOE's confirmation in February 2018 that it would no longer investigate civil rights complaints from transgender students denied access to bathrooms consistent with their gender identity, the Commissioner and the Attorney General issued another joint memorandum to school districts in which they reiterated New York's commitment to creating safe and supportive learning environments for all New York students and school district's obligation to comply with DASA.

The research shows that bullying and school climate are linked to children's academic achievement, learning, and development. Specifically, children who are bullied are more likely to avoid school, more likely to drop out of school, have lower academic achievement, have lower self-esteem and higher levels of anxiety, depression and loneliness, and are more likely to attempt suicide, both during childhood and later in life. A recent national survey of school climate found that more than 80 percent of lesbian, gay, bisexual, and transgender (LGBT) youth reported some form of bullying or harassment at school. These concerns are especially urgent for transgender students for whom the data indicates that 1 in 2 transgender students have had at least one suicide attempt by their twentieth birthday.

As a result of these developments, Department staff proposes to amend Commissioner's Regulation § 100.2(kk)(1) to include illustrative examples of the types of incidents of harassment, bullying and/or discrimination which must be reported to the principal, superintendent, or designee when reported to or witnessed by a school employee. Specifically, the proposed amendment includes a definition of "report of harassment, bullying, and/or discrimination" to include, but not be limited to, the following examples:

- a report regarding the denial of access to school facilities, functions, opportunities or programs including, but not limited to, restrooms, changing rooms, locker rooms, and/or field trips, based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or
- a report regarding application of a dress code, specific grooming or appearance standards that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or
- a report regarding the use of name(s) and pronoun(s) or the pronunciation of name(s) that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or
- a report regarding any other form of harassment, bullying, and/or discrimination, based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex.

The Department remains committed to working with all partners throughout the State to ensure that all students have an opportunity to thrive in a school environment that is safe, supportive and free from bullying, harassment, and/or discrimination. We will continue to support district administrators and school staff as they continue to take proactive steps to create a positive school culture and climate in which students feel safe and supported, and fully included. The proposed amendment to Commissioner's Regulations § 100.2(kk)(1) is intended to support these efforts by clarifying and assisting in DASA implementation statewide.

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 rule is necessary to clarify the regulation to provide illustrative examples to the field to aid in the continued implementation of DASA pursuant to Education Law § 14(3) and will not impose any additional costs on the State, school districts, BOCES and charter schools, or the State Education Department, beyond those imposed by the statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule is necessary to clarify the regulation to provide illustrative examples to the field to aid in the continued implementation of DASA pursuant to Education Law § 14(3). Additionally, Education Law § 13 requires that districts have a process for receiving reports of and investigating oral or written reports of harassment, discrimination and/or bullying. As such the clarifying amendments will not impose any additional program, service, duty or responsibility beyond those imposed by the statute.

6. PAPERWORK:

The proposed rule does not impose and new paperwork requirements beyond those already required by statute, but merely provides illustrative examples of the types of harassment, bullying and/or discrimination which must be reported to the principal, superintendent, or designee when reported to or witnessed by a school employee.

7. DUPLICATION:

The proposed rule does not duplicate existing State or Federal regulations.

8. ALTERNATIVES:

The proposed rule is necessary to implement Regents policy related to providing illustrative examples of the types of harassment, bullying and/or discrimination which must be reported to the principal, superintendent, or designee when reported to or witnessed by a school employee in compliance with DASA. There are no viable alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no related Federal standards.

10. COMPLIANCE SCHEDULE:

The proposed rule is necessary to provide illustrative examples of the types of harassment, bullying and/or discrimination which must be reported to the principal, superintendent, or designee when reported to or witnessed by a school employee in compliance with DASA. Because the rule merely provides additional illustrative examples, it is anticipated that regulated parties will be able to achieve compliance with proposed rule by its effective date.

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed rule is necessary to clarify the regulation to provide illustrative examples to the field to aid in the continued implementation of DASA pursuant to Education Law § 14(3). Additionally, Education Law § 13 requires that districts have a process for receiving reports of and investigating oral or written reports of harassment, discrimination and/or bullying.

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.

(b) Local governments:

1. EFFECT OF RULE:

The proposed amendment applies to each school district, BOCES and charter school in the State pursuant to Education Law Article 2.

2. COMPLIANCE REQUIREMENTS:

In 2010, DASA added a new Article 2 to the Education Law to require, among other things, school districts to create policies and guidelines to be used in school training programs to discourage harassment, bullying, and/or discrimination and to enable school personnel to prevent and respond to discrimination or harassment. DASA became effective on July 1, 2012, and was later amended to include cyberbullying, effective July 1, 2013. Subsequently, the Department worked with key stakeholders through the DASA Task Force to develop and implement guidance and regulations to assist schools in implementing the provisions of the law. Since the adoption of Commissioner's Regulations to implement DASA, the Department has worked to provide training to the field, updates to the DASA website, and several guidance documents.

DASA continues to be a powerful tool used to address bullying, discrimination, and harassment in our schools and to ensure that all students are educated in a safe and supportive school environment. However, the issues faced by students and schools in this area continue to evolve. The Department is committed to working with stakeholders to ensure that all students have the opportunity to learn and to attend school free from bullying, harassment, and/or discrimination.

To that end, in July 2015, the Department issued guidance, entitled "Creating a Safe and Supportive School Environment for Transgender and Gender Nonconforming Students", to assist school districts in fostering an educational environment for all students that is safe and free from harassment, bullying, and discrimination — regardless of sex, gender identity, or expression — and to facilitate compliance with local, state, and federal laws concerning bullying, harassment, discrimination, and student privacy. At the time the guidance document was issued, the Department received national recognition for the proactive nature of the guidance to protect transgender and gender non-conforming students. In May 2016, this work was highlighted by the United States Department of Education as a sample policy designed to address bullying, discrimination, and/or harassment of transgender and gender non-conforming students.

In August 2016, Commissioner Elia, in partnership with Attorney General Schneiderman, issued a memorandum, guidance, and model materials to assist school districts in complying with DASA. That guidance provided school districts with model forms to assist with investigating and verifying reports of bullying, harassment, and/or discrimination.

In October 2017, the Office of the State Comptroller (OSC) issued an audit report entitled "Implementation of the Dignity for All Students Act". While OSC noted the efforts made by the Department to provide professional development and technical assistance and the efforts of school districts throughout the State to comply with DASA, OSC's findings also revealed a need to provide additional guidance and training to the field, particularly in the area of identifying, documenting, investigating, and reporting DASA incidents.

In February 2017, the Commissioner again issued a joint memorandum with the Attorney General to remind school districts of the obligation to protect transgender students from bullying, discrimination, and harassment in their schools and at all school functions, despite actions taken by the United States Department of Education (USDOE) and the United States Department of Justice (USDOJ) to rescind previously issued guidance surrounding the protection of transgender and gender non-conforming students. In response to USDOE's confirmation in February 2018 that it would no longer investigate civil rights complaints from transgender students denied access to bathrooms consistent with their gender identity, the Commissioner and the Attorney General issued another joint memorandum to school districts in which they reiterated New York's commitment to creating safe and supportive learning environments for all New York students and school district's obligation to comply with DASA.

The research shows that bullying and school climate are linked to children's academic achievement, learning, and development. Specifically, children who are bullied are more likely to avoid school, more likely to drop out of school, have lower academic achievement, have lower self-esteem and higher levels of anxiety, depression and loneliness, and are more likely to attempt suicide, both during childhood and later in life. A recent national survey of school climate found that more than 80 percent of lesbian, gay, bisexual, and transgender (LGBT) youth reported some form of bullying or harassment at school. These concerns are especially urgent for transgender students for whom the data indicates that 1 in 2 transgender students have had at least one suicide attempt by their twentieth birthday.

As a result of these developments, Department staff proposes to amend Commissioner's Regulation § 100.2(kk)(1) to include illustrative examples of the types of incidents of harassment, bullying and/or discrimination which must be reported to the principal, superintendent, or designee when reported to or witnessed by a school employee. Specifically, the proposed amendment includes a definition of "report of harassment, bullying, and/or discrimination" to include, but not be limited to, the following examples:

- a report regarding the denial of access to school facilities, functions, opportunities or programs including, but not limited to, restrooms, changing rooms, locker rooms, and/or field trips, based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or
- a report regarding application of a dress code, specific grooming or appearance standards that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or
- a report regarding the use of name(s) and pronoun(s) or the pronunciation of name(s) that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or
- a report regarding any other form of harassment, bullying, and/or discrimination, based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex.

The Department remains committed to working with all partners throughout the State to ensure that all students have an opportunity to thrive in a school environment that is safe, supportive and free from bullying, harassment, and/or discrimination. We will continue to support district administrators and school staff as they continue to take proactive steps to create a positive school culture and climate in which students feel safe and supported, and fully included. The proposed amendment to Commissioner's Regulations § 100.2(kk)(1) is intended to support these efforts by clarifying and assisting in DASA implementation statewide.

3. PROFESSIONAL SERVICES:

The proposed rule does not impose any additional professional services requirements on local governments.

4. COMPLIANCE COSTS:

The proposed rule is necessary to clarify the regulation to provide illustrative examples to the field to aid in the continued implementation of DASA pursuant to Education Law § 14(3). Additionally, Education Law § 13 requires that districts have a process for receiving reports of and investigating oral or written reports of harassment, discrimination and/or bullying. As such the clarifying amendments will not impose any additional program, service, duty, responsibility or costs beyond those imposed by the statute.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements on school districts or charter schools. Economic feasibility is addressed in the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

There were no significant alternatives and none were considered. The proposed rule is necessary to clarify the regulation to provide illustrative examples to the field to aid in the continued implementation of DASA pursuant to Education Law § 14(3). Additionally, Education Law § 13 requires that districts have a process for receiving reports of and investigating oral or written reports of harassment, discrimination and/or bullying. As such the clarifying amendments will not impose any additional program, service, duty or responsibility beyond those imposed by the statute.

Because the statute upon which the proposed amendment is based applies to all school districts in the State and to charter schools and registered nonpublic high schools, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools from coverage by the proposed amendment.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, from the chief school officers of the five big city school districts and from charter schools.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment applies to each of the 689 public school districts in the State, charter schools, and registered nonpublic schools in the State, to the extent that they offer instruction in the high school grades, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. At present, there is one charter school located in a rural area that is authorized to issue diplomas.

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

The proposed rule is necessary to clarify the regulation to provide illustrative examples to the field to aid in the continued implementation of DASA pursuant to Education Law § 14(3). Additionally, Education Law § 13 requires that districts have a process for receiving reports of and investigating oral or written reports of harassment, discrimination and/or bullying. As such the clarifying amendments will not impose any additional reporting, recordkeeping or professional service beyond those already imposed by the statute.

3. COMPLIANCE COSTS:

None.

4. MINIMIZING ADVERSE IMPACT:

There were no significant alternatives and none were considered. The proposed rule is necessary to clarify the regulation to provide illustrative examples to the field to aid in the continued implementation of DASA pursuant to Education Law § 14(3). Additionally, Education Law § 13 requires that districts have a process for receiving reports of and investigating oral or written reports of harassment, discrimination and/or bullying. As such the clarifying amendments will not impose any additional program, service, duty or responsibility beyond those imposed by the statute.

Because the statute upon which the proposed amendment is based applies to all school districts in the State and to charter schools and registered nonpublic high schools, 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.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The proposed amendment is necessary to The proposed rule is necessary to clarify the regulation to provide illustrative examples to the field to aid in the continued implementation of DASA pursuant to Education Law § 14(3).

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

NOTICE OF ADOPTION**Continuous Accreditation Requirement for Educator Preparation Providers**

I.D. No. EDU-06-18-00006-A

Filing No. 447

Filing Date: 2018-05-08

Effective Date: 2018-05-23

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

Action taken: Amendment of Subpart 4-2 and section 52.21 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207, 210, 215 and 305

Subject: Continuous accreditation requirement for educator preparation providers.

Purpose: Allows institutions of higher education with registered educator preparation programs to be accredited by accrediting association seeking recognition.

Text or summary was published in the February 7, 2018 issue of the Register, I.D. No. EDU-06-18-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Since publication of the Notice of Proposed Rule Making in the State Register on February 7, 2018, the State Education Department (SED) received the following comments on the proposed amendment. Below is an assessment of the public comments received.

1. COMMENT:

Several commenters agreed with the Department's proposal to allow institutions to apply for accreditation through an accrediting association that is seeking recognition from the CHEA or USDE, but has not yet achieved recognition status, because it provides them with options for national accreditation; CAEP would no longer be the only option. At least two commenters noted that having options for national accreditation is beneficial because it recognizes and allows for variation in educator preparation providers, including the diversity of size and mission. One commenter also explained that having options promotes transparency and accountability and makes all accreditors strive for improvement and responsiveness. In addition, the commenter highlighted the time sensitivity of adding options because many institutions are in the midst of upcoming CAEP accreditation site visits and CAEP continues to be a moving target. Another commenter added that the proposal to give institutions five years from the date of notification to successfully complete the accreditation process with an accrediting association that is seeking recognition from the CHEA or USDE is fair and reasonable.

DEPARTMENT RESPONSE:

No response is necessary because the comments are supportive.

2. COMMENT:

Two commenters support the Department's proposal because it would specifically allow the Association for Advancing Quality in Educator Preparation (AAQEP) to become an option for the accreditation of educator

preparation providers in New York State. They indicated that AAQEP offers a system of accreditation superior to CAEP in a number of essential ways, including taking into account differences in institutions and having a process where institutions undergoing review in the same semester are placed in cohorts and can communicate with each other several semesters in advance of the site visit. They also expressed concerns with particular CAEP Standards. AAQEP's reasonable yet challenging standards, their collaborative approach with educator preparation providers, and their focus on validity and methodological rigor demonstrate to one commenter that they are run by a team of highly respected experts in the field. The other commenter is impressed with AAQEP's philosophy that recognizes the importance of collaboration, a broader view of P-12 partnerships, and the encouragement of innovation and continuous improvement.

DEPARTMENT RESPONSE:

No response is necessary because the comment is supportive.

3. COMMENT:

One commenter expressed frustration over the lengthy comment period for the proposal because her college department of education agreed that AAQEP is a better fit than CAEP for their department, but their CAEP accreditation report was due one month before the Board of Regents was scheduled to make a decision about the proposal. As a result, they had to complete a report that they have no intention of following through with CAEP.

DEPARTMENT RESPONSE:

The State Administrative Procedure Act requires that all proposed rulemakings have a 60-day public comment period. Since this is a statutory requirement, no regulatory changes are needed.

NOTICE OF ADOPTION**Safety Nets for Teacher Certification Examinations**

I.D. No. EDU-06-18-00007-A

Filing No. 448

Filing Date: 2018-05-08

Effective Date: 2018-05-23

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

Action taken: Amendment of section 80-1.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 305, 3001, 3003, 3004 and 3009

Subject: Safety nets for teacher certification examinations.

Purpose: Extension of all safety nets to allow candidates to complete all other certification requirements by 6/30/18.

Text or summary was published in the February 7, 2018 issue of the Register, I.D. No. EDU-06-18-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Since publication of the Notice of Proposed Rule Making in the State Register on February 7, 2018, the State Education Department (SED) received the following comments on the proposed amendment. Below is an assessment of the public comments received.

1. COMMENT:

Commenter expressed concern that the Department wants to grant certification to people with no experience and failing test scores. Commenter noted that there are several teachers with safety nets teaching in schools, and that is a disaster.

DEPARTMENT RESPONSE:

The commenter is concerned with the use of safety nets to satisfy teacher certification requirements in general and does not refer to specific issues with the Department's proposal to remove a deadline related to the safety nets.

At this time, the Commissioner's Regulations require candidates to complete all other certification requirements on or before June 30, 2018 to be eligible to use one of the safety nets for the teacher certification examinations. The Department is proposing to eliminate this requirement for candidates who use one or more safety nets. Candidates must continue

to take advantage of safety nets before their applicable expiration date(s), as outlined in Section 80-1.5 of the Commissioner's Regulations; however, they do not have to complete all additional requirements for certification by June 30, 2018. Currently, the June 30, 2018 deadline would require candidates to complete the additional certification requirements prior to the expiration dates for the safety nets for the EAS and the CST. The proposed amendment provides candidates with flexibility to complete all additional certification requirements at their own pace while still being required to take advantage of the safety nets by their applicable expiration date(s).

2. COMMENT:

Commenter thinks that the teacher safety net should not have been removed and recommends extending the safety net until the teacher profession improves.

DEPARTMENT RESPONSE:

The Department's proposal to remove a deadline related to the safety nets does not discontinue the use of safety nets for the teacher certification examinations. Candidates could continue to take advantage of safety nets before their applicable expiration date(s), as outlined in Section 80-1.5 of the Commissioner's Regulations; however, they would not have to complete all additional requirements for certification on or before June 30, 2018. The current June 30, 2018 deadline would require candidates to complete the additional certification requirements prior to the expiration dates for the safety nets for the EAS and the CST. The proposed amendment provides candidates with flexibility to complete all additional certification requirements at their own pace while still being required to take advantage of the safety nets by their applicable expiration date(s).

3. COMMENT:

Commenter requests eliminating the edTPA requirement for teacher certification, especially for out-of-state certified teachers.

DEPARTMENT RESPONSE:

No response is necessary because the edTPA requirement for teacher certification is not related to the Department's proposal regarding safety nets.

NOTICE OF ADOPTION

Mental Health Education

I.D. No. EDU-06-18-00008-A

Filing No. 449

Filing Date: 2018-05-08

Effective Date: 2018-07-01

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

Action taken: Amendment of sections 135.1 and 135.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), 308(not subdivided), 804(1)-(7); L. 1998, ch. 401; L. 2016, ch. 390; L. 2017, ch. 1

Subject: Mental Health Education.

Purpose: To implement the provisions of chapter 390 of the Laws of 2016 and chapter 1 of the Laws of 2017.

Text or summary was published in the February 7, 2018 issue of the Register, I.D. No. EDU-06-18-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on February 7, 2018, the State Education Department (SED) received the following comments on the proposed amendment.

1. COMMENT:

The New York State Psychological Association (NYSPA), strongly supports the proposed amendments to § 135.1 and § 135.3 related to mental health instruction in schools. The NYSPA additionally requested the opportunity to participate on the New York State Mental Health Education Advisory Council.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive. However, al-

though the NYSPA did have representation on the New York State Mental Health Education Advisory Council, the Department extended the opportunity for additional NYSPA members to participate.

2. COMMENT:

Commenter, a family practitioner, expressed the importance including at least one experienced primary care physician with experience teaching day-to-day mental health with patients on the New York State Mental Health Education Advisory Council. Commenter was particularly concerned with the expertise necessary to develop useful curriculum to be developed for classroom teachers.

DEPARTMENT RESPONSE:

No response necessary as the comment is outside the scope of the proposed rule. However, the Department extended the opportunity to this individual to participate as a member of the New York State Mental Health Education Advisory Council.

NOTICE OF ADOPTION

Graduate Admission Examination Requirements

I.D. No. EDU-06-18-00009-A

Filing No. 450

Filing Date: 2018-05-08

Effective Date: 2018-05-23

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

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

Statutory authority: Education Law, sections 101, 207, 210-a; L. 2017, ch. 454

Subject: Graduate admission examination requirements.

Purpose: To implement chapter 454 of the Laws of 2017.

Text or summary was published in the February 7, 2018 issue of the Register, I.D. No. EDU-06-18-00009-EP.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Endorsement Requirements for Licensure as a Dentist

I.D. No. EDU-06-18-00010-A

Filing No. 451

Filing Date: 2018-05-08

Effective Date: 2018-05-23

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

Action taken: Amendment of section 61.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6506(6), 6507(2) and 6604(3)

Subject: Endorsement Requirements for Licensure as a Dentist.

Purpose: To permit dentists with licenses issued by a Canadian province to become licensed dentists in New York State by endorsement.

Text or summary was published in the February 7, 2018 issue of the Register, I.D. No. EDU-06-18-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Since publication of a Notice of Proposed Rulemaking in the February 7, 2018 State Register, the State Education Department received the following comments:

1. COMMENT:

The Federal Trade Commission of the United States of America (FTC), submitted comments in support of the proposed amendment. The FTC states that its comment on the “proposed amendment builds on [its] extensive experience in two important areas that affect many consumers: oral health care and occupational licensing barriers to providing health care services across state boundaries.” The FTC also summarizes some of its recent law enforcement, research and advocacy activities in these two areas. The FTC further states that its prior “advocacy comments and activities, which underscore the importance of licensure portability to an occupation and consumers, underpin [its comment on the proposed amendment].”

In summary, the FTC states that “[c]ompetition among health professionals, including dentists, have the potential to benefit consumers. By extending New York’s existing process for endorsement to dental licenses issued by Canadian provinces, the proposed amendment would decrease barriers to licensure of Canadian dentists and increase the pool of dentists qualified for licensure. Accordingly, the proposed amendment could potentially increase the supply of dentists, and thereby promote competition and consumer choice, increase access to dental care, and decrease the price of dental services. The proposed amendment may promote such benefits in both underserved areas, such as the North Country region, and other areas of New York. It could also improve the ability of dental schools to recruit Canadian dentists to faculty positions, which might also increase access to care in nearby underserved communities. In sum, [FTC] staff support the proposed amendment because it would likely increase competition among dentists, increase access to dental services, improve dental outcomes, and reduce consumers’ dental costs, thereby benefitting New York residents.”

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive and recognizes that the Department is working to both protect the public and provide greater access to dental care for New Yorkers.

2. COMMENT:

Commenter, who identified himself as a graduate of a California dental school and a holder of a California dentist license, states that he has been working in Canada as a dentist since his graduation and supports the proposed amendment because he would like to work in New York and contribute to the oral health of the population.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive and recognizes that the Department is working to both protect the public and provide greater access to dental care for New Yorkers.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Allow Individuals Completing a Program Accredited by the American Speech, Language, and Hearing Association (ASHA) to Obtain an Initial Teaching Certificate

I.D. No. EDU-21-18-00040-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 80-3.16 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207, 305, 3001, 3004 and 3009

Subject: Allow Individuals Completing a Program Accredited by the American Speech, Language, and Hearing Association (ASHA) to Obtain an Initial Teaching Certificate.

Purpose: Allow individuals completing a program accredited by ASHA to obtain an initial certificate in speech language disabilities.

Text of proposed rule: 1. A new section 80-3.16 shall be added to the Regulations of the Commissioner of Education as follows:

§ 80-3.16 *Additional Certification Pathway for an Initial Certificate for Certain Teacher Candidates Completing a Speech-Language Pathology Program Accredited by the American Speech, Language and Hearing Association.*

(a) *Initial teaching certificate for candidates completing a speech-language pathology program accredited by the American Speech, Language, and Hearing Association (ASHA). In lieu of meeting the requirements prescribed in section 80-3.3 of this Subpart, a candidate may meet the following requirements for an initial certificate as a teacher of speech and language disabilities (all grades):*

(1) *Education: The candidate shall meet the education requirement by satisfactorily completing a master’s or higher degree program in speech-language pathology accredited by the American Speech, Language, and Hearing Association (ASHA) from a regionally or nationally accredited institution of higher education in the U.S. or its territories or from an institution of higher education authorized by the Regents to confer degrees and whose programs are registered by the Department.*

(2) *Examination: The candidate must achieve a satisfactory passing score on the Educating All Students (EAS) exam.*

(3) *Practicum: The candidate shall satisfactorily complete a college-supervised practicum, as defined in section 52.21(b)(1) of this Title, of 150 clock hours that includes experiences with students with speech and language disabilities in early childhood (birth-grade 2), childhood (grades 1-6), middle childhood (grades 5-9), and adolescence (grades 7-12). The practicum shall include experiences in elementary and/or secondary schools.*

(4) *Additional requirements: The candidate must complete all other requirements for an Initial certificate prescribed in Subpart 80-1 of this Title, including all required workshops and fingerprinting.*

Text of proposed rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Data, views or arguments may be submitted to: Rebecca Coyle, NYS Education Department, 89 Washington Avenue, Room 975 EBA, Albany, NY 12234, (518) 473-9763, email: rebecca.coyle@nysed.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement**1. STATUTORY AUTHORITY:**

Education Law 101 (not subdivided) 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 210 (not subdivided) authorizes the Regents to register domestic and foreign institutions in terms of New York standards.

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) authorizes the Commissioner to promulgate regulations governing the certification requirements for teachers employed in public schools.

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

2. LEGISLATIVE OBJECTIVES:

The purpose of the proposed amendment to add a new Section 80-3.16 of the Regulations of the Commissioner of Education is to allow candidates who complete a speech-language pathology program accredited by ASHA to obtain an Initial certificate in speech and language disabilities (all grades). In New York State, candidates can obtain this certificate by completing an approved teacher education program in speech and language disabilities or meeting certification requirements through individual evaluation, which includes completion of a college-supervised practicum of 150 hours. However, most other states do not require completion of a teacher education program for individuals to provide speech services in a school or have speech language pathology programs that may include very little pedagogical coursework for classroom instruction. As such, most institutions of higher education outside of New York do not have separate teacher education programs in speech and language disabilities. Rather, most other states require completion of a program accredited by the American Speech, Language, and Hearing Association (ASHA) for individuals to provide speech services in school.

3. NEEDS AND BENEFITS:

There is currently a shortage of teachers in the area of speech and language disabilities in districts across the state. To help alleviate this shortage area, the proposed certification pathway for candidates who complete a speech-language pathology program accredited by ASHA would provide another option for qualified candidates both out of state and in New York to obtain an Initial certificate in speech and language disabilities (all grades).

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.

c. Costs to private regulated parties: The amendment 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 amendment does not impose any additional program, service, duty or responsibility upon any local government.

6. PAPERWORK:

The proposed amendment does not impose any additional paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

Because the State believes that uniform certification standards are required across the State, no alternatives were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be permanently adopted by the Board of Regents at its September 2018 meeting. If adopted at the September meeting, the proposed amendment will become effective on October 3, 2018.

Regulatory Flexibility Analysis

The purpose of the proposed amendment to add a new Section 80-3.16 of the Regulations of the Commissioner of Education is to allow candidates who complete a speech-language pathology program accredited by ASHA to obtain an Initial certificate in speech and language disabilities (all grades). In New York State, candidates can obtain this certificate by completing an approved teacher education program in speech and language disabilities or meeting certification requirements through individual evaluation, which includes completion of a college-supervised practicum of 150 hours. However, most other states do not require completion of a teacher education program for individuals to provide speech services in a school or have speech language pathology programs that may include very little pedagogical coursework for classroom instruction. As such, most institutions of higher education outside of New York do not have separate teacher education programs in speech and language disabilities. Rather, most other states require completion of a program accredited by the American Speech, Language, and Hearing Association (ASHA) for individuals to provide speech services in school.

The amendment does 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 proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

This proposed amendment applies to all individuals in New York State who complete a speech-language pathology program accredited by the American Speech, Language, and Hearing Association (ASHA) and pursue an Initial certificate in the classroom teaching service in speech and language disabilities (all grades), including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The purpose of the proposed amendment to add a new Section 80-3.16 of the Regulations of the Commissioner of Education is to allow candidates who complete a speech-language pathology program accredited by ASHA to obtain an Initial certificate in speech and language disabilities (all grades). In New York State, candidates can obtain this certificate by completing an approved teacher education program in speech and language disabilities or meeting certification requirements through individual evaluation, which includes completion of a college-supervised practicum of 150 hours. However, most other states do not require completion of a teacher education program for individuals to provide speech services in a school or have speech language pathology programs that may include very little pedagogical coursework for classroom instruction. As such, most institutions of higher education outside of New York do not have separate teacher education programs in speech and language disabilities. Rather, most other states require completion of a program accredited by the American Speech, Language, and Hearing Association (ASHA) for individuals to provide speech services in school.

There is currently a shortage of teachers in the area of speech and language disabilities in districts across the state. To help alleviate this shortage area, the proposed certification pathway for candidates who

complete a speech-language pathology program accredited by ASHA would provide another option for qualified candidates both out of state and in New York to obtain an Initial certificate in speech and language disabilities (all grades).

3. COSTS:

The proposed amendment does not impose any costs on teacher certification candidates and/or the New York State school districts/BOCES who wish to hire them.

4. MINIMIZING ADVERSE IMPACT:

The Department believes that uniform standards for certification must be established across the State. Therefore, no alternatives were considered for those located in rural areas of the State.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed amendment to add a new Section 80-3.16 of the Regulations of the Commissioner of Education is to allow candidates who complete a speech-language pathology program accredited by ASHA to obtain an Initial certificate in speech and language disabilities (all grades).

There is currently a shortage of teachers in the area of speech and language disabilities in districts across the state. To help alleviate this shortage area, the proposed certification pathway for candidates who complete a speech-language pathology program accredited by ASHA would provide another option for qualified candidates both out of state and in New York to obtain an Initial certificate in speech and language disabilities (all grades).

Because it is evident from the nature of the proposed amendment 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.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Voluntary Institutional Accreditation for Title IV Purposes

I.D. No. EDU-21-18-00048-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 4-1.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 210, 212, 214, 215 and 305

Subject: Voluntary Institutional Accreditation for Title IV Purposes.

Purpose: To establish a fee structure for institutional accreditation by the Board of Regents and Commissioner of Education.

Text of proposed rule: 1. Subdivision (b) of Section 4-1.3 of the Rules of the Board of Regents, shall be amended, as follows:

(b) Duration of accreditation. Accreditation shall be for a term of 10 years unless otherwise limited to a lesser period for good cause as determined by the commissioner and the Board of Regents, based upon a review conducted pursuant to this Subpart. [The term of accreditation may be extended by the commissioner on one or more occasions for a period not to exceed 12 months on each occasion for good cause as determined by the commissioner, including but not limited to inability to conduct site visits because of unforeseen events and the department's plan to coordinate a site visit with a site visit by another accrediting agency.] *One or more administrative extensions of the term of accreditation may be granted for a period not to exceed 12 months on each occasion for good cause as determined by the Commissioner, for reasons including but not limited to, an inability to conduct site visits because of unforeseen events and/or the scheduling of a meeting of the Regents Advisory Council on Institutional Accreditation and/or the Board of Regents, provided however that an administrative extension granted by the Commissioner pursuant to this subdivision shall not extend the corrective action period granted to an institution pursuant to section 4-1.3(d)(ii) of this Subpart.*

2. A new paragraph (i) shall be added to Section 4-1.3 of the Rules of the Board of Regents, as follows:

(i) Fees.

(1) Applications for initial accreditation pursuant to section 4-1.5 of this Subpart shall include a non-refundable payment of \$3,000 to the Department for expenses related to the review of the self-study submitted pursuant to section 4-1.5(a)(3) of this Subpart.

(2) Institutions seeking initial accreditation pursuant to this Subpart, for which the Department has determined that the self-study is sufficient in depth and breadth to form a reasonable basis for a site review to be

conducted pursuant to section 4-1.5(a)(4) of this Subpart, shall remit to the Department a fee of \$10,000 for expenses related to the site visit and subsequent procedures related to initial accreditation pursuant to this Subpart.

(3) Institutions accredited by the Commissioner and the Board of Regents pursuant to this Subpart shall remit a non-refundable annual fee of \$35,000 in a timeframe and manner prescribed by the Department for expenses related to accreditation. Failure to remit the annual fee in accordance with the schedule set by the Department shall result in an adverse accreditation action against the institution.

(4) The filing of an appeal of a determination of an adverse accreditation action pursuant to section 4-1.5(a)(11) of this Subpart shall include a payment of \$10,000 for expenses related to processing such appeal.

(5) The department shall periodically review, and if necessary revise, this fee schedule to ensure that it is sufficient to meet the expenses related to accreditation.

Text of proposed rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Data, views or arguments may be submitted to: Rebecca Coyle, NYS Education Department, Office of Higher Education, 89 Washington Avenue, Room 975 EBA, Albany, NY 12234, (518) 473-9763, email: rebecca.coyle@nysed.gov

Public comment will be received until: 60 days after publication of this notice.

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 210 authorizes the Board of Regents to register domestic and foreign institutions in terms of New York standards, and fix the value of degrees, diplomas and certificates issued by institutions of other states or countries.

Education Law 212 authorizes the Department to charge fees for certificates or permits for which fees are not otherwise provided, as fixed by regulations of the Department.

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

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.

2. LEGISLATIVE OBJECTIVES:

The purpose of the proposed amendment is to clarify that the extensions provided for in the Rules of the Board of Regents are specifically administrative in nature, and are granted for reasons such as the scheduling of site visits, meetings of the Board of Regents or the Regents Advisory Council, etc., and that these administrative extensions do not extend the corrective action period granted to an institution to come into compliance with the standards for accreditation. The proposed amendment also establishes a fee structure for institutions of higher education seeking to become accredited or accredited by the Commissioner and the Board of Regents.

3. NEEDS AND BENEFITS:

On February 8, 2018, the Department appeared before the National Advisory Committee on Institutional Quality and Integrity (NACIQI) concerning the petition of the Board of Regents and Commissioner of Education for renewal of recognition by the U.S. Secretary of Education as an institutional accrediting agency. NACIQI is charged with making a recommendation to the Secretary of Education concerning applications for recognition as institutional accrediting agencies. At the February 8, 2018 NACIQI meeting, the Committee accepted the following motion concerning the Board of Regents and Commissioner of Education's recognition:

NACIQI recommends to continue the agency's current recognition and require the agency to come into compliance within 12 months, and submit a compliance report 30 days after the 12 month period that demonstrates the agency's compliance.

NACIQI identified one area of noncompliance in the Rules of the Board of Regents regarding the language in § 4-1.3(b) concerning duration of accreditation. NACIQI felt that the language concerning extensions of the term of accreditation as determined by the Commissioner should be amended to be explicit about the use of administrative extensions, and to ensure that enforcement timelines are not exceeded.

The proposed amendment would make clear that the extensions provided for in this section of the Rules of the Board of Regents are specifically administrative in nature, and are granted for reasons such as the scheduling of site visits, meetings of the Board of Regents or the

Regents Advisory Council, etc., and that these administrative extensions do not extend the corrective action period granted to an institution to come into compliance with the standards for accreditation.

Upon enactment of the proposed amendment, the Department will prepare the required compliance report for submission to NACIQI.

In the Regents 2017-2018 State Budget Priorities, the Board proposed the enactment of an appropriation that would allow the Department to charge fees for institutional accreditation and spend the funds raised by those fees on expenses incurred in conducting the accreditation function, including the addition of dedicated accreditation staff.

The approved FY 2019 State Budget included the necessary spending authority language for the Department. An account will be established for the funds raised by fees charged to institutions applying for accreditation and those institutions accredited by the Regents and Commissioner of Education.

The proposed amendment establishes a fee structure for institutional accreditation by the Board of Regents and Commissioner of Education. The proposed fee structure is based upon the number of institutions currently accredited by the Board of Regents and Commissioner. As the number of accredited institutions changes, the Department will review the fee schedule to ensure that it is sufficient to meet the expenses related to accreditation and make recommendations to the Regents for any necessary revisions to the fee schedule.

4. COSTS:

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

b. Costs to local government: The amendment does not impose any costs on local government.

c. Costs to private regulated parties: The amendment sets out a fee schedule for any higher education institution seeking accreditation by the Department as follows:

- Applications for initial accreditation pursuant to section 4-1.5 of this Subpart shall include a non-refundable payment of \$3,000 to the Department for expenses related to the review of the self-study submitted pursuant to section 4-1.5(a)(3) of this Subpart.

- Institutions seeking initial accreditation pursuant to this Subpart, for which the Department has determined that the self-study is sufficient in depth and breadth to form a reasonable basis for a site review to be conducted pursuant to section 4-1.5(a)(4) of this Subpart, shall remit to the Department a fee of \$10,000 for expenses related to the site visit and subsequent procedures related to initial accreditation pursuant to this Subpart.

- Institutions accredited by the Commissioner and the Board of Regents pursuant to this Subpart shall remit a non-refundable annual fee of \$35,000 in a timeframe and manner prescribed by the Department for expenses related to accreditation. Failure to remit the annual fee in accordance with the schedule set by the Department shall result in an adverse accreditation action against the institution.

- The filing of an appeal of a determination of an adverse accreditation action pursuant to section 4-1.5(a)(11) of this Subpart shall include a payment of \$10,000 for expenses related to processing such appeal.

- The Department shall periodically review, and if necessary revise, this fee schedule to ensure that it is sufficient to meet the expenses related to accreditation.

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 impose any additional paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternatives were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be adopted as a permanent rule by the Board of Regents at its September 2018 meeting. If adopted at the September 2018 meeting, the proposed amendment will become effective on October 3, 2018.

Regulatory Flexibility Analysis

(a) Local governments:

The 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 proposed amendment 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.

(b) Small businesses:

1. EFFECT OF RULE:

The Office of College and University Evaluation Services estimates that there are at least 10 currently accredited institutions currently operating as small businesses with fewer than 100 employees in this State.

2. COMPLIANCE REQUIREMENTS:

On February 8, 2018, the Department appeared before the National Advisory Committee on Institutional Quality and Integrity (NACIQI) concerning the petition of the Board of Regents and Commissioner of Education for renewal of recognition by the U.S. Secretary of Education as an institutional accrediting agency. NACIQI is charged with making a recommendation to the Secretary of Education concerning applications for recognition as institutional accrediting agencies. At the February 8, 2018 NACIQI meeting, the Committee accepted the following motion concerning the Board of Regents and Commissioner of Education's recognition:

NACIQI recommends to continue the agency's current recognition and require the agency to come into compliance within 12 months, and submit a compliance report 30 days after the 12 month period that demonstrates the agency's compliance.

NACIQI identified one area of noncompliance in the Rules of the Board of Regents regarding the language in § 4-1.3(b) concerning duration of accreditation. NACIQI felt that the language concerning extensions of the term of accreditation as determined by the Commissioner should be amended to be explicit about the use of administrative extensions, and to ensure that enforcement timelines are not exceeded.

The proposed amendment would make clear that the extensions provided for in this section of the Rules of the Board of Regents are specifically administrative in nature, and are granted for reasons such as the scheduling of site visits, meetings of the Board of Regents or the Regents Advisory Council, etc., and that these administrative extensions do not extend the corrective action period granted to an institution to come into compliance with the standards for accreditation.

Upon enactment of the proposed amendment, the Department will prepare the required compliance report for submission to NACIQI.

In the Regents 2017-2018 State Budget Priorities, the Board proposed the enactment of an appropriation that would allow the Department to charge fees for institutional accreditation and spend the funds raised by those fees on expenses incurred in conducting the accreditation function, including the addition of dedicated accreditation staff.

The approved FY 2019 State Budget included the necessary spending authority language for the Department. An account will be established for the funds raised by fees charged to institutions applying for accreditation and those institutions accredited by the Regents and Commissioner of Education.

The proposed amendment establishes a fee structure for institutional accreditation by the Board of Regents and Commissioner of Education. The proposed fee structure is based upon the number of institutions currently accredited by the Board of Regents and Commissioner. As the number of accredited institutions changes, the Department will review the fee scheduled to ensure that it is sufficient to meet the expenses related to accreditation and make recommendations to the Regents for any necessary revisions to the fee schedule.

3. PROFESSIONAL SERVICES:

No professional services are needed to comply with the proposed amendment.

4. COMPLIANCE COSTS:

The amendment sets out a fee schedule for any higher education institution seeking accreditation by the Department as follows:

- Applications for initial accreditation pursuant to section 4-1.5 of this Subpart shall include a non-refundable payment of \$3,000 to the Department for expenses related to the review of the self-study submitted pursuant to section 4-1.5(a)(3) of this Subpart.

- Institutions seeking initial accreditation pursuant to this Subpart, for which the Department has determined that the self-study is sufficient in depth and breadth to form a reasonable basis for a site review to be conducted pursuant to section 4-1.5(a)(4) of this Subpart, shall remit to the Department a fee of \$10,000 for expenses related to the site visit and subsequent procedures related to initial accreditation pursuant to this Subpart.

- Institutions accredited by the Commissioner and the Board of Regents pursuant to this Subpart shall remit a non-refundable annual fee of \$35,000 in a timeframe and manner prescribed by the Department for expenses related to accreditation. Failure to remit the annual fee in accordance with the schedule set by the Department shall result in an adverse accreditation action against the institution.

- The filing of an appeal of a determination of an adverse accreditation action pursuant to section 4-1.5(a)(11) of this Subpart shall include a payment of \$10,000 for expenses related to processing such appeal.

- The Department shall periodically review, and if necessary revise, this fee schedule to ensure that it is sufficient to meet the expenses related to accreditation.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements on any regulated parties.

6. MINIMIZING ADVERSE IMPACT:

In an effort to have uniform standards for all accredited institutions across the State, no alternatives were considered.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from accredited institutions across the State.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

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

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

On February 8, 2018, the Department appeared before the National Advisory Committee on Institutional Quality and Integrity (NACIQI) concerning the petition of the Board of Regents and Commissioner of Education for renewal of recognition by the U.S. Secretary of Education as an institutional accrediting agency. NACIQI is charged with making a recommendation to the Secretary of Education concerning applications for recognition as institutional accrediting agencies. At the February 8, 2018 NACIQI meeting, the Committee accepted the following motion concerning the Board of Regents and Commissioner of Education's recognition:

NACIQI recommends to continue the agency's current recognition and require the agency to come into compliance within 12 months, and submit a compliance report 30 days after the 12 month period that demonstrates the agency's compliance.

NACIQI identified one area of noncompliance in the Rules of the Board of Regents regarding the language in § 4-1.3(b) concerning duration of accreditation. NACIQI felt that the language concerning extensions of the term of accreditation as determined by the Commissioner should be amended to be explicit about the use of administrative extensions, and to ensure that enforcement timelines are not exceeded.

The proposed amendment would make clear that the extensions provided for in this section of the Rules of the Board of Regents are specifically administrative in nature, and are granted for reasons such as the scheduling of site visits, meetings of the Board of Regents or the Regents Advisory Council, etc., and that these administrative extensions do not extend the corrective action period granted to an institution to come into compliance with the standards for accreditation.

Upon enactment of the proposed amendment, the Department will prepare the required compliance report for submission to NACIQI.

In the Regents 2017-2018 State Budget Priorities, the Board proposed the enactment of an appropriation that would allow the Department to charge fees for institutional accreditation and spend the funds raised by those fees on expenses incurred in conducting the accreditation function, including the addition of dedicated accreditation staff.

The approved FY 2019 State Budget included the necessary spending authority language for the Department. An account will be established for the funds raised by fees charged to institutions applying for accreditation and those institutions accredited by the Regents and Commissioner of Education.

The proposed amendment establishes a fee structure for institutional accreditation by the Board of Regents and Commissioner of Education. The proposed fee structure is based upon the number of institutions currently accredited by the Board of Regents and Commissioner. As the number of accredited institutions changes, the Department will review the fee scheduled to ensure that it is sufficient to meet the expenses related to accreditation and make recommendations to the Regents for any necessary revisions to the fee schedule.

3. COSTS:

The amendment sets out a fee schedule for any higher education institution seeking accreditation by the Department as follows:

- Applications for initial accreditation pursuant to section 4-1.5 of this Subpart shall include a non-refundable payment of \$3,000 to the Department for expenses related to the review of the self-study submitted pursuant to section 4-1.5(a)(3) of this Subpart.

- Institutions seeking initial accreditation pursuant to this Subpart, for which the Department has determined that the self-study is sufficient in depth and breadth to form a reasonable basis for a site review to be conducted pursuant to section 4-1.5(a)(4) of this Subpart, shall remit to the Department a fee of \$10,000 for expenses related to the site visit and subsequent procedures related to initial accreditation pursuant to this Subpart.

- Institutions accredited by the Commissioner and the Board of Regents pursuant to this Subpart shall remit a non-refundable annual fee of \$35,000 in a timeframe and manner prescribed by the Department for expenses related to accreditation. Failure to remit the annual fee in accordance with the schedule set by the Department shall result in an adverse accreditation action against the institution.

- The filing of an appeal of a determination of an adverse accreditation action pursuant to section 4-1.5(a)(11) of this Subpart shall include a payment of \$10,000 for expenses related to processing such appeal.

- The Department shall periodically review, and if necessary revise, this fee schedule to ensure that it is sufficient to meet the expenses related to accreditation.

4. MINIMIZING ADVERSE IMPACT:

The Department believes that all accredited institutions across the State, whether or not they are located in rural areas or not, should be held to the same uniform standards. Therefore, no alternatives were considered.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed amendment is to clarify that the extensions provided for in the Rules of the Board of Regents are specifically administrative in nature, and are granted for reasons such as the scheduling of site visits, meetings of the Board of Regents or the Regents Advisory Council, etc., and that these administrative extensions do not extend the corrective action period granted to an institution to come into compliance with the standards for accreditation. The proposed amendment also establishes a fee structure for institutions of higher education seeking to become accredited or accredited by the Commissioner and the Board of Regents.

Because it is evident from the nature of the proposed amendments that they 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.

50,000,000 or more unique monthly United States visitors or users for a majority of months during the preceding 12 months.”

Text of proposed rule and any required statements and analyses may be obtained from: Nicholas R. Cartagena, Esq., State Board of Elections, 40 North Pearl Street, Ste. 5, Albany, NY 12207, (518) 474-2064, email: nicholas.cartagena@elections.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority: The New York State Democracy Protection Act, Chapter 59 of the Laws of 2018, Part JJJ, requires the New York State Board of Elections to promulgate rules related to the Board maintaining and making available for public inspection records and copies of paid internet or digital advertisements by Independent Expenditure committees. Further the Act requires the Board to promulgate regulations defining the scope of the term “online platform.” Election Law §§ 14-107 [5-a] and 14-107-b expressly authorizes the New York State Board of Elections to promulgate such rules and regulations. Election Law § 3-102(17) authorizes the State Board of Elections to “perform such other acts as may be necessary to carry out the purposes of this chapter.”

2. Legislative objectives: The legislative objective furthered by the proposed regulation is to ensure transparency for independent expenditures in the form of internet and digital advertising and to protect New York elections from foreign influence.

3. Needs and benefits: The regulation increases transparency by requiring internet and digital political advertisements in the form of independent expenditures on online platforms to comply with certain disclosure requirements. The proposed regulation also aims to prevent foreign influence in State and Local elections by prohibiting foreign entities from purchasing political advertisements. Further, the proposed regulation requires Independent Expenditure committees to disclose internet and digital political advertisements to the State Board in certain formats so the Board can create and maintain a database of internet and digital political advertisements on its website.

4. Costs:

a. This regulatory amendment does not increase costs to regulated parties as the regulation reflects only existing statutory obligations. There is a cost related to the time and effort of Online Platforms, who now have to collect registration forms from Independent Expenditure committees purchasing political advertisements. There is an increased cost to the time and effort for Independent Expenditure committees who have to report all internet and digital advertisements and disclose them to the State Board in certain formats.

b. There is an increased cost to the State Board, as the State Board is now obligated to collect records and copies of internet and digital advertisements from Independent Expenditure Committees and create and maintain a database on its website of such advertisements.

c. This assessment of cost is based on the nature of the regulation.

d. This regulatory amendment does not create new costs as the reporting obligations are in Election Law 14-107.

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

6. Paperwork: This proposed rule imposes no new reporting or regulatory filing requirements not provided for by statute, but statutory compliance requires Online Platforms to collect registration documents from Independent Expenditure committees.

7. Duplication: There is no jurisdictional duplication created by this rulemaking.

8. Alternatives: This rulemaking amends the existing regulations to conform to the requirements of Election Law §§ 14-107 and 14-107-b as amended by Chapter 59 of the Laws of 2018. The definition of the term online platform could be amended to include more or less entities.

9. Federal standards: Not applicable.

10. Compliance schedule: The rule provides no new compliance schedules not already expressly provided for by §§ 14-107 and 14-107-b of the Election Law.

Regulatory Flexibility Analysis

1. Effect of rule: There is no impact on local government due to this rule. This rule will have a minimal impact on small business. Should a small business engage in independent expenditures, the existing statute and regulation would require the committee to register and report activity to the State Board of Elections. This rule reflects a statutory amendment to Election Law §§ 14-107 and 14-107-b in 2018.

2. Compliance requirements: If a small business engaged in independent expenditures, it is required under existing law to register with the State Board of Elections as a political committee and to comply with the provisions of Article 14 of the Election Law, as applicable, including

State Board of Elections

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Implementation of the Democracy Protection Act

I.D. No. SBE-21-18-00047-P

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

Proposed Action: Amendment of section 6200.10; addition of section 6200.11 to Title 9 NYCRR.

Statutory authority: Election Law, sections 14-107(5-a), 14-107-b and 3-102(17)

Subject: Implementation of the Democracy Protection Act.

Purpose: The rule effectuates the amendments to article 14 of the Election Law resulting from chapter 59 of the Laws of 2018.

Substance of proposed rule (Full text is posted at the following State website: www.elections.ny.gov): The proposed amendment to section 6200.10, and the addition of section 6200.11, implements changes in law resulting from the New York State Democracy Protection Act, Chapter 59 of the Laws of 2018, Part JJJ. The proposed regulation modifies current regulations as follows: a) Prohibits foreign entities from forming an independent expenditure committee and purchasing political ads in order to influence New York elections; b) Requires that internet and digital advertisements paid for by Independent Expenditure Committees and targeted to 50 or more members of the General Public Audience be subject to disclosure requirements; c) Requires all paid independent political online ads to clearly display that the ad was not authorized by any candidate and who actually paid for the ad; and d) Requires television or radio broadcast stations, provider of cable or satellite televisions, or online platforms to collect the registration documents of Independent Expenditure committees when such committees purchase purchases communications in the form of an independent expenditure.

Additionally, the proposed regulation defines “online platform” as follows: “An online platform means: (1) a public-facing Internet Web site, web application, or digital application, including a social network, ad network or search engine, which sells political advertisements and has

disclosing internet and digital political ads. In regards to the definition of "Online Platform," the proposed definition functionally excludes small businesses that operate a website. This rule has no impact on local governments.

3. Professional services: A small business that engages in independent expenditures may acquire accounting services to maintain and report activity to comply with the existing reporting requirements. This rule making, conforming the statute to the regulatory text, does not significantly change any such potential need.

4. Compliance costs: It is unclear what the compliance costs are for regulated business or industry to comply with this rule. This rule making, conforming the statute to the regulatory text, does not significantly change any such potential need. Nothing in this rule mandates any entity to engage in the activities triggering filing requirements.

5. Economic and technological feasibility: Our assessment of the economic and technological feasibility of compliance with this rule, as with the existing rule, is that a small business would need a computer to make required disclosures.

6. Minimizing adverse impact: The rule requires no mitigation of impacts on small businesses as it regulates independent expenditures and reporting by those entities which choose to engage in those activities on an equal basis. The rules does not require engaging in such activities. The rules has no impact on local governments.

7. Small business and local government participation: The State Board of Elections has solicited and will continue to solicit public comment. This would include comments that may suggest alternatives to minimize the impact on small businesses that choose to make independent expenditures regulated by Article 14 of the Election Law.

For rules that either establish or modify a violation or penalties associated with a violation: not applicable.

Initial review of the rule, pursuant to SAPA § 207: not applicable.

Rural Area Flexibility Analysis

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

Job Impact Statement

1. Nature of impact: This rule should have minimal or no impact on jobs as it amends existing independent disclosure requirements by political committees and provides that Online Platforms collect registration forms from Independent Expenditure committees.

2. Categories and numbers affected: This rule will impact committees which engage in independent expenditure activity and Online Platforms. This rules will not create employment opportunities.

3. Regions of adverse impact: This rules has a statewide applicability, and has no disproportionate adverse impact on jobs or employment opportunities in any region.

4. Minimizing adverse impact: The State Board of Elections has not taken any measures to minimize adverse impact on existing jobs or promote the development of new employment opportunities because the State Board of Elections has determined this rule would not have an adverse impact on jobs.

5. Self-employment opportunities: Not applicable.

6. Initial review of the rule, pursuant to SAPA § 207: Not applicable.

Department of Environmental Conservation

ERRATUM

The Department of Environmental Conservation submitted an updated Regulatory Impact Statement, Regulatory Flexibility Analysis and Job Impact Statement for ID No. ENV-12-18-00043-P pertaining to BEACH Act Standards and Reclassification Rule for publication in the May 9, 2018 issue, however the original statements were inadvertently republished instead. The revised statements are printed below.

The Department of State apologizes for any inconvenience this may have caused.

Revised Regulatory Impact Statement

The New York State Department of Environmental Conservation

(Department) is proposing revisions to New York's water quality standards to meet the requirements of the federal Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000 (P.L. 106-284). The Department is also proposing upgrades to the classification of two water bodies.

1. Statutory Authority

The statutory authority for adoption of water quality standards and classifications is found in the Environmental Conservation Law (ECL) Articles 3 and 17. ECL Article 3 provides that the Commissioner of the Department may adopt regulations to carry out the purposes of the ECL in general. ECL Article 17 directs the Department to classify the waters of the state in accordance with best usage and maintain reasonable standards consistent with public health and public enjoyment of the waters. Specifically, Section 17-0301 provides that the Department "shall group the designated waters of the state into classes. Such classification shall be made in accordance with considerations of best usage in the interest of the public" and further that the Department "shall adopt and assign standards of quality and purity for each such classification necessary for the public use or benefit contemplated by such classification."

2. Legislative Objectives

The legislative objectives related to this proposed rule are to "conserve, improve and protect [the State's] natural resources and environment and to prevent, abate and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well being." ECL 1-0101(1). Furthermore, it is the policy of the state to guarantee that the "widest range of beneficial uses of the environment is attained without risk to health or safety, unnecessary degradation or other undesirable or unintended consequences." ECL 1-0101(3)(b). In furtherance of these broad policies, specific objectives are to "maintain reasonable standards of purity of the waters of the state consistent with public health and public enjoyment thereof..." ECL 17-0101.

3. Needs and Benefits

The proposed rule would adopt new pathogen standards for all coastal recreation waters and new definitions for the terms "coastal recreation waters" and "primary contact recreation season," which are needed to meet the requirements of the federal BEACH Act. The proposed standards are consistent with the United States Environmental Protection Agency's (USEPA's) 2012 Recreational Water Quality Criteria (RWQC). The RWQC are USEPA's recommendations for protecting human health in waters designated for primary contact recreation use. The proposed standards are: a 90-day Geometric Mean (GM) of 35 cfu/100mL and a statistical threshold value (STV) of 130 cfu/100mL for enterococci, and a 90-day GM of 126 cfu/100mL and a STV of 410 cfu/100mL for E.coli. Existing total and fecal coliform standards for recreational use protection would be maintained.

In evaluating the waters that would be defined as "coastal recreation waters," and covered by this proposed rule, the Department identified two large coastal waters, currently designated as Class I, that were not designated as having a best usage of primary contact recreation: Upper New York Bay (6 NYCRR § 890.6 - Item No. 6); and a portion of Lower New York Bay (6 NYCRR § 890.6 - Item No. 4). In 1985, the Department determined that these waters were unable to support a best usage of primary contact recreation. See Use Attainability Analysis of the New York Harbor Complex, August 1985, Page 17. Since that time, the water quality in the two water bodies proposed for reclassification has improved dramatically. See New York Harbor Water Quality Report, 2016. In 2015, the Department revised its regulations to require that Class SD and I waters be of quality suitable for swimming. That rulemaking did not designate a best usage of primary contact recreation for Class SD or I waters. Considering the water quality improvements in these two waterbodies and that they are adjacent to numerous public beaches, the Department has determined that they should be reclassified from Class I to Class SB to designate the best usage of primary contact recreation. The proposed pathogen standards would thus apply to the reclassified waters, consistent with the federal BEACH Act requirements for all marine coastal recreation waters, as well as a more stringent dissolved oxygen standard for Class SB waters.

4. Costs

The Department reviewed this proposed rule and identified the likely anticipated costs. The Department identified 41 municipal wastewater treatment plants ranging from 0.1 million gallons per day (MGD) to 135 MGD treatment capacity discharging to coastal recreation waters (including waters proposed for reclassification by this rule). Sixteen (16)

of the 41 municipal wastewater treatment plants discharge to the Great Lakes, while the remaining 25 facilities discharge to marine coastal recreation waters (including waters proposed for reclassification by this rule). Additionally, 4 Private, Commercial, and Institutional (PCI) facilities were identified as surface water sanitary dischargers to marine coastal recreation waters.

The financial impact due to the adoption of the proposed E. coli standard is considered to be de minimus, as existing disinfection treatment facilities discharging to the Great Lakes are expected to meet the proposed standard without significant adjustments.

Under the proposed enterococci standards 25 municipal wastewater treatment plants and 4 PCI facilities discharging to marine coastal recreation waters (including waters proposed for reclassification by this rule) will likely need to upgrade their existing disinfection systems or incur increased operation and maintenance (O&M) costs resulting from higher dosing. The Department analyzed the costs associated with disinfection using both chlorination and ultraviolet radiation (UV).

The estimated unit cost for building a UV disinfection system is \$512,676/MGD design flow in capital costs with an estimated O&M cost of \$10,000/MGD per year. Given that the total capital cost for conversion to UV disinfection is significantly higher than other alternatives, the estimated financial impact assumes that the impacted facilities will not choose the UV option. For facilities that already have an existing UV disinfection system, the most cost-effective alternative is to double the UV light intensity or dosing, thus the financial impact of \$10,000/MGD per year will be that resulting solely from increased O&M expenditures. Construction of a de-chlorination facility is estimated to cost \$220,000/ MGD. The average O&M cost of approximately \$18,600/ MGD per year was used to determine the potential financial impact associated with O&M for facilities utilizing chlorination and de-chlorination and \$27,900/ MGD per year for facilities that currently chlorinate but will need to add de-chlorination facilities. The estimated total financial impact is as follows: 9 municipal wastewater treatment facilities and 2 PCI facilities would incur a collective capital cost of approximately \$55 million to construct chlorination/dechlorination; 29 impacted facilities would incur increased O&M costs, collectively totaling approximately \$14 million per year.

Certain coastal Class SB waters (including waters proposed for reclassification from Class I to Class SB by this rule) are impacted by Combined Sewer Overflows (CSO). The New York City (NYC) CSO control program is being implemented through the development of Long Term Control Plans (LTCPs). The LTCPs must meet the regulatory requirements of the EPA's CSO Control Policy as per the Clean Water Act (CWA) section 402(q), and adhere to the terms of the 2005 Consent Order between NYSDEC and NYC (Case No. CO2-20000107-8), as modified in 2008, 2009, 2012, 2015, 2016, and 2017 (collectively the "Consent Order"). LTCPs evaluate the cost-effectiveness of a range of control options/strategies, including up to 100% CSO capture. Given that NYC must currently comply with EPA's CSO control policy through the development and implementation of these LTCPs, no additional costs are anticipated to be driven by this rulemaking beyond those already required by the Consent Order, the LTCPs, NYC's State Pollutant Discharge Elimination System (SPDES) Permits, the CSO Control Policy and CWA section 402(q). These existing and continuing requirements are expected to result in the submission of approvable Jamaica Bay and City-Wide LTCPs that will include projects designed to achieve the highest attainable condition within the CSO impacted waterbodies.

The proposed reclassification would also cause a more stringent, existing Class SB aquatic life standard for Dissolved Oxygen (DO) to apply to these waters. The existing DO standard for Class I is a minimum of 4.0 mg/L, while the existing DO standard for Class SB is a minimum of 4.8 mg/L, with allowable excursions below 4.8 mg/L for limited periods of time. An examination of the current DO levels in these water bodies reveals that the new standard would be attained and not likely result in additional costs.

5. Local Government Mandates

As described in this document, this proposed rule would revise and update New York State's water quality standards which in turn would be incorporated into permits issued under Titles 7 and 8 of Article 17 of the Environmental Conservation Law. Any county, city, town, village, school district, fire district, or other special district permitted to discharge under the above statute may be responsible for complying with revised effluent limitations resulting from the proposed rule. The Department has reviewed potentially affected permits and included the estimated costs to comply with the proposed rule discussed above. Beyond these costs, this

rule would not impose any additional program, service, duty, or responsibility upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork

As part of the SPDES program, all significant permittees (for permit classifications see the Department's Technical & Operational Guidance Series (TOGS) 1.2.2) are required to periodically report monitoring data for substances included in their permit. The proposed regulations are not expected to increase or decrease the number of significant SPDES permittees. Dischargers that may be required to report on a parameter for which they were previously not regulated would have to maintain records and report the discharge level of the newly regulated parameter on existing reports. This proposed rule does not require the submission of any new forms.

7. Duplication

Both federal law and federal regulations set forth requirements for states regarding water quality standards (uses and criteria). Under federal law, promulgation of surface water standards is primarily a state responsibility. EPA provides oversight and guidance and approves state standards for surface water, but does not promulgate standards that apply nationwide. However, where a state's standards are inadequate, and EPA disapproves, EPA must then promulgate standards for the state if the state does not timely address the inadequacies.

8. Alternatives

The Department considered the "no action" alternative which would place the state in the position of not meeting the federal BEACH Act. The no action alternative was rejected as it was determined to be less protective of coastal recreation waters than the proposed rule and would not implement the requirements of the BEACH Act. The "no action" alternative for the reclassification was also rejected because the reclassification is appropriate at this time because of improvements in water quality since 1985 and because the two large coastal waters are adjacent to numerous public beaches.

9. Federal Standards

The proposed regulatory changes do not exceed any federal minimum standards. The proposal is consistent with the requirements of the federal BEACH Act. For more information, please see Section 7 of this document, titled "Duplication."

10. Compliance Schedule

The proposed rule, if adopted, would take effect on the date that the Notice of Adoption is published in the State Register. However, the Department recognizes that it may be unreasonable, both physically and fiscally, to expect regulated parties to comply with the regulations immediately. After the rulemaking becomes effective it would be implemented in permits when modified. If additional treatment is required, a compliance schedule in the permit may be established on a case-by-case basis with the permittee, and may require the permittee to submit a report describing their chosen treatment alternative and include a schedule for construction. Under such a scenario, the Department would review and, if appropriate, would approve the report before construction would commence. Although it is difficult to estimate, with accuracy, the amount of time necessary for regulated parties to achieve compliance with the proposed rule, it is expected that the Department will be able to review and renew affected permits within five years of the effective date of promulgation.

Revised Regulatory Flexibility Analysis

The New York State Department of Environmental Conservation (Department) is proposing new standards for all coastal recreation waters to meet the requirements of the federal Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000 (P.L. 106-284). In addition, the Department is proposing to reclassify certain Class I waters consisting of Upper New York Bay and a portion of Lower New York Bay to add the best usage of primary contact recreation to these waters.

1. Effect of Rule

The Department reviewed the proposed rule and identified the likely anticipated costs that are set forth in this section. The Department identified 41 municipal wastewater treatment plants ranging from 0.1 million gallons per day (MGD) to 135 MGD treatment capacity discharging to coastal recreation waters (including waters proposed for reclassification by this rule). Sixteen (16) of the 41 municipal wastewater treatment plants discharge to the Great Lakes, while the remaining 25 facilities discharge to marine coastal recreation waters (including waters proposed for reclassification by this rule). Additionally, 4 Private, Commercial, and Institutional (PCI) facilities were identified as surface water sanitary dischargers to marine coastal recreation waters.

The financial impact due to the adoption of the proposed E. coli standard is considered to be de minimus, as existing disinfection treatment facilities discharging to the Great Lakes are expected to meet the proposed standard without significant adjustments.

Under the proposed enterococci standards 25 municipal wastewater treatment plants and 4 PCI facilities discharging to marine coastal recreation waters (including waters proposed for reclassification by this rule) will likely need to upgrade their existing disinfection systems or incur increased operation and maintenance (O&M) costs resulting from higher dosing. The Department analyzed the costs associated with disinfection using chlorination and ultraviolet radiation (UV).

The estimated unit cost for building a UV disinfection system is \$512,676/MGD design flow in capital costs with an estimated O&M cost of \$10,000/MGD per year. Given that the total capital cost for conversion to UV disinfection is significantly higher than other alternatives, the estimated financial impact assumes that the impacted facilities will not choose the UV option. For facilities that already have an existing UV disinfection system, the most cost-effective alternative is to double the UV light intensity or dosing, thus the financial impact of \$10,000/MGD per year will be that resulting solely from increased O&M expenditures. Construction of a de-chlorination facility is estimated to cost \$220,000/ MGD. The average O&M cost of approximately \$18,600/MGD per year was used to determine the potential financial impact associated with O&M for facilities utilizing chlorination and de-chlorination and \$27,900/MGD per year for facilities that currently chlorinate but will need to add de-chlorination facilities. The estimated total financial impact is as follows: 9 municipal wastewater treatment facilities and 2 PCI facilities would incur a collective capital cost of approximately \$55 million to construct chlorination/dechlorination; 29 impacted facilities would incur increased O&M costs, collectively totaling approximately \$14 million per year.

Certain coastal Class SB waters (including waters proposed for reclassification from Class I to Class SB by this rule) are impacted by Combined Sewer Overflows (CSO). The New York City (NYC) CSO control program is being implemented through the development of Long Term Control Plans (LTCPs). The LTCPs must meet the regulatory requirements of the EPA's CSO Control Policy as per the Clean Water Act (CWA) section 402(q), and adhere to the terms of the 2005 Consent Order between NYSDEC and NYC (Case No. CO2-20000107-8), as modified in 2008, 2009, 2012, 2015, 2016, and 2017 (collectively the "Consent Order"). LTCPs evaluate the cost-effectiveness of a range of control options/strategies, including up to 100% CSO capture. Given that NYC must currently comply with EPA's CSO control policy through the development and implementation of these LTCPs, no additional costs are anticipated to be driven by this rulemaking beyond those already required by the Consent Order, the LTCPs, NYC's State Pollutant Discharge Elimination System (SPDES) Permits, the CSO Control Policy and CWA section 402(q). These existing and continuing requirements are expected to result in the submission of approvable Jamaica Bay and City-Wide LTCPs that will include projects designed to achieve the highest attainable condition within the CSO impacted waterbodies.

The proposed reclassification would also cause a more stringent, existing Class SB aquatic life standard for Dissolved Oxygen (DO) to apply to these waters. The existing DO standard for Class I is a minimum of 4.0 mg/L, while the existing DO standard for Class SB is a minimum of 4.8 mg/L, with allowable excursions below 4.8 mg/L for limited periods of time. An examination of the current DO levels in these water bodies reveals that the new standard would be attained and not likely result in additional costs.

2. Compliance Requirements

As part of the SPDES program, all significant permittees (for permit classifications see the Department's Technical & Operational Guidance Series (TOGS) 1.2.2) are required to periodically report monitoring data for substances include in their permit. The proposed regulations are not expected to increase or decrease the number of significant SPDES permittees. Dischargers that may be required to report on a parameter for which they were previously not regulated would have to maintain records and report the discharge level of the newly regulated parameter on existing reports. This proposed rule does not require the submission of any new forms. As mentioned above, the Department has identified costs associated with the proposed rule that may be incurred by small businesses or local governments.

3. Professional Services

There may be professional engineering services needed for the facilities potentially affected by the proposed rule, as mentioned above, to upgrade existing disinfection systems.

4. Compliance Costs

The Department reviewed the proposed rule and identified the likely anticipated costs that are set forth in this section. The estimated total financial impact for the municipal wastewater treatment facilities and PCI facilities to meet the proposed standards is a capital cost of approximately \$55 million and a net increase in O&M costs of approximately \$14 million per year. For a more detailed discussion please see above.

5. Economic and Technological Feasibility

The Department has concluded that compliance by regulated parties is both economically and technologically feasible. Under the proposed enterococci standards 25 municipal wastewater treatment plants and 4 PCI facilities discharging to marine coastal recreation waters (including waters proposed for reclassification by this rule) will likely need to upgrade their existing disinfection systems or incur increased O&M costs resulting from higher dosing.

6. Minimizing Adverse Impact

In developing this rulemaking, consideration was given to approaches that would minimize adverse economic impacts of the rule on small businesses and local governments such as differing requirements, outcome standards, and potential exemptions from coverage. Given the nature of this rule, and in order to adequately protect the waters of the State and to meet the requirements of federal law, differing requirements or potential exemptions for small businesses and local governments were not feasible. However, for the potentially impacted facilities subject to this rule, the Department will allow necessary time to establish a path to compliance.

The proposed regulatory changes, if adopted, would take effect on the date that the Notice of Adoption is published in the State Register. The Department recognizes that it may be unreasonable, both physically and fiscally, to expect regulated parties to comply with the regulations immediately. After the rulemaking becomes effective it would be implemented in permits when modified. If additional treatment is required, a compliance schedule in the permit may be worked out on a case-by-case basis with the permittee. Such a compliance schedule may require the permittee to submit a report describing their chosen treatment alternative and include a schedule for construction. Under such a scenario, the Department would review and, if appropriate, would approve the report before construction would commence. Although it is difficult to estimate, with accuracy, the amount of time necessary for regulated parties to achieve compliance with the proposed rule, it is expected that the Department will be able to review and renew affected permits within five years of the effective date of promulgation.

7. Small Business and Local Government Participation

The Department will inform the public about the proposed rule through the Department website, letters to dischargers and municipalities, and notices in the Environmental Notice Bulletin and the State Register. The Department will hold two public hearings pertaining to the rulemaking. The public will have the opportunity to comment on the proposed rule by attending a public hearing or by submitting written comments to the Department.

Revised Job Impact Statement

This document is prepared in accordance with the State Administrative Procedure Law (SAPA) § 201-a. Pursuant to SAPA § 201-a (2) (a), the Department has determined that a Job Impact Statement is not required because the proposed rule will not have a substantial adverse impact on jobs and employment opportunities. This document contains the Department's rationale for this determination.

1. Nature of Impact

The Department is proposing new standards for all coastal recreation waters to meet the requirements of the federal Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000 (P.L. 106-284). In addition, the Department is proposing to reclassify certain Class I waters consisting of Upper New York Bay and a portion of Lower New York Bay to add the best usage of primary contact recreation to these waters. The only businesses or entities that could potentially be adversely impacted by this rule are those that hold State Pollutant Discharge Elimination System (SPDES) permits for discharge to the affected waterbodies.

2. Categories and Numbers Affected

The Department reviewed the proposed rule and identified the likely anticipated costs that are set forth in this section. The Department identified 41 municipal wastewater treatment plants ranging from 0.1 million gallons per day (MGD) to 135 MGD treatment capacity discharging to coastal recreation waters (including waters proposed for reclassification by this rule). Sixteen (16) of the 41 municipal wastewater

treatment plants discharge to the Great Lakes, while the remaining 25 facilities discharge to marine coastal recreation waters (including waters proposed for reclassification by this rule). Additionally, 4 Private, Commercial, and Institutional (PCI) facilities were identified as surface water sanitary dischargers to marine coastal recreation waters.

The financial impact due to the adoption of the proposed E. coli standard is considered to be de minimis, as existing disinfection treatment facilities discharging to the Great Lakes are expected to meet the proposed standard without significant adjustments. Under the proposed enterococci standards 25 municipal wastewater treatment plants and 4 PCI facilities discharging to marine coastal recreation waters (including waters proposed for reclassification from Class I to Class SB by this rule) will likely need to upgrade their existing disinfection systems or incur increased operation and maintenance (O&M) costs resulting from higher dosing. The Department analyzed the costs associated with disinfection using chlorination and ultraviolet radiation (UV).

The estimated unit cost for building a UV disinfection system is \$512,676/MGD design flow in capital costs with an estimated O&M cost of \$10,000/MGD per year. Given that the total capital cost for conversion to UV disinfection is significantly higher than other alternatives, the estimated financial impact assumes that the impacted facilities will not choose the UV option. For facilities that already have an existing UV disinfection system, the most cost-effective alternative is to double the UV light intensity or dosing, thus the financial impact of \$10,000/MGD per year will be that resulting solely from increased O&M expenditures. Construction of a de-chlorination facility is estimated to cost \$220,000/ MGD. The average O&M cost of approximately \$18,600/MGD per year was used to determine the potential financial impact associated with O&M for facilities utilizing chlorination and de-chlorination and \$27,900/MGD per year for facilities that currently chlorinate but will need to add de-chlorination facilities.

The estimated total financial impact is as follows: 9 municipal wastewater treatment facilities and 2 PCI facilities would incur a collective capital cost of approximately \$55 million to construct chlorination/dechlorination; 29 impacted facilities would incur increased O&M costs, collectively totaling approximately \$14 million per year.

Although these costs are not de minimis, they are spread across a large number of facilities over time and are not likely to impact in any measurable way job opportunities in New York State. To the contrary, this rule may create job opportunities for engineers and construction firms to design and construct necessary waste water treatment plant retrofits.

Certain coastal Class SB waters (including waters proposed for reclassification from Class I to Class SB by this rule) are impacted by Combined Sewer Overflows (CSO). The New York City (NYC) CSO control program is being implemented through the development of Long Term Control Plans (LTCPs). The LTCPs must meet the regulatory requirements of the EPA's CSO Control Policy as per the Clean Water Act (CWA) section 402 (q), and adhere to the terms of the 2005 Consent Order between NYSDEC and NYC (Case No. CO2-20000107-8), as modified in 2008, 2009, 2012, 2015, 2016, and 2017 (collectively the "Consent Order"). LTCPs evaluate the cost-effectiveness of a range of control options/strategies, including up to 100% CSO capture. Given that NYC must currently comply with EPA's CSO control policy through the development and implementation of these LTCPs, no additional costs are anticipated to be driven by this rulemaking beyond those already required by the Consent Order, the LTCPs, NYC's SPDES Permits, the CSO Control Policy and CWA section 402 (q). These existing and continuing requirements are expected to result in the submission of approvable Jamaica Bay and City-Wide LTCPs that will include projects designed to achieve the highest attainable condition within the CSO impacted waterbodies.

The proposed reclassification would also cause a more stringent, existing Class SB aquatic life standard for Dissolved Oxygen (DO) to apply to these waters. The existing DO standard for Class I is a minimum of 4.0 mg/L, while the existing DO standard for Class SB is a minimum of 4.8 mg/L, with allowable excursions below 4.8 mg/L for limited periods of time. An examination of the current DO levels in these water bodies reveals that the new standard would be attained and not likely result in additional costs.

3. Regions of Adverse Impact

This rule would set forth new water quality standards for coastal recreation waters. These waters are found along the shores of Bronx, Cayuga, Chautauqua, Erie, Jefferson, Kings, Monroe, Nassau, Niagara, Orleans, Oswego, Queens, Richmond, St. Lawrence, Suffolk, Wayne, and

Westchester counties. This rule would also upgrade the classification of Class I coastal waters of Upper New York Bay and a portion of Lower New York Bay, found along the shores of Kings, New York, and Richmond counties. However, as mentioned above, the proposed rule is not likely to negatively impact in any measurable way job opportunities in the state of New York. To the contrary, this rule may create job opportunities for engineers and construction firms to design and construct necessary wastewater treatment plant retrofits and may result in fewer beach closures which in turn would potentially increase tourism revenue for the affected areas.

4. Minimizing Adverse Impact

The proposed regulatory changes, if adopted, would take effect on the date that the Notice of Adoption is published in the State Register. However, the Department recognizes that it may be unreasonable, both physically and fiscally, to expect regulated parties to comply with the regulations immediately. After the rulemaking becomes effective it would be implemented in permits when modified. If additional treatment is required, a compliance schedule in the permit may be worked out on a case-by-case basis with the permittee. Such a compliance schedule may require the permittee to submit a report describing their chosen treatment alternative and include a schedule for construction. Under such a scenario, the Department would review and, if appropriate, would approve the report before construction would commence. Although it is difficult to estimate, with accuracy, the amount of time necessary for regulated parties to achieve compliance with the proposed rule, it is expected that the Department will be able to review and renew affected permits within five years of the effective date of promulgation.

5. Conclusion

The Department has determined that this potential impact is not a "substantial adverse impact on jobs and employment opportunities" as that term is defined in section 201-a (6) (c) of the New York State Administrative Procedure Act. In addition, this rule will not have a measurable impact on self-employment. Therefore, the Department has determined that a Job Impact Statement is not required.

EMERGENCY RULE MAKING

Sanitary Condition of Shellfish Lands

I.D. No. ENV-21-18-00027-E

Filing No. 410

Filing Date: 2018-05-02

Effective Date: 2018-05-02

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

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

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

Finding of necessity for emergency rule: Preservation of public health.

Specific reasons underlying the finding of necessity: Shellfish are filter feeders that consume plankton, other minute organisms and particulate matter found in the water column. They are capable of accumulating pathogenic bacteria, viruses and toxic substances within their bodies. Consequently, shellfish harvested from areas that do not meet the bacteriological standards for certification have an increased potential to cause illness in shellfish consumers. Closures of shellfish lands that do not meet the water quality standards provide essential protection of public health. Some shellfish growing areas will require reclassification as uncertified year-round and/or seasonally uncertified. Recent evaluations of current water quality data indicate that the bacteriological standards for certified shellfish lands are not being met in the affected areas and an increased risk of illness exists for shellfish consumers.

Some shellfish growing areas will require reclassification as certified year-round and seasonally uncertified. Recent evaluations of current water quality data also indicate that the bacteriological standards for other shellfish growing areas are being met and those areas can be reclassified as certified year-round or seasonally uncertified for the harvest of shellfish. Technical changes are also needed to clarify descriptions for enforcement purposes, to correct inconsistent spellings of similar names and to remove unnecessary ordinal indicators in the description of closure dates.

The promulgation of this regulation on an emergency basis is necessary to protect public health. If the department does not adopt this rule making on an emergency basis, areas that do not meet bacteriological standards

will remain open for the harvest and consumption of potentially harmful shellfish.

Subject: Sanitary Condition of Shellfish Lands.

Purpose: To reclassify underwater shellfish lands to protect public health.

Text of emergency rule: 6 NYCRR Part 41 is amended to read as follows:

Clause 41.2(b)(1)(ii)(‘e’) is amended to read as follows:

(‘e’) [All] *During the period of November 1 through April 30, both dates inclusive, all that area of East Bay and all other bays, creeks, canals and tributaries lying [east and within the boundaries north of a line extending southerly from the westernmost point of land at Big Crow Island at Neds Creek to the southwestern corner of the Fundy Channel Bridge of the Meadowbrook Parkway on West Crow Island, and] north of a line extending easterly from the southwestern corner of the Fundy Channel Bridge of the Meadowbrook Parkway on West Crow Island to the northwestern tip of the Sloop Channel Bridge of the Wantagh State Parkway connecting Green Island with Jones Beach State Park, and west of a line extending northerly along the western shoreline of Green Island to the southwestern tip of the Goose Creek Bascule Bridge of the Wantagh State Parkway, connecting Green Island with Great (Low) Island, [and south of a line extending westerly to the westernmost point of land of Big Crow Island on Neds Creek.] then continuing northerly along the shoreline to the westernmost point of Great (Low) Island, and continuing northwesterly to the southernmost point of land at Whaleneck Point, and lying south and east of a line extending southwest to the northernmost tip of Big Crow Island at Neds Creek, continuing along the western shore of Big Crow Island, to the southwestern corner of the Fundy Channel Bridge of the Meadowbrook Parkway on West Crow Island.*

Clause 41.2(b)(3)(ii)(‘c’) is amended to read as follows:

(‘c’) All that area of West Pond and *that portion of Hempstead Harbor lying [southerly and easterly of a line extending northerly from the westernmost end of the rock jetty, located southerly of the mouth of West Pond, to the westernmost end of the rock jetty with adjacent wooden walkway, located on Dosoris Island, northerly of the mouth of West Pond (local names, local landmarks).] between lines extending 500 feet northwesterly from the seaward ends of the rock jetties on each side of the entrance to West Pond (local names, local landmarks).*

Clause 41.2(b)(4)(ii)(‘c’) is amended to read as follows:

(‘c’) All that area of West Pond and *that portion of Hempstead Harbor lying [southerly and easterly of a line extending northerly from the westernmost end of the rock jetty, located southerly of the mouth of West Pond, to the westernmost end of the rock jetty with adjacent wooden walkway, located on Dosoris Island, northerly of the mouth of West Pond (local names, local landmarks).] between lines extending 500 feet northwesterly from the seaward ends of the rock jetties on each side of the entrance to West Pond (local names, local landmarks).*

Subparagraph 41.3(b)(4)(xiv) is amended to read as follows:

(xiv) [Noyac] *Noyack* Creek. During the period May [1st] 1 through November [30th] 30 (both dates inclusive) all that area of [Noyac] *Noyack* Creek lying southerly of a line extending southwesterly from the southwesternmost point of land on Clam Island to the opposite shoreline located at Morton National Wildlife Refuge in Noyack.

Clauses 41.3(b)(4)(xv)(‘a’), (‘b’) and (‘c’) are amended to read as follows:

(‘a’) During the period May [15th] 1 through [October 15th] *November 30* (both dates inclusive), all that area of Cold Spring Pond within the *former* Lobster Inn Boat Basin (local names, local landmark), lying northwest of a line extending northeasterly along the fixed wooden dock of the *former* Lobster Inn Restaurant to the opposite shoreline, and all that area lying southeast of a line extending southwesterly from the northwesternmost point of land on the unnamed peninsula bordering the northeastern side of the cove, continuing southwesterly to the opposite shoreline (adjacent to the *former* Lobster Inn Restaurant).

(‘b’) During the period January [1st] 1 through December [31st] 31 (both dates inclusive), all that area of the *former* Lobster Inn Boat Basin lying southeast of a line extending northeasterly along the fixed wooden dock of the *former* Lobster Inn Restaurant to the opposite shoreline.

(‘c’) During the period May [1st] 1 through November [30th] 30, both dates inclusive, all that area of Cold Spring Pond lying northeast of a line extending southeasterly from an orange marker located on the northern shoreline in the northeastern corner of the pond to another orange marker located on the eastern shoreline adjacent to Shrubland Road.

Subparagraph 41.3(b)(5)(vii) is amended to read as follows:

(vii) [During the period May 15th through October 15th (both dates inclusive), all] *Devon Yacht Club*. All that area of the Devon Yacht Club Boat Basin (local name), located on the southern side of Napeague Bay.

Clause 41.3(b)(5)(viii)(‘a’) is amended to read as follows:

(‘a’) *Alewife Pond*. All that area of Alewife Pond, including entrance channel and all that area of Northwest Harbor, within [50] 300 yards in all directions from the inlet of Alewife Pond.

Clause 41.3(b)(5)(ix)(‘c’) is amended to read as follows:

(‘c’) In the absence of [the] *one or both* painted markers, all of Northwest Creek is uncertified.

Clause 41.3(b)(7)(iii)(‘c’) is amended to read as follows:

(‘c’) Wickham Creek. *During the period of May 15 through October 31, both dates inclusive, all that area of Wickham Creek and its tributaries.*

Subclauses 41.3(b)(7)(iii)(‘c’)(‘1’) and (‘2’) are repealed.

Subclause 41.3(b)(7)(iii)(‘c’)(‘3’) is renumbered Subclause 41.3(b)(7)(iii)(‘c’)(‘1’).

Clause 41.3(b)(7)(xi)(‘e’) is amended to read as follows:

(‘e’) West Creek. During the period of [May 1st through November 30th] *January 1 through December 31, both dates inclusive, all that area of West Creek [including], and all that area of Great Peconic Bay within 750 feet in all directions of the southernmost point of the jetty on the east side of the mouth of West Creek.*

Subclause 41.3(b)(7)(xii)(‘b’)(‘2’) is amended to read as follows:

(‘2’) During the period [April 15th to December 31st] *May 1 through November 30, both dates inclusive, all that area of Jockey Creek, Town Creek and tributaries, lying west of a line extending southerly from the south end of Terry Road directly to the opposite shore.*

Clause 41.3(b)(7)(xii)(‘d’) is amended to read as follows:

(‘d’) Goose Creek. During the period [April 15th through December 31st] *May 1 through November 30, both dates inclusive, all that area of Goose Creek lying south and west of the Goose Creek Bridge (local landmarks).*

Clause 41.3(b)(7)(xiii)(‘a’) is amended to read as follows:

(‘a’) *Oyster Ponds*. During the period May 15[th] through October 31[st], both dates inclusive, all that area of Orient Harbor [lying east of a line extending northerly from the tip of the northwesternmost dock of the Orient Yacht Club to the northernmost corner of the bulkhead at the shoreline at the foot of the Harbor River Road] *and its tributaries lying north and east of the fixed dock at Orient Yacht Club and then east of a line extending northerly from the northwestern corner of the northwestern most dock of the Orient Yacht Club to an orange marker on the beach 275 yards northwest of the northernmost corner of the bulkhead at the foot of Harbor River Road and all that area of Oyster Ponds in its entirety.*

Clauses 41.3(b)(7)(xiii)(‘c’) and (‘d’) are repealed.

Clause 41.3(b)(7)(xiii)(‘e’) is renumbered Clause 41.3(b)(7)(xiii)(‘c’).

Renumbered Clause 41.3(b)(7)(xiii)(‘c’) is amended to read as follows:

(‘c’) Spring Pond. During the period January 1[st] through December 31[st], both dates inclusive, all that area of Spring Pond including tributaries, *and all that area of Orient Harbor within 500 feet in all directions of the southeastern end of the easternmost bulkhead at the entrance to Spring Pond.*

Clause 41.3(b)(7)(xiii)(‘f’) is repealed.

Subparagraph 41.3(b)(7)(xv) is amended to read as follows:

(xv) Little Peconic Bay. Richmond Creek. During the period [April 1st] *May 1* through October 31[st], both dates inclusive, all that area of Richmond Creek lying west of a line extending north from the easternmost point of land at the south side of the mouth of Richmond Creek to the opposite shore.

Paragraph 41.3(b)(10) is amended to read as follows:

(10) Town of [Smith Town] *Smithtown*

Clauses 41.3(b)(10)(i)(‘a’) and (‘b’) are amended to read as follows:

(‘a’) All that area of Smithtown Bay, including the Nissequogue River and its tributaries and Sunken Meadow Creek, lying south of a line extending northeasterly from the flagpole at the East Bath House at Sunken Meadow State Park (local landmark) to Buoy BW “NR”, located *(at coordinates 40° 55.395' N latitude and 73° 13.745' W longitude)*, approximately one mile north of the mouth of the Nissequogue River, thence southeasterly to the flagpole located at the Town of Smithtown Beach at Short Beach (local landmark).

(‘b’) All that area within a one-half mile radius of Buoy BW “NR”, *(at coordinates 40° 55.395' N latitude and 73° 13.745' W longitude)*, approximately one mile north of the mouth of the Nissequogue River.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire July 30, 2018.

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

Regulatory Impact Statement

1. Statutory authority:

The statutory authority for designating shellfish lands as certified or uncertified is given in Environmental Conservation Law (ECL) section

13-0307. Subdivision 1 of section 13-0307 of the ECL requires the Department of Environmental Conservation (the department) to periodically conduct examinations of all shellfish lands within the marine district to ascertain the sanitary condition of these areas. Subdivision 2 of this section requires the department to certify which shellfish lands are in such sanitary condition that shellfish may be taken for food. Such lands are designated as certified shellfish lands. All other shellfish lands are designated as uncertified. The statutory authority for promulgating regulations with respect to the harvest of shellfish is given in ECL section 13-0319.

2. Legislative objectives:

There are two purposes of the legislation: to ensure that shellfish lands are appropriately classified as either certified or uncertified and to protect public health by preventing the harvest and consumption of shellfish from lands that do not meet the standards for a certified shellfish land. This legislation requires the department to examine shellfish lands and determine which shellfish lands meet the sanitary criteria for a certified shellfish land, as set forth in Part 47 of Title 6 NYCRR, promulgated pursuant to section 13-0319 of the ECL. Shellfish lands which meet these criteria must be designated as certified. Shellfish lands which do not meet criteria must be designated as uncertified to prevent the harvest of shellfish from those lands.

3. Needs and benefits:

To protect public health and to comply with ECL 13-0307, the Division of Marine Resources' Shellfish Sanitation Program conducts and maintains sanitary surveys of shellfish growing areas (SGA) in the marine district in New York State. Maintenance of these surveys includes the regular collection and bacteriological examination of water samples to monitor the sanitary condition of SGAs. Annual water quality evaluation reports written in 2017 are prepared by the staff of the Shellfish Sanitation Program for each SGA. These reports present the results of statistical analyses of water quality data comprised of a minimum of 30 water quality data points. The years involved can vary based on the number of samples collected for each year, for each growing area.

The report summary may state that all or portions of an SGA should be designated as uncertified for the harvest of shellfish or that all, or portions of an SGA should be designated as certified or seasonally uncertified for the harvest of shellfish based on criteria in 6NYCRR Part 47. Seasonally uncertified areas are closed for the harvest of shellfish during particular months that are specified in regulations and those months can vary from SGA to SGA.

Regulations that designate shellfish lands as certified are needed to allow the harvest of shellfish from lands that meet the sanitary criteria for a certified area. Shellfish are a valuable state resource and, where possible, should be available for commercial and recreational harvest. The classification of previously uncertified shellfish lands as certified may provide additional sources of income for commercial shellfish diggers by increasing the amount of areas available for harvest. The direct harvest of shellfish for use as food is allowed from certified shellfish lands only. Recreational harvesters also benefit by having increased harvest opportunities and the ability to make use of a natural resource readily available to the public.

Regulations that designate shellfish lands as uncertified are needed to prevent the harvest and consumption of shellfish from lands that do not meet the sanitary criteria for a certified area. Shellfish harvested from uncertified shellfish lands have a greater potential to cause human illness due to the possible presence of pathogenic bacteria or viruses. These pathogens may cause the transmission of infectious disease to the shellfish consumer.

These regulations also protect the shellfish industry. Commercial shellfish harvesters and seafood wholesalers, retailers, and restaurants are adversely affected by public reaction to instances of shellfish related illness. By prohibiting the harvest of shellfish from lands that fail to meet the sanitary criteria, these regulations can ensure that only wholesome shellfish are allowed to be sold to the shellfish consumer.

Additionally, these regulations include changes to the shellfish growing area descriptions that will update, clarify and correct them to match the current physical appearance and names of local landmarks cited in the descriptions and to achieve better consistency within Part 41. These changes will aid harvesters and law enforcement officials in determining which areas are uncertified for the harvest of shellfish.

4. Costs:

There will be no costs to State or local governments. No direct costs will be incurred by regulated commercial shellfish harvesters in the form of initial capital investment or initial non-capital expenses, in order to comply with these proposed regulations. The department cannot provide an estimate of potential lost income to shellfish harvesters when areas are classified as uncertified, due to a number of variables that are associated with commercial shellfish harvesting; nor can the potential benefits be estimated when areas are reopened. Those variables are listed in the following three paragraphs.

As of December 31, 2016, the department had issued 1,746 New York State shellfish digger's permits for the year 2016. However, the actual number of those individuals who harvest shellfish commercially full time is not known. Recreational harvesters who wish to harvest more than the daily recreational limit of 100 hard clams, with no intent to sell their catch, can only do so by purchasing a New York State digger's permit. The number of individuals who hold shellfish digger's permits for that type of recreational harvest is unknown. The department's records do not differentiate between full time and part-time commercial or recreational shellfish harvesters.

The number of harvesters working in a particular area cannot be estimated for the reason stated above. In addition, the number of harvesters in a particular area is dependent upon the season, the amount of shellfish resource in the area, the price of shellfish and other economic factors, unrelated to the department's proposed regulatory action. When a particular area is classified as uncertified (closed to shellfish harvesting), harvesters can shift their efforts to other certified areas.

Estimates of the existing shellfish resource in a particular embayment are not known. Recent shellfish population assessments have not been conducted by the department. Without this information, the department cannot determine the effect a closure or reopening would have on the existing shellfish resource.

The department's actions to classify areas as certified or uncertified are not dependent on the shellfish resources in a particular area. They are based solely on the results of water quality analyses, the need to protect public health, and statutory requirements.

There is no cost to the department. Administration and enforcement of the proposed amendment are covered by existing programs.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

No new paperwork is required.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

There are no acceptable alternatives. ECL section 13-0307 stipulates that when the department has determined that a shellfish land meets the sanitary criteria for certified shellfish lands, the department must designate the land as certified and open to shellfish harvesting. All other shellfish lands must be designated as uncertified and closed to shellfish harvesting. These actions are necessary to protect public health. Failure to comply with the National Shellfish Sanitation Program (NSSP) guidelines could result in a ban on New York State shellfish in interstate commerce and would cause undue hardship to the commercial harvesting industry.

9. Federal standards:

There are no federal standards regarding the certification of shellfish lands. New York and other shellfish producing and shipping states participate in the National Shellfish Sanitation Program (NSSP) which provides guidelines intended to promote uniformity in shellfish sanitation standards among members. The NSSP is a cooperative program consisting of the federal government, states and the shellfish industry. Participation in the NSSP is voluntary, but participating states agree to follow NSSP water quality standards. Each state adopts its own regulations to implement a shellfish sanitation program consistent with the NSSP. The U.S. Food and Drug Administration (FDA) evaluates state programs and standards relative to NSSP guidelines. Substantial non-conformity with NSSP guidelines can result in sanctions being taken by FDA, including removal of the state's shellfish shippers from the Interstate Certified Shellfish Shippers List. This would effectively bar a non-conforming state's shellfish products from interstate commerce.

10. Compliance schedule:

Compliance with any new regulations designating areas as certified or uncertified does not require additional capital expense, paperwork, record keeping or any action by the regulated parties. Immediate compliance with any regulation designating shellfish lands as uncertified is necessary to protect public health. Shellfish harvesters are notified of changes in the classification of shellfish lands by mail either prior to, or concurrent with, the adoption of new regulations. Therefore, immediate compliance can be readily achieved.

Regulatory Flexibility Analysis

1. Effect of rule:

As of December 31, 2016, there were 1,746 licensed shellfish diggers in New York State for the year 2016. The numbers of permits issued for areas in the State are as follows: Town of Babylon, 47; Town of Brookhaven, 286; Town of East Hampton, 235; Town of Hempstead, 108; Town of Huntington, 156; Town of Islip, 139; Town of North Hempstead, 9; Town of Oyster Bay, 108; Town of Riverhead, 69; Town of Shelter Island, 52; Town of Smithtown, 38; Town of Southampton, 173; Town of Southold, 251; New York City, 46; and Other, 16.

The Department of Environmental Conservation (the department) periodically conducts examinations of all shellfish lands within the marine district to ascertain the sanitary condition of these areas. As a result of these examinations, the department will designate lands as certified for the harvest of shellfish or uncertified for the harvest of shellfish. Any change in the designation of shellfish lands may have an effect on shellfish diggers. Each time shellfish lands or portions of shellfish lands are designated as uncertified, there may be some loss of income for shellfish diggers who are harvesting shellfish from the lands to be closed. This loss may be determined by the acreage to be closed, the type of closure (whether year-round or seasonal), the species of shellfish present in the area, the area's productivity, and the market value of the shellfish resource in the particular area.

When uncertified shellfish lands are found to meet the department's sanitary criteria and are designated by the department as certified, there is a benefit to shellfish diggers. More shellfish lands are made available for the harvest of shellfish, and there is a potential for an increase in income for shellfish diggers. Again, the effect of the re-opening of a harvesting area is determined by the shellfish species present, the area's productivity, and the market value of the shellfish resource in the area.

Shellfish growing area descriptions will be updated, clarified and corrected to match the current physical appearance and names of local landmarks cited in the descriptions and to achieve better consistency within Part 41. These changes will aid harvesters and law enforcement officials in determining which areas are uncertified for the harvest of shellfish.

Local governments on Long Island exercise management authority and share law enforcement responsibility for shellfish with the State and the counties of Nassau and Suffolk. These include the towns of Hempstead, North Hempstead and Oyster Bay in Nassau County and the towns of Babylon, Islip, Brookhaven, Southampton, East Hampton, Southold, Shelter Island, Riverhead, Smithtown and Huntington in Suffolk County. Changes in the classification of shellfish lands impose no additional requirements on local governments above the level of management and enforcement that they normally undertake; therefore, there should be no effect on local governments.

2. Compliance requirements:

There are no reporting or recordkeeping requirements for small businesses or local governments.

3. Professional services:

Small businesses and local governments will not require any professional services to comply with proposed rules.

4. Compliance costs:

There are no capital costs which will be incurred by small businesses or local governments.

5. Economic and technological feasibility:

There is no reporting, recordkeeping, or affirmative actions that small businesses or local governments must undertake to comply with the proposed rules. Similarly, small businesses and local governments will not have to retain any professional services or incur any capital costs to comply with such rules. As a result, it should be economically and technically feasible for small businesses and local governments to comply with this rule.

6. Minimizing adverse impact:

The designation of shellfish lands as uncertified may have an adverse impact on commercial shellfish diggers. All diggers in the towns affected by proposed closures will be notified by mail of the designation of shellfish lands as uncertified prior to, or concurrent with the date the closures go into effect. Shellfish lands which fail to meet the sanitary criteria during specific months of the year will be designated as uncertified only during those months. During the other months, shellfish may be harvested from those lands when they are certified. To further minimize any adverse effects of proposed closures, towns may request that uncertified shellfish lands be considered for conditionally certified designation or for a shellfish transplant project. Shellfish diggers will also be able to shift harvesting effort to nearby certified shellfish lands. There should be no significant adverse impact on local governments from these changes in the classification of shellfish lands.

7. Small business and local government participation:

Impending shellfish closures are discussed at regularly scheduled Shellfish Advisory Committee meetings. This committee, organized by the department, is comprised of representatives of local baymen's associations, shellfish shippers and local town officials. Through their representatives, shellfish harvesters and shippers can express their opinions and give recommendations to the department concerning shellfish land classification. Local governments, state legislators, and baymen's organizations are notified by mail and given the opportunity to comment on any proposed rulemaking. The department will consider any such comments prior to filing a Notice of Adoption with the Department of State.

8. Cure period or other opportunity for ameliorative action:

Pursuant to SAPA 202-b (1-a)(b), no such cure period is included in the rule because of the potential adverse impact that it could have on the health of shellfish consumers. Immediate compliance is required to ensure that public health is protected.

9. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

The rule will be reviewed in three years.

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. This rule making only affects the marine and coastal district of the State; there are no rural areas within the marine and coastal district. The shellfish fishery is entirely located within the marine and coastal district, and is not located adjacent to any rural areas of the State. The proposed rule will not impose any reporting, record keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 41, DEC has determined that a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

Environmental Conservation Law section 13-0307 requires that the department examine shellfish lands and certify which shellfish lands are in such sanitary condition that shellfish may be taken for use as food. Shellfish lands that do not meet the criteria for certified (open) shellfish lands must be designated as uncertified (closed) to protect public health.

Rule makings to amend 6 NYCRR 41, Sanitary Condition of Shellfish Lands, can potentially have a positive or negative effect on jobs for shellfish harvesters. Amendments to reclassify areas as certified may increase job opportunities, while amendments to reclassify areas as uncertified may limit harvesting opportunities.

The department does not have specific information regarding the locations in which individual diggers harvest shellfish, and therefore is unable to assess the specific job impacts on individual shellfish diggers. In general terms, amendments of 6 NYCRR Part 41 to designate areas as uncertified can have negative impacts on harvesting opportunities. The extent of the impact will be determined by the acreage closed, the type of closure (year-round or seasonal), the area's productivity, and the market value of the shellfish. In general, any negative impacts are small because the department's actions to designate areas as uncertified typically only affect a small portion of the shellfish lands in the state. Negative impacts are also diminished in many instances by the fact that shellfish harvesters are able to redirect effort to adjacent certified areas.

Amendments of 6 NYCRR Part 41 to designate areas as certified can have positive impacts on harvesting opportunities. This action results in financial benefits for commercial fisherman and increased opportunities for recreational shellfish harvesters. Increasing the amount of certified shellfish harvesting areas can provide a financial benefit due to the increased availability of shellfish resources.

2. Categories and numbers affected:

Licensed commercial shellfish diggers can be affected by amendments to 6 NYCRR Part 41. Most harvesters are self-employed, but there are some who work for companies with privately controlled shellfish lands or who harvest surf clams or ocean quahogs in the Atlantic Ocean.

As of December 31, 2016, there were 1,746 licensed shellfish diggers in New York State for the year 2016. The numbers of permits issued for areas in the State are as follows: Town of Babylon, 47; Town of Brookhaven, 286; Town of East Hampton, 235; Town of Hempstead, 108; Town of Huntington, 156; Town of Islip, 139; Town of North Hempstead, 9; Town of Oyster Bay, 108; Town of Riverhead, 69; Town of Shelter Island, 52; Town of Smithtown, 38; Town of Southampton, 173; Town of Southold, 251; New York City, 46; and Other, 16.

It is estimated that ten (10) to twenty-five (25) percent of the diggers are full-time harvesters. The remainder are seasonal or part-time harvesters.

3. Regions of adverse impact:

Certified shellfish lands that could potentially be affected by amendments to 6 NYCRR Part 41 are located within or adjacent to Nassau County and Suffolk County. There is no potential adverse impact to jobs in any other areas of New York State.

4. Minimizing adverse impact:

Shellfish lands are designated as uncertified to protect public health as required by the Environmental Conservation Law. Some impact from rule makings to close areas that do not meet the criteria for certified shellfish lands is unavoidable.

To minimize the impact of closures of shellfish lands, the department evaluates areas to determine whether they can be opened seasonally during periods of improved water quality. The department also operates conditional harvesting programs at the request of, and in cooperation with, local governments. Conditional harvesting programs allow harvest in uncertified areas under prescribed conditions, determined by studies, when

bacteriological water quality is acceptable. Additionally, the department operates shellfish transplant harvesting programs which allow removal of shellfish from closed areas for bacterial cleansing in certified areas, thereby recovering a valuable resource. Conditional harvesting and shellfish transplant programs increase harvesting opportunities by making the resource in a closed area available under controlled conditions.

5. Self-employment opportunities:

A large majority of shellfish harvesters in New York State are self-employed. Rule makings to change the classification of shellfish lands can have an impact on self-employment opportunities. The impact is dependent on the size and productivity of the affected area and the availability of adjacent lands for shellfish harvesting.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sanitary Condition of Shellfish Lands

I.D. No. ENV-21-18-00028-P

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

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

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

Subject: Sanitary Condition of Shellfish Lands.

Purpose: To reclassify underwater shellfish lands to protect public health.

Text of proposed rule: 6 NYCRR Part 41 is amended to read as follows:

Clause 41.2(b)(1)(ii)(e) is amended to read as follows:

(e) [All] *During the period of November 1 through April 30, both dates inclusive, all that area of East Bay and all other bays, creeks, canals and tributaries lying [east and within the boundaries north of a line extending southerly from the westernmost point of land at Big Crow Island at Neds Creek to the southwestern corner of the Fundy Channel Bridge of the Meadowbrook Parkway on West Crow Island, and] north of a line extending easterly from the southwestern corner of the Fundy Channel Bridge of the Meadowbrook Parkway on West Crow Island to the northwestern tip of the Sloop Channel Bridge of the Wantagh State Parkway connecting Green Island with Jones Beach State Park, and west of a line extending northerly along the western shoreline of Green Island to the southwestern tip of the Goose Creek Bascule Bridge of the Wantagh State Parkway, connecting Green Island with Great (Low) Island, [and south of a line extending westerly to the westernmost point of land of Big Crow Island on Neds Creek.] then continuing northerly along the shoreline to the westernmost point of Great (Low) Island, and continuing northwesterly to the southernmost point of land at Whaleneck Point, and lying south and east of a line extending southwestwardly to the northernmost tip of Big Crow Island at Neds Creek, continuing along the western shore of Big Crow Island, to the southwestern corner of the Fundy Channel Bridge of the Meadowbrook Parkway on West Crow Island.*

Clause 41.2(b)(3)(ii)(c) is amended to read as follows:

(c) All that area of West Pond and *that portion of Hempstead Harbor lying [southerly and easterly of a line extending northerly from the westernmost end of the rock jetty, located southerly of the mouth of West Pond, to the westernmost end of the rock jetty with adjacent wooden walkway, located on Dosoris Island, northerly of the mouth of West Pond (local names, local landmarks).] between lines extending 500 feet northwesterly from the seaward ends of the rock jetties on each side of the entrance to West Pond (local names, local landmarks).*

Clause 41.2(b)(4)(ii)(c) is amended to read as follows:

(c) All that area of West Pond and *that portion of Hempstead Harbor lying [southerly and easterly of a line extending northerly from the westernmost end of the rock jetty, located southerly of the mouth of West Pond, to the westernmost end of the rock jetty with adjacent wooden walkway, located on Dosoris Island, northerly of the mouth of West Pond (local names, local landmarks).] between lines extending 500 feet northwesterly from the seaward ends of the rock jetties on each side of the entrance to West Pond (local names, local landmarks).*

Subparagraph 41.3(b)(4)(xiv) is amended to read as follows:

(xiv) [Noyac] *Noyack* Creek. During the period May [1st] 1 through November [30th] 30 (both dates inclusive) all that area of [Noyac] *Noyack* Creek lying southerly of a line extending southwestwardly from the southwesternmost point of land on Clam Island to the opposite shoreline located at Morton National Wildlife Refuge in Noyack.

Clauses 41.3(b)(4)(xv)(a), (b) and (c) are amended to read as follows:

(a) During the period May [15th] 1 through [October 15th] November 30 (both dates inclusive), all that area of Cold Spring Pond within the *former* Lobster Inn Boat Basin (local names, local landmark),

lying northwest of a line extending northeasterly along the fixed wooden dock of the *former* Lobster Inn Restaurant to the opposite shoreline, and all that area lying southeast of a line extending southwestwardly from the northwesternmost point of land on the unnamed peninsula bordering the northeastern side of the cove, continuing southwestwardly to the opposite shoreline (adjacent to the *former* Lobster Inn Restaurant).

(b) During the period January [1st] 1 through December [31st] 31 (both dates inclusive), all that area of the *former* Lobster Inn Boat Basin lying southeast of a line extending northeasterly along the fixed wooden dock of the *former* Lobster Inn Restaurant to the opposite shoreline.

(c) During the period May [1st] 1 through November [30th] 30, both dates inclusive, all that area of Cold Spring Pond lying northeast of a line extending southeasterly from an orange marker located on the northern shoreline in the northeastern corner of the pond to another orange marker located on the eastern shoreline adjacent to Shrubland Road.

Subparagraph 41.3(b)(5)(vii) is amended to read as follows:

(vii) [During the period May 15th through October 15th (both dates inclusive), all] *Devon Yacht Club*. All that area of the Devon Yacht Club Boat Basin (local name), located on the southern side of Napeague Bay.

Clause 41.3(b)(5)(viii)(a) is amended to read as follows:

(a) *Alewife Pond*. All that area of Alewife Pond, including entrance channel and all that area of Northwest Harbor, within [50] 300 yards in all directions from the inlet of Alewife Pond.

Clause 41.3(b)(5)(ix)(c) is amended to read as follows:

(c) In the absence of [the] *one or both* painted markers, all of Northwest Creek is uncertified.

Clause 41.3(b)(7)(iii)(c) is amended to read as follows:

(c) Wickham Creek. *During the period of May 15 through October 31, both dates inclusive, all that area of Wickham Creek and its tributaries.*

Subclauses 41.3(b)(7)(iii)(c)(1) and (2) are repealed.

Subclause 41.3(b)(7)(iii)(c)(3) is renumbered Subclause 41.3(b)(7)(iii)(c)(1).

Clause 41.3(b)(7)(xi)(e) is amended to read as follows:

(e) West Creek. During the period of [May 1st through November 30th] *January 1 through December 31, both dates inclusive, all that area of West Creek [including], and all that area of Great Peconic Bay within 750 feet in all directions of the southernmost point of the jetty on the east side of the mouth of West Creek.*

Subclause 41.3(b)(7)(xii)(b)(2) is amended to read as follows:

(2) During the period [April 15th to December 31] *May 1 through November 30, both dates inclusive, all that area of Jockey Creek, Town Creek and tributaries, lying west of a line extending southerly from the south end of Terry Road directly to the opposite shore.*

Clause 41.3(b)(7)(xii)(d) is amended to read as follows:

(d) Goose Creek. During the period [April 15th through December 31st] *May 1 through November 30, both dates inclusive, all that area of Goose Creek lying south and west of the Goose Creek Bridge (local landmarks).*

Clause 41.3(b)(7)(xiii)(a) is amended to read as follows:

(a) *Oyster Ponds*. During the period May [15th] 1 through October 31[st], both dates inclusive, all that area of Orient Harbor [lying east of a line extending northerly from the tip of the northwesternmost dock of the Orient Yacht Club to the northernmost corner of the bulkhead at the shoreline at the foot of the Harbor River road] *and its tributaries lying north and east of the fixed dock at Orient Yacht Club and then east of a line extending northerly from the northwestern corner of the northwesternmost dock of the Orient Yacht Club to an orange marker on the beach 275 yards northwest of the northernmost corner of the bulkhead at the foot of Harbor River Road and all that area of Oyster Ponds in its entirety.*

Clauses 41.3(b)(7)(xiii)(c) and (d) are repealed.

Clause 41.3(b)(7)(xiii)(e) is renumbered Clause 41.3(b)(7)(xiii)(c).

Renumbered Clause 41.3(b)(7)(xiii)(c) is amended to read as follows:

(c) Spring Pond. During the period January 1[st] through December 31[st], both dates inclusive, all that area of Spring Pond including tributaries, *and all that area of Orient Harbor within 500 feet in all directions of the southeastern end of the easternmost bulkhead at the entrance to Spring Pond.*

Clause 41.3(b)(7)(xiii)(f) is repealed.

Subparagraph 41.3(b)(7)(xv) is amended to read as follows:

(xv) Little Peconic Bay. Richmond Creek. During the period [April 1st] *May 1* through October 31[st], both dates inclusive, all that area of Richmond Creek lying west of a line extending north from the easternmost point of land at the south side of the mouth of Richmond Creek to the opposite shore.

Paragraph 41.3(b)(10) is amended to read as follows:

(10) Town of [Smith Town] *Smithtown*

Clauses 41.3(b)(10)(i)(a) and (b) are amended to read as follows:

(a) All that area of Smithtown Bay, including the Nissequogue River and its tributaries and Sunken Meadow Creek, lying south of a line

extending northeasterly from the flagpole at the East Bath House at Sunken Meadow State Park (local landmark) to Buoy BW "NR", located (at coordinates 40° 55.395' N latitude and 73° 13.745' W longitude), approximately one mile north of the mouth of the Nissequogue River, thence southeasterly to the flagpole located at the Town of Smithtown Beach at Short Beach (local landmark).

(b) All that area within a one-half mile radius of Buoy BW "NR", (at coordinates 40° 55.395' N latitude and 73° 13.745' W longitude), approximately one mile north of the mouth of the Nissequogue River.

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

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority:

The statutory authority for designating shellfish lands as certified or uncertified is given in Environmental Conservation Law (ECL) section 13-0307. Subdivision 1 of section 13-0307 of the ECL requires the Department of Environmental Conservation (the department) to periodically conduct examinations of all shellfish lands within the marine district to ascertain the sanitary condition of these areas. Subdivision 2 of this section requires the department to certify which shellfish lands are in such sanitary condition that shellfish may be taken for food. Such lands are designated as certified shellfish lands. All other shellfish lands are designated as uncertified. The statutory authority for promulgating regulations with respect to the harvest of shellfish is given in ECL section 13-0319.

2. Legislative objectives:

There are two purposes of the legislation: to ensure that shellfish lands are appropriately classified as either certified or uncertified and to protect public health by preventing the harvest and consumption of shellfish from lands that do not meet the standards for a certified shellfish land. This legislation requires the department to examine shellfish lands and determine which shellfish lands meet the sanitary criteria for a certified shellfish land, as set forth in Part 47 of Title 6 NYCRR, promulgated pursuant to section 13-0319 of the ECL. Shellfish lands which meet these criteria must be designated as certified. Shellfish lands which do not meet criteria must be designated as uncertified to prevent the harvest of shellfish from those lands.

3. Needs and benefits:

To protect public health and to comply with ECL 13-0307, the Division of Marine Resources' Shellfish Sanitation Program conducts and maintains sanitary surveys of shellfish growing areas (SGA) in the marine district in New York State. Maintenance of these surveys includes the regular collection and bacteriological examination of water samples to monitor the sanitary condition of SGAs. Annual water quality evaluation reports written in 2017 are prepared by the staff of the Shellfish Sanitation Program for each SGA. These reports present the results of statistical analyses of water quality data comprised of a minimum of 30 water quality data points. The years involved can vary based on the number of samples collected for each year, for each growing area.

The report summary may state that all or portions of an SGA should be designated as uncertified for the harvest of shellfish or that all, or portions of an SGA should be designated as certified or seasonally uncertified for the harvest of shellfish based on criteria in 6NYCRR Part 47. Seasonally uncertified areas are closed for the harvest of shellfish during particular months that are specified in regulations and those months can vary from SGA to SGA.

Regulations that designate shellfish lands as certified are needed to allow the harvest of shellfish from lands that meet the sanitary criteria for a certified area. Shellfish are a valuable state resource and, where possible, should be available for commercial and recreational harvest. The classification of previously uncertified shellfish lands as certified may provide additional sources of income for commercial shellfish diggers by increasing the amount of areas available for harvest. The direct harvest of shellfish for use as food is allowed from certified shellfish lands only. Recreational harvesters also benefit by having increased harvest opportunities and the ability to make use of a natural resource readily available to the public.

Regulations that designate shellfish lands as uncertified are needed to prevent the harvest and consumption of shellfish from lands that do not meet the sanitary criteria for a certified area. Shellfish harvested from uncertified shellfish lands have a greater potential to cause human illness due to the possible presence of pathogenic bacteria or viruses. These pathogens may cause the transmission of infectious disease to the shellfish consumer.

These regulations also protect the shellfish industry. Commercial shellfish harvesters and seafood wholesalers, retailers, and restaurants are adversely affected by public reaction to instances of shellfish related illness. By prohibiting the harvest of shellfish from lands that fail to meet the sanitary criteria, these regulations can ensure that only wholesome shellfish are allowed to be sold to the shellfish consumer.

Additionally, these regulations include changes to the shellfish growing area descriptions that will update, clarify and correct them to match the current physical appearance and names of local landmarks cited in the descriptions and to achieve better consistency within Part 41. These changes will aid harvesters and law enforcement officials in determining which areas are uncertified for the harvest of shellfish.

4. Costs:

There will be no costs to State or local governments. No direct costs will be incurred by regulated commercial shellfish harvesters in the form of initial capital investment or initial non-capital expenses, in order to comply with these proposed regulations. The department cannot provide an estimate of potential lost income to shellfish harvesters when areas are classified as uncertified, due to a number of variables that are associated with commercial shellfish harvesting; nor can the potential benefits be estimated when areas are reopened. Those variables are listed in the following three paragraphs.

As of December 31, 2016, the department had issued 1,746 New York State shellfish digger's permits for the year 2016. However, the actual number of those individuals who harvest shellfish commercially full time is not known. Recreational harvesters who wish to harvest more than the daily recreational limit of 100 hard clams, with no intent to sell their catch, can only do so by purchasing a New York State digger's permit. The number of individuals who hold shellfish digger's permits for that type of recreational harvest is unknown. The department's records do not differentiate between full time and part-time commercial or recreational shellfish harvesters.

The number of harvesters working in a particular area cannot be estimated for the reason stated above. In addition, the number of harvesters in a particular area is dependent upon the season, the amount of shellfish resource in the area, the price of shellfish and other economic factors, unrelated to the department's proposed regulatory action. When a particular area is classified as uncertified (closed to shellfish harvesting), harvesters can shift their efforts to other certified areas.

Estimates of the existing shellfish resource in a particular embayment are not known. Recent shellfish population assessments have not been conducted by the department. Without this information, the department cannot determine the effect a closure or reopening would have on the existing shellfish resource.

The department's actions to classify areas as certified or uncertified are not dependent on the shellfish resources in a particular area. They are based solely on the results of water quality analyses, the need to protect public health, and statutory requirements.

There is no cost to the department. Administration and enforcement of the proposed amendment are covered by existing programs.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

No new paperwork is required.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

There are no acceptable alternatives. ECL section 13-0307 stipulates that when the department has determined that a shellfish land meets the sanitary criteria for certified shellfish lands, the department must designate the land as certified and open to shellfish harvesting. All other shellfish lands must be designated as uncertified and closed to shellfish harvesting. These actions are necessary to protect public health. Failure to comply with the National Shellfish Sanitation Program (NSSP) guidelines could result in a ban on New York State shellfish in interstate commerce and would cause undue hardship to the commercial harvesting industry.

9. Federal standards:

There are no federal standards regarding the certification of shellfish lands. New York and other shellfish producing and shipping states participate in the National Shellfish Sanitation Program (NSSP) which provides guidelines intended to promote uniformity in shellfish sanitation standards among members. The NSSP is a cooperative program consisting of the federal government, states and the shellfish industry. Participation in the NSSP is voluntary, but participating states agree to follow NSSP water quality standards. Each state adopts its own regulations to implement a shellfish sanitation program consistent with the NSSP. The U.S. Food and Drug Administration (FDA) evaluates state programs and standards relative to NSSP guidelines. Substantial non-conformity with NSSP guidelines can result in sanctions being taken by FDA, including removal of the

state's shellfish shippers from the Interstate Certified Shellfish Shippers List. This would effectively bar a non-conforming state's shellfish products from interstate commerce.

10. Compliance schedule:

Compliance with any new regulations designating areas as certified or uncertified does not require additional capital expense, paperwork, record keeping or any action by the regulated parties. Immediate compliance with any regulation designating shellfish lands as uncertified is necessary to protect public health. Shellfish harvesters are notified of changes in the classification of shellfish lands by mail either prior to, or concurrent with, the adoption of new regulations. Therefore, immediate compliance can be readily achieved.

Regulatory Flexibility Analysis

1. Effect of rule:

As of December 31, 2016, there were 1,746 licensed shellfish diggers in New York State for the year 2016. The numbers of permits issued for areas in the State are as follows: Town of Babylon, 47; Town of Brookhaven, 286; Town of East Hampton, 235; Town of Hempstead, 108; Town of Huntington, 156; Town of Islip, 139; Town of North Hempstead, 9; Town of Oyster Bay, 108; Town of Riverhead, 69; Town of Shelter Island, 52; Town of Smithtown, 38; Town of Southampton, 173; Town of Southold, 251; New York City, 46; and Other, 16.

The Department of Environmental Conservation (the department) periodically conducts examinations of all shellfish lands within the marine district to ascertain the sanitary condition of these areas. As a result of these examinations, the department will designate lands as certified for the harvest of shellfish or uncertified for the harvest of shellfish. Any change in the designation of shellfish lands may have an effect on shellfish diggers. Each time shellfish lands or portions of shellfish lands are designated as uncertified, there may be some loss of income for shellfish diggers who are harvesting shellfish from the lands to be closed. This loss may be determined by the acreage to be closed, the type of closure (whether year-round or seasonal), the species of shellfish present in the area, the area's productivity, and the market value of the shellfish resource in the particular area.

When uncertified shellfish lands are found to meet the department's sanitary criteria and are designated by the department as certified, there is a benefit to shellfish diggers. More shellfish lands are made available for the harvest of shellfish, and there is a potential for an increase in income for shellfish diggers. Again, the effect of the re-opening of a harvesting area is determined by the shellfish species present, the area's productivity, and the market value of the shellfish resource in the area.

Shellfish growing area descriptions will be updated, clarified and corrected to match the current physical appearance and names of local landmarks cited in the descriptions and to achieve better consistency within Part 41. These changes will aid harvesters and law enforcement officials in determining which areas are uncertified for the harvest of shellfish.

Local governments on Long Island exercise management authority and share law enforcement responsibility for shellfish with the State and the counties of Nassau and Suffolk. These include the towns of Hempstead, North Hempstead and Oyster Bay in Nassau County and the towns of Babylon, Islip, Brookhaven, Southampton, East Hampton, Southold, Shelter Island, Riverhead, Smithtown and Huntington in Suffolk County. Changes in the classification of shellfish lands impose no additional requirements on local governments above the level of management and enforcement that they normally undertake; therefore, there should be no effect on local governments.

2. Compliance requirements:

There are no reporting or recordkeeping requirements for small businesses or local governments.

3. Professional services:

Small businesses and local governments will not require any professional services to comply with proposed rules.

4. Compliance costs:

There are no capital costs which will be incurred by small businesses or local governments.

5. Economic and technological feasibility:

There is no reporting, recordkeeping, or affirmative actions that small businesses or local governments must undertake to comply with the proposed rules. Similarly, small businesses and local governments will not have to retain any professional services or incur any capital costs to comply with such rules. As a result, it should be economically and technically feasible for small businesses and local governments to comply with this rule.

6. Minimizing adverse impact:

The designation of shellfish lands as uncertified may have an adverse impact on commercial shellfish diggers. All diggers in the towns affected by proposed closures will be notified by mail of the designation of shellfish lands as uncertified prior to, or concurrent with the date the closures

go into effect. Shellfish lands which fail to meet the sanitary criteria during specific months of the year will be designated as uncertified only during those months. During the other months, shellfish may be harvested from those lands when they are certified. To further minimize any adverse effects of proposed closures, towns may request that uncertified shellfish lands be considered for conditionally certified designation or for a shellfish transplant project. Shellfish diggers will also be able to shift harvesting effort to nearby certified shellfish lands. There should be no significant adverse impact on local governments from these changes in the classification of shellfish lands.

7. Small business and local government participation:

Impending shellfish closures are discussed at regularly scheduled Shellfish Advisory Committee meetings. This committee, organized by the department, is comprised of representatives of local baymen's associations, shellfish shippers and local town officials. Through their representatives, shellfish harvesters and shippers can express their opinions and give recommendations to the department concerning shellfish land classification. Local governments, state legislators, and baymen's organizations are notified by mail and given the opportunity to comment on any proposed rulemaking. The department will consider any such comments prior to filing a Notice of Adoption with the Department of State.

8. Cure period or other opportunity for ameliorative action:

Pursuant to SAPA 202-b (1-a)(b), no such cure period is included in the rule because of the potential adverse impact that it could have on the health of shellfish consumers. Immediate compliance is required to ensure that public health is protected.

9. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

The rule will be reviewed in three years.

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. This rule making only affects the marine and coastal district of the State; there are no rural areas within the marine and coastal district. The shellfish fishery is entirely located within the marine and coastal district, and is not located adjacent to any rural areas of the State. The proposed rule will not impose any reporting, record keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 41, DEC has determined that a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

Environmental Conservation Law section 13-0307 requires that the department examine shellfish lands and certify which shellfish lands are in such sanitary condition that shellfish may be taken for use as food. Shellfish lands that do not meet the criteria for certified (open) shellfish lands must be designated as uncertified (closed) to protect public health.

Rule makings to amend 6 NYCRR 41, Sanitary Condition of Shellfish Lands, can potentially have a positive or negative effect on jobs for shellfish harvesters. Amendments to reclassify areas as certified may increase job opportunities, while amendments to reclassify areas as uncertified may limit harvesting opportunities.

The department does not have specific information regarding the locations in which individual diggers harvest shellfish, and therefore is unable to assess the specific job impacts on individual shellfish diggers. In general terms, amendments of 6 NYCRR Part 41 to designate areas as uncertified can have negative impacts on harvesting opportunities. The extent of the impact will be determined by the acreage closed, the type of closure (year-round or seasonal), the area's productivity, and the market value of the shellfish. In general, any negative impacts are small because the department's actions to designate areas as uncertified typically only affect a small portion of the shellfish lands in the state. Negative impacts are also diminished in many instances by the fact that shellfish harvesters are able to redirect effort to adjacent certified areas.

Amendments of 6 NYCRR Part 41 to designate areas as certified can have positive impacts on harvesting opportunities. This action results in financial benefits for commercial fisherman and increased opportunities for recreational shellfish harvesters. Increasing the amount of certified shellfish harvesting areas can provide a financial benefit due to the increased availability of shellfish resources.

2. Categories and numbers affected:

Licensed commercial shellfish diggers can be affected by amendments to 6 NYCRR Part 41. Most harvesters are self-employed, but there are some who work for companies with privately controlled shellfish lands or who harvest surf clams or ocean quahogs in the Atlantic Ocean.

As of December 31, 2016, there were 1,746 licensed shellfish diggers in New York State for the year 2016. The numbers of permits issued for areas in the State are as follows: Town of Babylon, 47; Town of Brookhaven, 286; Town of East Hampton, 235; Town of Hempstead, 108; Town of

Huntington, 156; Town of Islip, 139; Town of North Hempstead, 9; Town of Oyster Bay, 108; Town of Riverhead, 69; Town of Shelter Island, 52; Town of Smithtown, 38; Town of Southampton, 173; Town of Southold, 251; New York City, 46; and Other, 16.

It is estimated that ten (10) to twenty-five (25) percent of the diggers are full-time harvesters. The remainder are seasonal or part-time harvesters.

3. Regions of adverse impact:

Certified shellfish lands that could potentially be affected by amendments to 6 NYCRR Part 41 are located within or adjacent to Nassau County and Suffolk County. There is no potential adverse impact to jobs in any other areas of New York State.

4. Minimizing adverse impact:

Shellfish lands are designated as uncertified to protect public health as required by the Environmental Conservation Law. Some impact from rule makings to close areas that do not meet the criteria for certified shellfish lands is unavoidable.

To minimize the impact of closures of shellfish lands, the department evaluates areas to determine whether they can be opened seasonally during periods of improved water quality. The department also operates conditional harvesting programs at the request of, and in cooperation with, local governments. Conditional harvesting programs allow harvest in uncertified areas under prescribed conditions, determined by studies, when bacteriological water quality is acceptable. Additionally, the department operates shellfish transplant harvesting programs which allow removal of shellfish from closed areas for bacterial cleansing in certified areas, thereby recovering a valuable resource. Conditional harvesting and shellfish transplant programs increase harvesting opportunities by making the resource in a closed area available under controlled conditions.

5. Self-employment opportunities:

A large majority of shellfish harvesters in New York State are self-employed. Rule makings to change the classification of shellfish lands can have an impact on self-employment opportunities. The impact is dependent on the size and productivity of the affected area and the availability of adjacent lands for shellfish harvesting.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Northern Catskill Riparian Areas

I.D. No. ENV-21-18-00029-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 190.36 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101(3)(b), 3-0301(1)(b), (d), (2)(m), 9-0105(1) and (3)

Subject: Northern Catskill Riparian Areas.

Purpose: To ensure public safety and protect natural resources on the Northern Catskill Riparian Areas.

Text of proposed rule: Existing section 190.36 will be renumbered 190.38 and a new section 190.36 will be added to read:

Section 190.36 Northern Catskill Riparian Areas.

In addition to other applicable provisions of this Part, the following requirements apply to the Northern Catskill Riparian Areas. In the event of a conflict between this section and another section of this Part, the more restrictive provision will control.

(a) Description. For the purposes of this section, Northern Catskill Riparian Areas means the following state forest preserve lands:

(1) The Kaaterskill Clove Riparian Corridor located in the towns of Hunter and Catskill in Greene County, along State Route 23A, beginning at the intersection of Spruce Creek and Kaaterskill Creek and extending downstream on Kaaterskill Creek approximately 2 miles to the state land boundary line. The regulated corridor includes the creek bed, the riparian area on the side of the creek in which State Route 23A is located, extending from the edge of the creek bed to State Route 23A or 300 feet, whichever is greater, and the riparian area on the other side of the creek extending 300 feet from the edge of the creek bed.

(2) The Kaaterskill Falls Riparian Area located in the town of Hunter in Greene County, beginning at a point 150 feet upstream of the Kaaterskill waterfall on Spruce Creek, and extending downstream to the base of the waterfall at the start of the man-made stone staircase. The regulated area includes the Kaaterskill creek bed, an area on the side of the creek which includes the stone staircase extending 300 feet from the edge of the stream bed or the staircase and the connector trail leading to the Escarpment Trail, whichever is greater, and on the other side of the creek extending 300 feet from the edge of the stream bed.

(3) The Platte Clove Riparian Corridor, located in the town of Hunter

in Greene County, and the town of Saugerties in Ulster County, beginning at the state land boundary near the intersection of Platte Clove Road and Steenburg Road and extending downstream to the southeast along Platte Clove Road and the Plattekill creek to the boundary of state land, approximately 1.6 miles. The regulated corridor includes the Plattekill creek bed, an area on the side of the creek which includes Platte Clove Road extending 300 feet from the edge of the creek bed to Platte Clove Road or 300 feet, whichever is greater, and an area on the other side of the creek extending 300 feet from the edge of the creek bed.

(4) The Colgate Lake Wild Forest Area located in the town of Jewett in Greene County, including 1,375 acres at the eastern end of County Route 78 (Colgate Lake Road), bordered by the Windham-Blackhead Range Wilderness to the north, south, and east. The unit boundary as posted follows the 2,400' contour on the north and south.

(b) No person shall kindle, build, maintain or use a fire, including, but not limited to, charcoal fires, wood fires, gas grills, propane stoves, or other portable stoves, within the Northern Catskill Riparian Areas, except at designated campsites or where camped in compliance with subdivision 190.3 (b) of this Part.

(c) No person shall possess a glass container within the Northern Catskill Riparian Areas, except when necessary for the storage of medicines.

(d) No person, within the Northern Catskill Riparian Areas, shall play an audio device, including, but not limited to, radios, tape players, compact disc or digital players, except at designated campsites, or where camped in compliance with subdivision 190.3 (b) of this Part, unless the noise is rendered inaudible to the public by a noise-damping device, such as headphones or earbuds. At designated campsites or where camped in compliance with subdivision 190.3 (b) of this Part, no person shall use any audio device which is audible outside the immediate area of the campsite.

(e) No person shall possess or consume beverages containing alcohol, including, but not limited to beer, wine, and liquor within the Northern Catskill Riparian Areas, except when transporting to, or at, designated camping sites, or where camped in compliance with subdivision 190.3 (b) of this Part.

(f) No person shall enter restricted areas, as designated by signs in the Northern Catskill Riparian Areas.

(g) No person shall possess a portable generator within the Kaaterskill Clove Riparian Corridor, the Kaaterskill Falls Riparian Area, or the Colgate Lake Wild Forest Area, except at designated campsites or where camped in compliance with subdivision 190.3 (b) of this Part. Possession of portable generators is prohibited within the Northern Catskill Riparian Corridor in the Indian Head Wilderness Area, located in the Town of Hunter, Greene County and the towns of Saugerties and Woodstock, Ulster County, lying generally west of the east boundary of the Catskill Park, south of Platte Clove, east of Devil's Tombstone Campground and north of the hamlets of Lake Hill and Shady.

(h) No person shall enter into, or remain in, the Kaaterskill Clove or Platte Clove Riparian Corridors between one-half hour after sunset and one-half hour before sunrise except for:

(1) persons camping at designated campsites, or where camped in compliance with subdivision 190.3 (b) of this Part;

(2) licensed hunters, anglers, and trappers for the purpose of hunting, fishing, or trapping;

(3) pedestrians using marked hiking trails to cross the areas; or

(4) persons otherwise authorized by permit issued by the department.

(i) In the Kaaterskill Falls Riparian Area, no person shall enter the area located within six (6) feet of cliff edges, except: on marked trails, including the man-made stone staircase and the trail leading to the first water plunge pool, commonly referred to as the mid-pool; when engaged in ice climbing or rappelling by rope; or by authorized permit issued by the department.

(j) In the Kaaterskill Falls Riparian Area, no person shall enter the water, wade, or swim within 150 feet upstream of Kaaterskill Falls.

Text of proposed rule and any required statements and analyses may be obtained from: Peter Frank, Bureau Chief, Forest Preserve, NYS DEC, 625 Broadway, Albany, New York 12233, (518) 473-9518, email: peter.frank@dec.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Additional matter required by statute: A Short EAF was completed for compliance with the State Environmental Quality Review Act.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law ("ECL") section 1-0101(3) (b) directs the Department of Environmental Conservation (Department) to guarantee "that the widest range of beneficial uses of the environment is attained

without risk to health or safety, unnecessary degradation or other undesirable or unintentional consequences.” ECL section 3-0301(1)(b) gives the Department the responsibility to “promote and coordinate management of...land resources to assure their protection, enhancement, provision, allocation, and balanced utilization...and take into account the cumulative impact upon all such resources in promulgating any rule or regulation.” ECL section 3-0301(1)(d) authorizes the Department to “provide for the care, custody and control of the Forest Preserve.” ECL section 9-0105(1) authorizes the Department to “[e]xercise care, custody, and control of the several preserves, parks and other State lands described in [Article 9 of the ECL],” which includes Forest Preserve lands. Article XIV, Section 1 of the New York State Constitution provides that the lands of the Forest Preserve “shall be forever kept as wild forest lands.” ECL section 3-0301(2) (m) authorizes the Department to adopt rules and regulations “as may be necessary, convenient or desirable to effectuate the purposes of [the ECL],” and ECL 9-0105(3) authorizes the Department to “[m]ake necessary rules and regulations to secure proper enforcement of [ECL Article 9].”

2. Legislative objectives:

Paragraph 1 of section 3 of Article XIV of the New York State Constitution provides that “forest and wild life conservation are. . . policies of the State.” Article XIV, section 1 of the New York State Constitution provides that the lands of the Forest Preserve “shall be forever kept as wild forest lands,” and ECL sections 3-0301(1)(b) and 9-0105(1) give the Department jurisdiction to manage Forest Preserve lands. The Department is also authorized to promulgate rules and regulations for the use of such lands (see ECL sections 3-0301(2) (m) and 9-0105(3)). Consistent with this authority, the proposed regulations are crafted to protect natural resources and the health, safety and general welfare of those who engage in recreational activities within the Northern Catskill Riparian Areas: Kaaterskill Falls, Kaaterskill Clove, Platte Clove, and Colgate Lake, of the Forest Preserve in the Catskill Park.

3. Needs and benefits:

The Northern Catskill Riparian Areas is composed of four separate areas, encompassing almost 2,000 acres of Forest Preserve lands in the Towns of Catskill, Hunter, and Jewett in Greene County, and a small portion in the Town of Saugerties, in Ulster County.

The Kaaterskill Clove Riparian Corridor is in the towns of Hunter and Catskill in Greene County, along State Route 23A. It begins at the intersection of Spruce Creek and Kaaterskill Creek and extends downstream on Kaaterskill Creek about 2 miles to the state land boundary. The corridor extends 300 feet from each side of the creek bed or to Route 23A, whichever is the greater distance.

The Kaaterskill Falls Riparian Area is in the town of Hunter, Greene County. It begins 150 feet upstream of Kaaterskill Falls, located on Spruce Creek and extends to the base of the waterfalls, including the stone staircase and the mid-pool. The regulated area extends 300 feet from each side of the creek bed or to the connector trail to the escarpment trail, whichever is the greater distance.

The Platte Clove Riparian Corridor is in the town of Hunter in Greene County and a small portion of the town of Saugerties in Ulster County. It begins at the state land boundary near the intersection of Platte Clove Road and Steenburgh Road, extending downstream along the creek, about 1.6 miles. The regulated corridor extends 300 feet from each side of the creek or to Platte Clove Road, whichever is greater.

The Colgate Lake Wild Forest Area is in the town of Jewett in Greene County, including about 1,375 acres at the eastern end of County Route 78 (Colgate Lake Road), bordered by the Windham-Blackhead Range Wilderness.

These areas have been popular public destinations since before the state began acquiring land in this area, which began in 1930 and extended through the 1960s, ending most recently in 2016. Kaaterskill Falls has been a tourist destination since the mid-1800s. As a result of increased social media and New York tourism promotion, public use has increased dramatically. The Department estimates approximately 100,000 people visit the site each year. Public use has also increased dramatically in the Kaaterskill Clove area during the summer over the last decade, as people use the area mainly to swim and picnic. Platte Clove is used year around, including ice climbing in the winter. The Colgate Lake area is one of the few public lakes available to the public in this portion of the Catskills and is heavily used during the summer.

Due to this dramatic increase in public use, serious public health and safety issues are being created. The natural resources of the areas are rapidly becoming despoiled and fragile ecosystems are being degraded. There have been numerous fatalities over the last decade in these areas. Multiple people have fallen to their deaths at Kaaterskill Falls, Kaaterskill Clove, and Platte Clove. In addition, a person was paralyzed at Colgate Lake as a result of unsafe diving.

The Department has improved safety at Kaaterskill Falls with the installation of a viewing platform, stone staircase, sections of split rail fencing, and the installation of a foot bridge upstream of the falls, allowing

people to cross the stream safely. However, even with these measures, people still engage in unsafe behaviors, such as wading in a very slippery stream just upstream of the falls and walking along the cliff faces.

The actions of people at Platte Clove and Kaaterskill Clove has resulted in recent fatalities and injuries. This regulation is intended to reduce the number of people who use the area, and restrict inappropriate activities to protect the public health and safety and the resource.

Colgate Lake provides a unique experience in the Catskills. Access to a small public lake for swimming and picnicking is uncommon in the northern Catskills. Public use of this area continues to increase, as people hear about this resource, especially through social media, and come to enjoy “a quiet” location. Site degradation is occurring in the immediate area adjacent to the lake and the popular camping sites nearby within this Wild Forest unit. These regulations are targeted to reduce the number of people who recreate here, provide an enjoyable user experience, and protect the resource.

Site degradation is also an issue at Kaaterskill Falls, Kaaterskill Clove, and Platte Clove. The trampling of vegetation has resulted in exposed and compacted soil. Trees are being stripped of their limbs for firewood, and indiscriminately located campfires are creating carbon scars on the ground. Garbage, trash, and broken glass are despoiling the wild character of the areas and raising public safety concerns.

The use of portable generators and audio devices have negatively impacted the quiet and solitude of these areas. The regulation will prohibit the use of portable generators and require that an individual listening to music must utilize headphones or other similar devices. Under current regulations, section 196.8 (b), portable generators, and other motorized equipment, are prohibited in Wilderness Areas. The Platte Clove Riparian Corridor is located within the Indian Head Wilderness, where the use of portable generators is already prohibited.

The conditions outlined are proposed to be addressed by varying levels of regulation in the four areas, as described below.

The following proposed restrictions would apply in all areas, except for people that are legally camped:

1. No fires, including gas grills and propane stoves
2. No glass containers except when containing medicine (currently posted by sign only at Kaaterskill Clove)
3. No playing audio devices without a personal noise damping device
4. No alcohol
5. No portable generators

In Kaaterskill Clove and Platte Clove, a further proposed restriction is closure of the area from dusk (1/2 hour after sunset) to dawn (1/2 hour before sunrise), excepting legal campers, licensed hunters, anglers, trappers, and those on marked trails. It is dangerous for individuals to hike in this area at night. High cliff faces and very steep terrain are not evident in the dark and a person falling can be seriously injured or killed.

At Kaaterskill Falls, two additional restrictions include: the prohibition of people entering the area within six feet of a cliff edge (except on marked trails, by ice climbers, or those rappelling by rope) and the prohibition of people entering the water within 150’ upstream of the falls. The proposed restrictions are for the safety of users. There are numerous high cliffs accessible to hikers, resulting in falls leading to serious injury or death. The stream bed is extremely slippery and stepping into the water near the edge of the falls can be dangerous. A tragic accident occurred several years ago when a woman was swept over the falls after slipping while stepping into the water to cross the stream above the falls. Local law enforcement and public safety officials are the first responders to incidents on these areas. Local governments support the regulatory proposal.

The Department has presented the proposed regulation at several meetings of local stakeholders in this area of the northern Catskills, including the Kaaterskill Clove working group and the Catskill Forest Preserve Advisory Committee. Local governments, including tourism and the county planning department, along with local user groups, first responders, sports people, and the hiking community, have attended these meetings. In addition, information regarding the Department’s intent to propose these regulations, content of the regulation, and the public process associated with the rulemaking, will appear in a widely distributed newspaper in the area. A public meeting in the local community will also be held during the formal regulatory comment period. All regulatory documents will appear on the Department’s website.

4. Costs:

There are no costs to the regulated community as a result of this proposed regulation. Costs to the state for the additional management actions are minimal and are estimated at \$2,500 for new signage and posting of the Colgate Lake Wild Forest.

5. Local government mandates:

This proposal will not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district.

6. Paperwork:

The proposed regulations will not impose any reporting requirements or other paperwork on any private or public entity.

7. Duplication:

There is no duplication, conflict, or overlap with state or federal regulations.

8. Alternatives:

The no-action alternative is not feasible since it does not adequately protect the Northern Catskill Riparian Areas from overuse and abuse and does not protect the public health, safety, and general welfare. The existing generic 6 NYCRR Part 190 regulations for state lands are not adequate in protecting the Northern Catskill Riparian Areas because of their unique characteristics, remote locations and very high level of public use.

Closing these areas to public use is also not an acceptable alternative. Forest Preserve land is acquired for the use of and enjoyment by the public. ECL section 9-0301(1) provides that "all lands in the Catskill Park. . . shall be forever reserved and maintained for the free use of all the people. . ." The closure of Forest Preserve land to public use should not occur except when absolutely necessary to protect public health or the resource. Closure would also be impractical due to the number of people who use these areas. Any closure would be ignored and enforcement would not be feasible.

9. Federal standards:

There is no relevant federal standard governing the use of State lands.

10. Compliance schedule:

Once the regulations are adopted, they are effective immediately, and all persons will be expected to comply with them upon their effective date. The Department will educate the public about the regulations through information posted on the Departments' website, signage posted on the property, and by working with user groups and other stakeholders to help disseminate information regarding the regulations.

Regulatory Flexibility Analysis

Adoption of a new section 190.36 to 6 NYCRR will address public safety and natural resource degradation issues on the Northern Catskill Riparian Areas while still providing a quality outdoor experience for users. A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with these regulations because the proposal will not impose any reporting, record-keeping or other compliance requirements on small businesses or local governments.

Since there are no identified cost impacts for compliance with the proposed regulations on the part of small businesses and local governments, they will bear no economic impact as a result of this proposal. The proposed regulations relate solely to protecting public safety and natural resources on the Northern Catskill Riparian Areas.

Rural Area Flexibility Analysis

Adoption of a new subdivision 190.36 will address public safety and natural resource degradation issues on the Northern Catskill Riparian Areas while still providing a quality outdoor experience for users. A Rural Area Flexibility Analysis is not submitted with this proposal because the proposal will not impose any reporting, record-keeping or other compliance requirements on rural areas. The proposed regulations relate solely to protecting public safety and natural resources on the Northern Catskill Riparian Areas.

Job Impact Statement

Adoption of a new section 190.36 to 6 NYCRR will address public safety and natural resource degradation issues on the Northern Catskill Riparian Areas while still providing a quality outdoor experience for users. A Job Impact Statement is not submitted with this proposal because the proposal will have no substantial adverse impact on existing or future jobs and employment opportunities. The proposed regulations relate solely to protecting public safety and natural resources on the Northern Catskill Riparian Areas.

Higher Education Services Corporation

EMERGENCY RULE MAKING

Enhanced Tuition Awards Program

I.D. No. ESC-21-18-00034-E

Filing No. 413

Filing Date: 2018-05-07

Effective Date: 2018-05-07

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

Action taken: Addition of section 2201.19 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 667-d

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (HESC) Emergency Rule Making seeking to add a new section 2201.19 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2017 term, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students pursuing their undergraduate studies at a New York State private institution of higher education. Decisions on applications for this Program are made prior to the beginning of the term. Therefore, it is critical that the terms of the Program as provided in the regulation be effective immediately in order for HESC to process scholarship applications in a timely manner. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the Program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: Enhanced Tuition Awards program.

Purpose: To implement the Enhanced Tuition Awards program.

Text of emergency rule: New section 2201.19 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.19 Enhanced Tuition Awards.

(a) *Definitions. For purposes of this section and Education Law, section 667-d, the following definitions shall apply:*

(1) *Award shall mean an Enhanced Tuition Award pursuant to Education Law, section 667-d.*

(2) *Full-time attendance or full-time study, for purposes of Education Law, section 667-d(1)(d)(ii), shall mean enrollment in at least 12 credits per semester and completion of at least 30 combined credits per year following the student's start date, or its equivalent, applicable to his or her program of study, excluding any permissible interruption of study as determined by the corporation, and except as provided in subdivision (b) of this section and Education Law, section 667-d(1)(d)(ii). Noncredit courses shall not be considered as contributing toward full-time attendance.*

(3) *Half-time shall mean enrollment in at least six but less than 12 credits, or the equivalent, per semester.*

(4) *Interruption in undergraduate study shall mean a temporary period of leave for a definitive length of time due to circumstances as determined by the corporation, including, but not limited to, death of a family member, medical leave, military service, service in the Peace Corps or parental leave.*

(5) *Program shall mean the Enhanced Tuition Awards codified in Education Law, section 667-d.*

(6) *Satisfactory progress shall have the same meaning as successful completion.*

(7) *Student's start date (i) for purposes of Education Law, section 667-d(1)(d)(i), shall mean the date the student began attendance as a first time college student; and (ii) for purposes of Education Law, section 667-d(1)(d)(ii), shall mean the date the college determines such recipient was first in attendance at that institution.*

(8) *Successful completion shall mean a student has earned at least 30 combined credits in each consecutive year following the student's start date, or its equivalent, applicable to his or her program or programs of study except as provided in subdivision (b) of this section and Education Law, section 667-d(1)(d)(ii).*

(b) *Eligibility. In addition to the requirements of Education Law, section 667-d, an applicant must also satisfy the general eligibility requirements provided in Education Law, section 661. As authorized by Education Law, section 667-d, the following exceptions and modifications to the eligibility requirements shall apply:*

(1) *College credit earned toward a recipient's program(s) of study while a high school student or other non-matriculated status shall be considered as contributing toward full-time attendance. For a recipient who earned college credit toward his or her program(s) of study prior to enrolling in college as a matriculated student and who is making satisfactory progress toward timely completion of his or her program(s) of study, and is enrolled in coursework not applicable toward his or her program(s) of study, such coursework outside of his or her program(s) of study shall be considered as contributing toward full-time attendance.*

(2) *A recipient must be in full-time attendance as defined in this section.*

(3) *For purposes of Education Law, section 667-d(1)(d)(i), an ap-*

applicant must have completed at least 30 combined credits in each consecutive year following his or her start date applicable to his or her program(s) of study which were accepted by his or her current institution at the time of application for this award, except for any permissible interruption of study as determined by the corporation. Notwithstanding, an applicant who enrolled in a program(s) of study leading to an undergraduate degree and enrolled as a first-time college student: (i) in the 2015-16 academic year who earned at least 54 combined credits applicable to his or her program(s) of study by the end of the 2016-17 academic year; shall become eligible to receive an award in the 2018-19 academic year and thereafter if such student completes at least 90 combined credits applicable to his or her program(s) of study by the end of the 2017-18 academic year; or (ii) in the 2016-17 academic year who earned at least 24 combined credits applicable to his or her program(s) of study by the end of the 2016-17 academic year; shall become eligible to receive an award in the 2018-19 academic year and thereafter if such student completes at least 60 combined credits applicable to his or her program(s) of study by the end of the 2017-18 academic year.

(4) For students who are disabled as defined by the Americans with Disabilities Act of 1990, 42 USC 12101, the full-time attendance requirement is eliminated, subject to the parameters of paragraph 3 of subdivision e of this section.

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

(1) In the program's first year:

(i) First priority shall be given to eligible applicants who are currently in attendance at an institution of higher education. If there are more applicants than available funds, recipients shall be chosen by lottery.

(ii) Second priority shall be given to eligible applicants who are matriculated in an approved program leading to an undergraduate degree at a private not-for-profit degree granting institution of higher education located in New York State, except those institutions set forth in Education Law, section 661(4)(b), for the first time. If there are more applicants than available funds, recipients shall be chosen by lottery.

(2) After the program's first year:

(i) First priority shall be given to eligible applicants who have received payment of an award pursuant to this section in a prior year and are currently in attendance at a private not-for-profit degree granting institution of higher education located in New York State, except those institutions set forth in Education Law, section 661(4)(b). If there are more applicants than available funds, recipients shall be chosen by lottery.

(ii) Second priority shall be given to eligible applicants who have not received payment of an award in a prior year and are currently in attendance at an institution of higher education. If there are more applicants than available funds, recipients shall be chosen by lottery.

(iii) Third priority shall be given to eligible applicants who are matriculated in an approved program leading to an undergraduate degree at a private not-for-profit degree granting institution of higher education located within New York State, except those institutions set forth in Education Law, section 661(4)(b), for the first time. If there are more applicants than available funds, recipients shall be chosen by lottery.

(d) Administration. In addition to the requirements contained in Education Law, section 667-d, the following requirements shall also apply.

(1) Applicants for an award shall:

(i) apply for program eligibility on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility; and

(ii) electronically transmit applications for program eligibility to the corporation on or before the date prescribed by the corporation for the applicable academic year.

(2) Recipients of an award shall:

(i) execute a contract with the corporation agreeing to reside in New York State for a continuous number of years equal to the duration of the award received and, if employed during such time, to be employed in New York State;

(ii) apply for payment annually on forms specified by the corporation; and

(iii) receive such awards for not more than two academic years of full-time undergraduate study if enrolled in an eligible two year program of study or four academic years of full-time undergraduate study or five academic years if the program of study normally requires five years, as defined by the commissioner pursuant to article thirteen of the education law, excluding any allowable interruption of study as defined in this section. For purposes of this subparagraph, a recipient's academic year shall begin with the term he or she was first in attendance at the institution in which he or she is currently enrolled.

(3) Institutions.

(i) Certification. For each recipient, institutions shall certify on forms and in the manner prescribed by the corporation the tuition rate charged by the institution, the amount of the institution's matching award,

eligibility to receive the award, the number of credits completed each academic term, the cumulative credits at the end of each academic term, and any other information requested by the corporation.

(ii) College Option. (A) An institution may annually choose to participate in the Program or to opt out of the Program in the manner prescribed by the corporation; (B) Institutional participation shall be for an entire academic year; (C) An institution may establish a cap on its participation based on a dollar threshold or a maximum number of students; (D) An institution that opts out of the Program shall continue to provide the institutional matching award and applicable tuition rate to all award recipients until such recipients have exhausted eligibility or are no longer eligible for award payments.

(e) Amounts.

(1) The amount of the award shall be determined in accordance with Education Law, section 667-d.

(2) Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time subject to the verification and certification by the institution of the recipient's full-time status and other eligibility and certification requirements.

(3) For students who are disabled as defined by the Americans with Disabilities Act of 1990, 42 USC 12101, upon each certification by the college or university, payment eligibility shall be determined and measured proportionally in equivalence with full-time study.

(f) Contractual obligation.

(1) For the purpose of complying with Education Law, section 667-d(1)(f), military personnel, including those in the Military Reserves and ROTC or CSPI, for whom New York is his or her legal state of residence shall be deemed to reside and be employed in New York State regardless of where the individual is stationed or deployed.

(2) For the purpose of complying with Education Law, section 667-d(1)(f), for a recipient who is no longer eligible to receive award payments, the duration he or she resides in New York State while completing undergraduate or graduate study, including medical residency, shall be credited toward the time necessary to satisfy the recipient's residency and employment requirement.

(3) Where a recipient, within six months of receipt of his or her final award payment, fails to maintain permanent domicile in New York State for a continuous number of years equal to the duration of the award received or, during such time, is employed in any other state, the corporation shall convert all award monies received to a 10-year student loan, without interest. However, the requirement to maintain permanent domicile, and only be employed, in New York State, may be deferred to complete undergraduate study or attend graduate school, including medical residency, on at least a half-time basis.

(4) Where a recipient has demonstrated extreme hardship as a result of a disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, postpone converting the award to a student loan, temporarily suspend repayment of the amount owed, discharge the amount owed, or take such other appropriate action. Notwithstanding, the corporation shall prorate the amount owed commensurate with the length of time the recipient complied with the residency and employment requirements.

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 4, 2018.

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

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's (HESC) statutory authority to promulgate regulations and administer Enhanced Tuition Awards (Program) is codified within Article 14 of the Education Law. In particular, Part III of Chapter 59 of the Laws of 2017 created the Program by adding a new section 667-d to the Education Law. Subdivision 9 of section 667-d of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

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

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

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

Legislative objectives:

The Education Law was amended to add a new section 667-d to create the Enhanced Tuition Awards program (Program). This Program is aimed at reducing tuition costs and accelerating completion rates for students who attend a private college in New York State.

Needs and benefits:

Many studies have underscored the importance of a college degree in today's global economy. According to a report by the Center on Education and the Workforce (CEW) at Georgetown University, by 2020, 65 percent of all jobs will require some form of postsecondary education or training, compared to 59 percent of jobs in 2010. The CEW report finds that having a skilled workforce is critical if the United States is to "remain competitive, attract the right type of industry, and engage the right type of talent in a knowledge-based and innovative economy." At the current pace, the United States will fall short of its skilled workforce needs by 5 million workers. The disparity in earning potential between high school graduates and college graduates has never been greater, nor has the student loan debt – which stands at \$1.3 trillion – being carried by those who have pursued a postsecondary education.

Recognizing the growing need for workers with postsecondary education and training, the wage earnings benefits for those with training beyond high school, the rapidly rising college costs and mounting student loan debt, this Program awards students up to \$6,000 to offset students' tuition costs through a combination of a New York State Tuition Assistance Program (TAP) award, the Enhanced Tuition Award and a match from those private colleges who elect to participate in the Program. When fully phased in, Program awards will be available to resident, undergraduate students from households with incomes of up to \$125,000. To be eligible for a Program award, students must be on track to complete an associate's degree in two years or a bachelor's degree in four years by taking at least 30 credits each year. Payments will be made directly to colleges and universities on behalf of students upon certification of their successful completion of the academic term.

Students receiving Enhanced Program Awards must sign a contract agreeing to live in New York State for the number of years equal to the duration of the award received and, if employed, work within the State during this time. Recipients who do not satisfy this obligation will have the value of their awards converted to an interest-free student loan.

Costs:

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

b. Private colleges that opt to participate in the Program are required to credit each recipient's remaining tuition expenses in an amount equal to the recipient's award ("matching award"). Such credit will be applied after the recipient has received an institutional aid package, if any, to ensure that this program does not reduce institutional aid that would otherwise be granted. The maximum amount of the matching award to a recipient is \$3,000.

c. The maximum cost of the program to the State is \$19 million in the first year based upon budget estimates.

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

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

Local government mandates:

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

Paperwork:

This proposal will require applicants to file an electronic application for each year they wish to receive an award up to and including five years of eligibility. Recipients are required to sign a contract agreeing to live in New York State, and not be employed outside the State, in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

Duplication:

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

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to financial aid professionals with regard to this Program. Several alternatives were considered in the drafting of this regulation, such as the application of the credit requirement. Given the statutory language as set forth in section 667-d of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government.

Compliance schedule:

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

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (HESC) Emergency Rule Making, seeking to add a new section 2201.19 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This rule implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies at a New York State private institution of higher education. Colleges that opt to participate in the Program are required to credit each recipient's remaining tuition expenses in an amount equal to the recipient's award ("matching award"). Such credit will be applied after the recipient has received an institutional aid package, if any, to ensure that this program does not reduce institutional aid that would otherwise be granted. The maximum amount of the matching award to a recipient is \$3,000. Notwithstanding, HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive impacts by offering \$19 million in new financial aid support for students seeking to enroll in a private college in New York state and providing students with additional tuition award benefits. Students will be rewarded for remaining and working in New York, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.19 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies at a New York State private institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit rural areas around the State as well.

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

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.19 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies at a New York State private institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

**EMERGENCY
RULE MAKING**

Excelsior Scholarship

I.D. No. ESC-21-18-00035-E

Filing No. 414

Filing Date: 2018-05-07

Effective Date: 2018-05-07

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

Action taken: Addition of section 2201.18 to Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (HESC) Emergency Rule Making seeking to add a new section 2201.18 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2017 term, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for full tuition benefits to college-going students pursuing their undergraduate studies at a New York State public institution of higher education. Decisions on applications for this Program are made prior to the beginning of the term. Therefore, it is critical that the terms of the Program as provided in the regulation be effective immediately in order for HESC to process scholarship applications in a timely manner. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the Program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: Excelsior Scholarship.

Purpose: To implement the Excelsior Scholarship.

Text of emergency rule: New section 2201.18 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.18 Excelsior Scholarship.

(a) Definitions. For purposes of this section and Education Law, section 669-h, the following definitions shall apply:

(1) Award shall mean an Excelsior Scholarship award pursuant to Education Law, section 669-h.

(2) Full-time attendance or full-time study, for purposes of Education Law, section 669-h(1)(c), shall mean enrollment in at least 12 credits per semester and completion of at least 30 combined credits per year following the student's start date, or its equivalent, applicable to his or her program of study, excluding any permissible interruption of study as determined by the corporation, and except as provided in subdivision (b) of this section and Education Law, section 669-h(1)(c). Noncredit courses shall not be considered as contributing toward full-time attendance.

(3) Half-time shall mean enrollment in at least six but less than 12 credits, or the equivalent, per semester.

(4) Interruption in undergraduate study shall mean a temporary period of leave for a definitive length of time due to circumstances as determined by the corporation, including, but not limited to, death of a family member, medical leave, military service, service in the Peace Corps or parental leave.

(5) Program shall mean the Excelsior Scholarship codified in Education Law, section 669-h

(6) Public institution of higher education shall mean the State University of New York, as defined in Education Law, section 352(3), a community college as defined in Education Law, section 6301(2), or the City University of New York as defined in Education Law, section 6202(2).

(7) Satisfactory progress shall have the same meaning as successful completion.

(8) Student's start date (i) for purposes of Education Law, section 669-h(1)(b), shall mean the date the student began attendance as a first time college student; and (ii) for purposes of Education Law, section 669-h(1)(c), shall mean the date the college determines such recipient was first in attendance at that institution.

(9) Successful completion shall mean a student has earned at least 30 combined credits in each consecutive year following the student's start date, or its equivalent, applicable to his or her program or programs of study except as provided in subdivision (b) of this section and Education Law, section 669-h(1)(c).

(b) Eligibility. In addition to the requirements of Education Law, section 669-h, an applicant must also satisfy the general eligibility requirements provided in Education Law, section 661. As authorized by Education Law, section 669-h, the following exceptions and modifications to the eligibility requirements shall apply:

(1) College credit earned toward a recipient's program(s) of study while a high school student or other non-matriculated student shall be considered as contributing toward full-time attendance. For a recipient who earned college credit toward his or her program(s) of study prior to enrolling in college as a matriculated student and who is making satisfactory progress toward timely completion of his or her program(s) of study, and is enrolled in coursework not applicable toward his or her program(s) of study, such coursework outside of his or her program(s) of study shall be considered as contributing toward full-time attendance.

(2) A recipient must be in full-time attendance as defined in this section.

(3) For purposes of Education Law, section 669-h(1)(b), an applicant must have completed at least 30 combined credits in each consecutive year following his or her start date applicable to his or her program(s) of study which were accepted by his or her current institution at the time of application for this award, except for any permissible interruption of study as determined by the corporation. Notwithstanding, an applicant who enrolled in a program(s) of study leading to an undergraduate degree and enrolled as a first-time college student: (i) in the 2015-16 academic year who earned at least 54 combined credits applicable to his or her program(s) of study by the end of the 2016-17 academic year, shall become eligible to receive an award in the 2018-19 academic year and thereafter if such student completes at least 90 combined credits applicable to his or her program(s) of study by the end of the 2017-18 academic year; or (ii) in the 2016-17 academic year who earned at least 24 combined credits applicable to his or her program(s) of study by the end of the 2016-17 academic year, shall become eligible to receive an award in the 2018-19 academic year and thereafter if such student completes at least 60 combined credits applicable to his or her program(s) of study by the end of the 2017-18 academic year.

(4) For students who are disabled as defined by the Americans with Disabilities Act of 1990, 42 USC 12101, the full-time attendance requirement is eliminated, subject to the parameters of paragraph 4 of subdivision d of this section.

(c) Administration. In addition to the requirements contained in Education Law, section 669-h, the following requirements shall also apply.

(1) Applicants for an award shall:

(i) apply for program eligibility on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility; and

(ii) electronically transmit applications for program eligibility to the corporation on or before the date prescribed by the corporation for the applicable academic year.

(2) Recipients of an award shall:

(i) execute a contract with the corporation agreeing to reside in New York State for a continuous number of years equal to the duration of the award received and, if employed during such time, to be employed in New York State;

(ii) apply for payment annually on forms specified by the corporation; and

(iii) receive such awards for not more than two academic years of full-time undergraduate study if enrolled in an eligible two year program of study or four academic years of full-time undergraduate study or five academic years if the program of study normally requires five years, as defined by the commissioner pursuant to article thirteen of the education law, excluding any allowable interruption of study as defined in this section. For purposes of this subparagraph, a recipient's academic year shall begin with the term he or she was first in attendance at the institution in which he or she is currently enrolled.

(3) For each recipient, institutions shall certify on forms and in the manner prescribed by the corporation the tuition rate charged by the institution, eligibility to receive the award, the number of credits completed each academic term, the cumulative credits at the end of each academic term, the type and amount of each student financial aid award received, excluding loans and work study, and any other information requested by the corporation.

(d) Amounts.

(1) The amount of the award shall be determined in accordance with Education Law, section 669-h.

(2) Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time subject to the verification and certification by the institution of the recipient's full-time status and other eligibility and certification requirements.

(3) Awards shall be reduced by the value of other educational grants and scholarships that cover the cost of attendance unless the award is exclusively for non-tuition expenses as authorized by Education Law, section 669-h.

(4) For students who are disabled as defined by the Americans with Disabilities Act of 1990, 42 USC 12101, upon each certification by the college or university, payment eligibility shall be determined and measured proportionally in equivalence with full-time study.

(e) Contractual obligation.

(1) For the purpose of complying with Education Law, section 669-h(4)(e), military personnel, including those in the Military Reserves and ROTC or CSPI, for whom New York is his or her legal state of residence shall be deemed to reside and be employed in New York State regardless of where the individual is stationed or deployed.

(2) For the purpose of complying with Education Law, section 669-h(4)(e), for a recipient who is no longer eligible to receive award pay-

ments, the duration he or she resides in New York State while completing undergraduate or graduate study, including medical residency, shall be credited toward the time necessary to satisfy the recipient's residency and employment requirement.

(3) Where a recipient, within six months of receipt of his or her final award payment, fails to maintain permanent domicile in New York State for a continuous number of years equal to the duration of the award received or, during such time, is employed in any other state, the corporation shall convert all award monies received to a 10-year student loan, without interest. However, the requirement to maintain permanent domicile, and only be employed, in New York State, may be deferred to complete undergraduate study or attend graduate school, including medical residency, on at least a half-time basis.

(4) Where a recipient has demonstrated extreme hardship as a result of a disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, postpone converting the award to a student loan, temporarily suspend repayment of the amount owed, discharge the amount owed, or take such other appropriate action. Notwithstanding, the corporation shall prorate the amount owed commensurate with the length of time the recipient complied with the residency and employment requirements.

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 4, 2018.

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

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's (HESC) statutory authority to promulgate regulations and administer the Excelsior Scholarship (Program) is codified within Article 14 of the Education Law. In particular, Part HHH of Chapter 59 of the Laws of 2017 created the Program by adding a new section 669-h to the Education Law. Subdivision 6 of section 669-h of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

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

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

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

Legislative objectives:

The Education Law was amended to add a new section 669-h to create the Excelsior Scholarship (Program). This Program makes college tuition-free for New York's middle class families at all State University of New York (SUNY) and City University of New York (CUNY) two-year and four-year colleges.

Needs and benefits:

Many studies have underscored the importance of a college degree in today's global economy. According to a report by the Center on Education and the Workforce (CEW) at Georgetown University, by 2020, 65 percent of all jobs will require some form of postsecondary education or training, compared to 59 percent of jobs in 2010. The CEW report finds that having a skilled workforce is critical if the United States is to "remain competitive, attract the right type of industry, and engage the right type of talent in a knowledge-based and innovative economy." At the current pace, the United States will fall short of its skilled workforce needs by 5 million workers. The disparity in earning potential between high school graduates and college graduates has never been greater, nor has the student loan debt – which stands at \$1.3 trillion – being carried by those who have pursued a

postsecondary education. Recognizing the growing need for workers with postsecondary education and training, the wage earnings benefits for those with training beyond high school, the rapidly rising college costs and mounting student loan debt, this Program makes college tuition-free for New York's students attending a State University of New York (SUNY) or City University of New York (CUNY) two-year or four-year college.

The Program provides for annual tuition awards up to \$5,500 for resident, undergraduate students from households with incomes of up to \$125,000, when fully phased in. Students must be on track to complete an associate's degree in two years or a bachelor's degree in four years by taking at least 30 credits each year. Awards are reduced by other financial aid received by the student, such as a Tuition Assistance Program (TAP) award. Any remaining tuition expense will be covered through a college credit. Payments will be made directly to the public college or university on behalf of the student upon certification of his or her successful completion of the academic term.

Students receiving an Excelsior Scholarship award must sign a contract agreeing to live in New York State for a number of years equal to the duration of the award received and, if employed, work within the State during this time. Recipients who do not satisfy this obligation will have the value of their awards converted to an interest-free student loan.

Costs:

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

b. The maximum cost of the program to the State is \$87 million in the first year based upon budget estimates.

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

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

Local government mandates:

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

Paperwork:

This proposal will require applicants to file an electronic application for each year they wish to receive an award up to and including five years of eligibility. Recipients are required to sign a contract agreeing to live in New York State, and not be employed outside the State, in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

Duplication:

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

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to financial aid professionals with regard to this Program. Several alternatives were considered in the drafting of this regulation, such as the application of the credit requirement. Given the statutory language as set forth in section 669-h of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government.

Compliance schedule:

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

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (HESC) Emergency Rule Making, seeking to add a new section 2201.18 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

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

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule

Making, seeking to add a new section 2201.18 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides full tuition benefits to college students who pursue their undergraduate studies at a New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit rural areas around the State as well.

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

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.18 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides full tuition benefits to college students who pursue their undergraduate studies at a New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

EMERGENCY RULE MAKING

New York State Science, Technology, Engineering and Mathematics Incentive Program

I.D. No. ESC-21-18-00036-E

Filing No. 415

Filing Date: 2018-05-07

Effective Date: 2018-05-07

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

Action taken: Addition of section 2201.13 to Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2014 term. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students who, beginning August 2014, pursue an undergraduate program of study in science, technology, engineering, or mathematics at a New York State public institution of higher education. High school students entering college in August must inform the institution of their intent to enroll no later than May 1. Therefore, it is critical that the terms of the program as provided in the regulation be available immediately in order for HESC to process scholarship applications so that students can make informed choices. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Science, Technology, Engineering and Mathematics Incentive Program.

Purpose: To implement the New York State Science, Technology, Engineering and Mathematics Incentive Program.

Text of emergency rule: New section 2201.13 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.13 New York State Science, Technology, Engineering and Mathematics Incentive Program.

(a) Definitions. The following definitions apply to this section:

(1) "Award" shall mean a New York State Science, Technology, Engineering and Mathematics Incentive Program award pursuant to section 669-e of the New York State education law.

(2) "Employment" shall mean continuous employment for at least thirty-five hours per week in the science, technology, engineering or mathematics field, as published on the corporation's web site, for a public or private entity located in New York State for five years after the completion of the undergraduate degree program and, if applicable, a higher degree program or professional licensure degree program and a grace period as authorized by section 669-e(4) of the education law.

(3) "Grace period" shall mean a six month period following a recipient's date of graduation from a public institution of higher education and, if applicable, a higher degree program or professional licensure degree program as authorized by section 669-e(4) of the education law.

(4) "High school class" shall mean the total number of students eligible to graduate from a high school in the applicable school year.

(5) "Interruption in undergraduate study or employment" shall mean a temporary period of leave for a definitive length of time due to circumstances as determined by the corporation, including, but not limited to, maternity/paternity leave, death of a family member, or military duty.

(6) "Program" shall mean the New York State Science, Technology, Engineering and Mathematics Incentive Program codified in section 669-e of the education law.

(7) "Public institution of higher education" shall mean the state university of New York, as defined in subdivision 3 of section 352 of the education law, a community college as defined in subdivision 2 of section 6301 of the education law, or the city university of New York as defined in subdivision 2 of section 6202 of the education law.

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

(9) "Science, technology, engineering and mathematics" programs shall mean those undergraduate degree programs designated by the corporation on an annual basis and published on the corporation's web site.

(10) "Successful completion of a term" shall mean that at the end of any academic term, the recipient: (i) met the eligibility requirements for the award pursuant to sections 661 and 669-e of the education law; (ii) completed at least 12 credit hours or its equivalent in a course of study leading to an approved undergraduate degree in the field of science, technology, engineering, or mathematics; and (iii) possessed a cumulative grade point average (GPA) of 2.5 as of the date of the certification by the institution. Notwithstanding, the GPA requirement is preliminarily waived for the first academic term for programs whose terms are organized in semesters, and for the first two academic terms for programs whose terms are organized on a trimester basis. In the event the recipient's cumulative GPA is less than a 2.5 at the end of his or her first academic year, the recipient will not be eligible for an award for the second academic term for programs whose terms are organized in semesters or for the third academic term for programs whose terms are organized on a trimester basis. In such case, the award received for the first academic term for programs whose terms are organized in semesters and for the first two academic terms for programs whose terms are organized on a trimester basis must be returned to the corporation and the institution may reconcile the student's account, making allowances for any other federal, state, or institutional aid the student is eligible to receive for such terms unless: (A) the recipient's GPA in his or her first academic term for programs whose terms are organized in semesters was a 2.5 or above, or (B) the recipient's GPA in his or her first two academic terms for programs whose terms are organized on a trimester basis was a 2.5 or above, in which case the institution may retain the award received and only reconcile the student's account for the second academic term for programs whose terms are organized in semesters or for the third academic term for programs whose terms are organized on a trimester basis. The corporation shall issue a guidance document, which will be published on its web site.

(b) Eligibility. An applicant for an award under this program pursuant to section 669-e of the education law must also satisfy the general eligibility requirements provided in section 661 of the education law.

(c) Class rank or placement. As a condition of an applicant's eligibility, the applicant's high school shall provide the corporation:

(1) official documentation from the high school either (i) showing the applicant's class rank together with the total number of students in such applicant's high school class or (ii) certifying that the applicant is in the top 10 percent of such applicant's high school class; and

(2) the applicant's most current high school transcript; and

(3) an explanation of how the size of the high school class, as defined in subdivision (a), was determined and the total number of students in such class using such methodology. If the high school does not rank the students in such high school class, the high school shall also provide the corporation with an explanation of the method used to calculate the top 10 percent of students in the high school class, and the number of students in the top 10 percent, as calculated. Each methodology must comply with the terms of this program as well as be rational and reasonable. In the event the corporation determines that the methodology used by the high school

fails to comply with the term of the program, or is irrational or unreasonable, the applicant will be denied the award for failure to satisfy the eligibility requirements; and

(4) any additional information the corporation deems necessary to determine that the applicant has graduated within the top 10 percent of his or her high school class.

(d) Administration.

(1) Applicants for an award shall:

(i) apply for program eligibility on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility; and

(ii) postmark or electronically transmit applications for program eligibility to the corporation on or before the date prescribed by the corporation for the applicable academic year. Notwithstanding any other rule or regulation to the contrary, such applications shall be received by the corporation no later than August 15th of the applicant's year of graduation from high school.

(2) Recipients of an award shall:

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

(ii) apply for payment annually on forms specified by the corporation;

(iii) confirm annually their enrollment in an approved undergraduate program in science, technology, engineering, or mathematics;

(iv) receive such awards for not more than four academic years of full-time undergraduate study or five academic years if the program of study normally requires five years, as defined by the commissioner pursuant to article thirteen of the education law, excluding any allowable interruption of study; and

(v) respond to the corporation's requests for a letter from their employer attesting to the employee's job title, the employee's number of hours per work week, and any other information necessary for the corporation to determine compliance with the program's employment requirements.

(e) Amounts.

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

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

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

(f) Failure to comply.

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

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

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

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

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

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 4, 2018.

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

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer

the New York State Science, Technology, Engineering and Mathematics Incentive Program ("Program") is codified within Article 14 of the Education Law. In particular, Part G of Chapter 56 of the Laws of 2014 created the Program by adding a new section 669-e to the Education Law. Subdivision 5 of section 669-e of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

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

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

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

Legislative objectives:

The Education Law was amended to add a new section 669-e to create the "New York State Science, Technology, Engineering and Mathematics Incentive Program" (Program). This Program is aimed at increasing the number of individuals working in the fields of science, technology, engineering and mathematics (STEM) in New York State to meet the increasingly critical need for those skills in the State's economy.

Needs and benefits:

According to a February 2012 report by President Obama's Council of Advisors on Science and Technology, there is a need to add to the American workforce over the next decade approximately one million more science, technology, engineering and mathematics (STEM) professionals than the United States will produce at current rates in order for the country to stay competitive. To meet this goal, the United States will need to increase the number of students who receive undergraduate STEM degrees by about 34% annually over current rates. The report also stated that fewer than 40% of students who enter college intending to major in a STEM field complete a STEM degree. Further, a recent Wall Street Journal article reported that New York state suffers from a shortage of graduates in STEM fields to fill the influx of high-tech jobs that occurred five years ago. At a plant in Malta, about half the jobs were filled by people brought in from outside New York and 11 percent were foreigners. According to the article, Bayer Corp. is due to release a report showing that half of the recruiters from large U.S. companies surveyed couldn't find enough job candidates with four-year STEM degrees in a timely manner; some said that had led to more recruitment of foreigners. About two-thirds of the recruiters surveyed said that their companies were creating more STEM positions than other types of jobs. There are also many jobs requiring a two-year degree. In an effort to deal with this shortage, companies are using more internships, grants and scholarships.

The Program is aimed at increasing the number New York graduates with two and four year degrees in STEM who will be working in STEM fields across New York state. Eligible recipients may receive annual awards for not more than four academic years of undergraduate full-time study (or five years if enrolled in a five-year program) while matriculated in an approved program leading to a career in STEM.

The maximum amount of the award is equal to the annual tuition charged to New York State resident students attending an undergraduate program at the State University of New York (SUNY), including state operated institutions, or City University of New York (CUNY). The current maximum annual award for the 2014-15 academic year is \$6,170. Payments will be made directly to schools on behalf of students upon certification of their successful completion of the academic term.

Students receiving a New York State Science, Technology, Engineering and Mathematics Incentive Program award must sign a service agreement and agree to work in New York state for five years in a STEM field and reside in the State during those five years. Recipients who do not fulfill their service obligation will have the value of their awards converted to a student loan and be responsible for interest.

Costs:

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

b. The maximum cost of the program to the State is \$8 million in the first year based upon budget estimates.

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

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

Local government mandates:

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

Paperwork:

This proposal will require applicants to file an electronic application for each year they wish to receive an award up to and including five years of eligibility. Recipients are required to sign a contract for services in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

Duplication:

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

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to financial aid professionals with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms/phrases used in the regulation as well as the academic progress requirement. Given the statutory language as set forth in section 669-e of the Education Law, a "no action" alternative was not an option.

Federal standards:

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

Compliance schedule:

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

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

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

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at a New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit rural areas around the State as well.

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

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive impacts inasmuch as it implements a statutory

student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

Justice Center for the Protection of People with Special Needs

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Protocols for Interviewing Service Recipients

I.D. No. JCP-21-18-00030-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 705 to Title 14 NYCRR.

Statutory authority: Executive Law, section 553(28); L. 2014, ch. 394, section 3

Subject: Protocols for interviewing service recipients.

Purpose: To ensure interviews of service recipients during investigations are conducted in a safe and sensitive manner.

Substance of proposed rule (Full text is posted at the following State website: www.justicecenter.ny.gov): Part 705 is added to Title 14 to establish protocols for interviewing service recipients.

A statement of background and intent is provided and indicates the intent to protect service recipients from an interview process which may be unintentionally harmful to their wellbeing. This rule seeks to balance the safety of service recipients in light of their clinical, personal considerations and the need for the timely completion of an effective investigation.

This rule applies to all investigations of alleged abuse and neglect conducted by the Justice Center, as well as investigations conducted by state agencies whose programs are under the jurisdiction of the Justice Center and by the facilities and programs defined in section 488(4) of the Social Services Law when acting as the delegate investigatory entity.

The statutory authority for this rule is Executive Law section 553(28).

The rule establishes a process for providing notification to service recipients who are alleged victims or potential witnesses and/or their personal representatives, as defined in the rule, that the alleged victim or potential witness may be interviewed as part of the investigation into the allegation of abuse and neglect. It also sets forth exceptions to the notification requirements.

The rule also establishes a process for making determinations regarding the appropriateness of conducting an interview given a service recipients' diagnosis. Under certain circumstances, the investigator shall document why proceeding with certain interviews is appropriate and include the steps take to protect the service recipient's health, safety, and wellbeing during the interview.

Finally, the rule establishes a process for determining whether the presence of the personal representative at the interview is to be permitted and indicates that service recipients or their personal representatives are advised about what to expect in an interview and that participation in the interview is entirely voluntary.

Text of proposed rule and any required statements and analyses may be obtained from: Rebecca Mudie, Justice Center for the Protection of People with Special Needs, 161 Delaware Avenue, Delmar, NY 12054, (518) 549-0254, email: rebecca.mudie@JusticeCenter.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority: Executive Law Section 553(28) enacted by chapter 394 of the laws of 2014 requires the Justice Center to develop protocols in consultation with state oversight agencies for interviewing service recipients during investigations of allegations of abuse and/or neglect and to promulgate regulations describing and implementing such protocols.

2. Legislative objectives: The proposed rule comports with the legislative directive to develop and implement protocols so that interviews of service recipients during investigations are conducted in a safe and appropriately sensitive manner.

3. Needs and benefits: The purpose of this rule is to protect service recipients from an interview process which may be unintentionally harmful to their wellbeing. This rule is required by statute and is intended to balance the safety of service recipients in light of their clinical, personal considerations and the need for the timely completion of an effective investigation.

4. Costs: Service providers are already required to report allegations of abuse and neglect and assist the Justice Center or state oversight agencies with any ensuing investigations. This rule was previously adopted by emergency regulation, and guidance documents were issued to state oversight agencies. Since service providers are already complying with the provisions of this rule, costs will not be incurred to comply with this rule. Annual cost for continuing compliance would depend upon the size of the provider agency, the number of service recipients served, and the prevalence of investigations. Continuing compliance costs are unlikely to increase for state oversight or provider agencies.

5. Local government mandates: This rule imposes no program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: 1) Service providers and state oversight agencies are required to document in writing that notification to service recipients and/or their personal representatives that a service recipient may be interviewed during an investigation has been made, or that a diligent effort was made to provide such notification. A template for notification of personal representatives has been provided to state oversight agencies and posted on the Justice Center's website.

2) Under limited circumstances, investigators are required to document in the investigative record why certain interviews occurred and the steps taken to protect the service recipient's health, safety and wellbeing during the interview.

3) Investigators are required to document in the investigative record if he or she determines that a service recipient's personal representative should not be present at an interview or should leave once an interview is underway.

7. Duplication: There are no relevant rules or other legal requirements of the state and federal governments that duplicate, overlap or conflict with the rule.

8. Alternatives: There were no significant alternatives considered.

9. Federal standards: This rule does not exceed any minimum standards of the federal government.

10. Compliance schedule: While the protocols have been developed and implemented, they are not currently in regulation and the agency needs to adopt a final regulation to comply with the enabling statute and to continue the protection of the health, safety and welfare of service recipients during the interview process.

Regulatory Flexibility Analysis

1. Effect of rule: Approximately 2,500 provider agencies, as defined in Social Services Law 488(4):

1) program in which services are provided and which is operated, licensed or certified by the office of mental health, the office for people with developmental disabilities or the office of alcoholism and substance abuse services;

2) any residential programs or facilities licensed or certified by the office of children and family services, excluding foster family homes and residential programs for victims of domestic violence;

3) adult care facilities, which shall mean adult homes or enriched housing programs that (A) that have a licensed capacity of eighty or more beds; and (B) in which at least twenty-five percent of the residents are persons with serious mental illness as defined by mental hygiene law section 1.03(52);

4) any overnight, summer day and traveling summer day camps for children with developmental disabilities as defined in regulations promulgated by the commissioner of health; or

5) the New York state school for the blind and the New York state school for the deaf, which operate pursuant to Education Law articles 87 and 88;

6) an institution for the instruction of the deaf and the blind which has a residential component and is subject to the visitation of the commissioner of education pursuant to Education Law Article 85 with respect to its day and residential components;

7) special act school districts serving students with disabilities; or

8) in-state private schools which have been approved by the commissioner of education for special education services or programs, and which have a residential program.

2. Compliance requirements: Providers agencies are required to document in writing that notification to service recipients and/or their personal representatives that a service recipient may be interviewed during an investigation has been made, or that a diligent effort was made to provide such notification.

3. Professional services: Professional services are not necessary to comply with this rule.

4. Compliance costs: Since provider agencies are already complying with the provisions of this rule, initial capital costs will not be incurred to comply with this rule. Annual cost for continuing compliance would depend upon the size of the provider agency, the number of service recipients served, and the prevalence of investigations. Continuing compliance costs are unlikely to vary for provider agencies.

5. Economic and technological feasibility: Provider agencies are already complying with the provisions of this rule.

6. Minimizing adverse impact: The implementation of this rule was directed by statute and does not impose an adverse economic impact on service providers. Service providers are already required to report allegations of abuse and neglect and assist the Justice Center or state oversight agencies with any ensuing investigations.

7. Small business and local government participation: Small businesses and local governments will have an opportunity for public comment during this rule make process.

Rural Area Flexibility Analysis

This rule imposes neither an adverse impact on rural areas; nor reporting, recordkeeping or other compliance requirements on public or private entities in rural areas that are not similarly imposed upon service providers in other areas of the State.

The proposed rule sets forth the procedures developed and implemented by the Justice Center pursuant to statutory direction to ensure that interviews of service recipients during the course of an investigation of alleged abuse and neglect are conducted in a safe and appropriately sensitive manner.

Comments will be received and entertained during the public comment period associated with the Proposed Rulemaking portion of this Notice.

Job Impact Statement

A Job Impact Statement (JIS) is not required because it is evident from the subject matter of this proposal that it will have no impact on jobs and employment opportunities.

The proposed consensus rule merely clarifies language in the existing rule and makes minor technical corrections.

Accordingly, the adoption of this rule will not affect existing investigator jobs or employment opportunities.

Office for People with Developmental Disabilities

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Certificate of Incorporation

I.D. No. PDD-21-18-00046-P

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

Proposed Action: This is a consensus rule making to amend Part 681 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

Subject: Certificate of Incorporation.

Purpose: Remove a requirement for certificate holders that is no longer required under Mental Hygiene Law section 16.07.

Text of proposed rule: Existing paragraph 681.3(h) is amended as follows:

- (h) The certificate holder shall obtain prior approval from OPWDD to:
 - (1) change the address of physical location of the intermediate care facility or utilize additional physical locations or premises or parts of premises;
 - (2) initiate any changes in the overall provision of services; *or*
 - [(3) change the powers or purposes set forth in any certificate of incorporation or partnership agreement; or]
 - 3[(4)] change the certified residential capacity of the intermediate care facility.

Text of proposed rule and any required statements and analyses may be obtained from: Office of Counsel, Bureau of Policy and Regulatory Affairs, Office for People With Developmental Disabilities (OPWDD), 44 Holland Avenue, 3rd Floor, Albany, NY 12229, (518) 474-7700, email: rau.unit@opwdd.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment and an E.I.S. is not needed.

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

Consensus Rule Making Determination

In 2010, Mental Hygiene Law repealed Section 16.07 to discontinue the requirement that certificates of incorporation be approved by the commissioner of OPWDD. In conformance with the repeal of Section 16.07, OPWDD is removing the requirement for certificate holders to receive approval from OPWDD to change the powers or purposes set forth in any certificate of incorporation or partnership agreement.

OPWDD has determined that due to the nature and purpose of the amendments no person is likely to object to the rule as written.

Job Impact Statement

A Job Impact Statement for the proposed amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

The proposed regulations update 14 NYCRR Part 681.1(h) by removing the requirement for certificate holders to receive approval from OPWDD to change the powers or purposes set forth in any certificate of incorporation or partnership agreement. The amendments will not result in costs, including staffing costs, or new compliance requirements for providers and consequently, the amendments will not have a substantial impact on jobs or employment opportunities in New York State.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Property Tax Expenses and Refunds of Over-Collections for Such Expenses

I.D. No. PSC-21-18-00033-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 amount by which New York American Water, Inc. (NYAW) over-collected property tax expenses from customers and the means of refunding such over-collections to ratepayers.

Statutory authority: Public Service Law, sections 89-b and 89-c

Subject: Property tax expenses and refunds of over-collections for such expenses.

Purpose: To ensure just and reasonable rates.

Substance of proposed rule: The Commission is considering the amount by which New York American Water, Inc. (NYAW) over-collected property tax expenses from customers and the means of refunding such over-collections to ratepayers. On April 30, 2018, Department of Public Service Staff (Staff) filed a report with the Commission consisting of its review of NYAW's calculation of its over-payments of property tax expenses and related customer impact. The Report determined that the customer impact of NYAW overpayment to taxing authorities totaled approximately \$2.3 million. The Report recommends a refund to customers which would average \$65.37 per customer. The Report also states that ratepayers could expect a \$2.4 million reduction in future yearly rates due to the correction of the property tax assessments. The Report recommends revised property tax targets and related surcharges in the current rate plan. The Report supplies the Commission with three options for making ratepayers whole for the property tax errors: First, provide all ratepayers a monthly sur-credit of \$4.57 for one year, using the variance during the previous rate plan with interest to offset the deferrals related to the cancelled \$26.95 surcharge, and leave the authorized but uncollected deferral amounts unchanged; Second, subtract the deferrals on the Company's book against the \$2.3 million ratepayers impact and sur-credit the balance to ratepayers of \$65.37 for one year; and Third, approve the net credits owed ratepayers from NYAW's prior rate plan in Case 11-W-0472, but leave all regulatory assets resulted from previous rate plan on NYAW's books, along with the

customer impact during the current rate plan in Case 16-W-0259 for disposition through NYAW's existing property tax reconciliation mechanisms. Staff recommends the second option. The Commission may choose one of the proposed options or decide on an alternative method of making ratepayers whole. The full text of the Staff Report and the full case record of the proceeding 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 action 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: 60 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-0259SP3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Con Edison's Petition for the Smart Solutions for Natural Gas DR Pilot Implementation Plan and Associated Budget

I.D. No. PSC-21-18-00041-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 Smart Solutions for Natural Gas Customers Gas Demand Response (DR) Pilot Implementation Plan filed by Consolidated Edison Company of New York, Inc. (Con Edison) on April 26, 2018.

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

Subject: Con Edison's petition for the Smart Solutions for Natural Gas DR Pilot Implementation Plan and associated budget.

Purpose: To promote gas system reliability by encouraging gas demand reductions during peak gas demand days.

Substance of proposed rule: The Public Service Commission (Commission) is considering the Smart Solutions for Natural Gas Customers Gas Demand Response (DR) Pilot Implementation Plan filed by Consolidated Edison Company of New York, Inc. (Con Edison) on April 26, 2018, requesting approval for the Gas DR Pilot that aims to reduce net customer gas demand during a peak gas demand day during the coldest days of the year. The Gas DR Pilot consists of a performance-based Gas DR program primarily targeting Commercial & Industrial gas customers and multi-family buildings with centralized heating systems, as well as a Direct Load Control Gas DR Pilot targeting residential gas customers. Con Edison is requesting funding of \$5 million to administer the Gas DR Pilot program over a three-year period, seeks flexibility to reallocate funds within the Gas DR Pilot as needed, and the ability to defer additional incentive costs for recovery in the next gas rate filing if those incentive costs are higher than estimated in the Implementation Plan. The Gas DR Pilot is one of the multi-solution proposals in Con Edison's Smart Solutions for Natural Gas Customers Program portfolio, which was filed in Case 17-G-0606 on September 29, 2017. The Smart Solutions for Natural Gas Customers Program is a multi-solution strategy to decrease gas usage and procure alternative resources so that Con Edison may meet its customers' demand for natural gas despite a forecasted growing shortfall of peak gas day pipeline capacity. The full text of the filing and the full record of the proceeding 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 action 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: 60 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-G-0606SP2)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Establish New SC No. 7—High Density Loads Individual Negotiated Contract

I.D. No. PSC-21-18-00042-P

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

Proposed Action: The Commission is considering a proposal filed by the City of Jamestown Board of Public Utilities (Jamestown), to P.S.C. No. 7—Electricity, to establish Service Classification (SC) No. 7—High Density Loads Individual Negotiated Contract.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Establish new SC No. 7—High Density Loads Individual Negotiated Contract.

Purpose: To ensure that high density load customers receive cost-based rates that do not provide an undue preference.

Substance of proposed rule: The Commission is considering a proposal filed, on May 1, 2018, by the City of Jamestown Board of Public Utilities (Jamestown), to amend its tariff to add P.S.C. No. 7—Electricity, to establish Service Classification (SC) No. 7 — High Density Loads Individual Negotiated Contract. The new classification would apply to new and existing High Density Load (HDL) customers who do not qualify under existing business development assistance programs as contemplated in Rider No. 5 of the Jamestown tariff. The proposed SC No. 7 will apply to HDL customers who have a maximum load greater than 300 kW and an annual Energy Use Intensity greater than 250 kWh per operating space square footage. In addition to a fixed monthly customer charge and a reactive power charge calculated per kW of measured demand, energy and demand charges will be specified in individually negotiated contracts with HDL customers. Energy charges will be adjusted monthly by the incremental purchased power costs incurred by the Jamestown for all HDL customers served. Jamestown states that the addition of a new service classification is necessary to protect existing municipal electric utility customers from increased supply costs resulting from high density load customers. The proposed amendments have an effective date of September 1, 2018. The full text of the filing and the full record of the proceeding 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 action 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: 60 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.

(18-E-0265SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Intent to Submeter Electricity at 98 Front Street, Brooklyn, New York

I.D. No. PSC-21-18-00043-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 notice of intent of 80 Adams Property Owner, LLC to submeter electricity at 98 Front Street, Brooklyn, New York.

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

Subject: Intent to submeter electricity at 98 Front Street, Brooklyn, New York.

Purpose: To ensure adequate submetering equipment and consumer protections are in place.

Substance of proposed rule: The Commission is considering the notice of intent filed by 80 Adams Property Owner, LLC (Owner) on May 3, 2018, to submeter electricity at 98 Front Street, Brooklyn, New York located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison). By stating its intent to submeter electricity, 80 Adams Property Owner, LLC, has requested authorization to take electric service from Con Edison and then distribute and meter that electricity to tenants. Submetering of electricity to residential tenants is allowed so long as it complies with the protections and requirements of the Commission's regulations at 16 NYCRR Part 96. The full text of the notice of intent and the full record of the proceeding 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 action 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: 60 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.

(18-E-0268SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Electric Ratemaking Policy for Direct Current Fast Charging (DCFC) Facilities Used to Recharge Electric Vehicles

I.D. No. PSC-21-18-00044-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 the New York Power Authority, the DEC, the DOT, and the Thruway Authority regarding electric rates for Direct Current Fast Charging (DCFC) facilities.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Electric ratemaking policy for Direct Current Fast Charging (DCFC) facilities used to recharge electric vehicles.

Purpose: To ensure just and reasonable rates in the context of charging electric vehicles.

Substance of proposed rule: The Commission is considering a proposal filed by the New York Power Authority, the New York State Department of Environmental Conservation, the New York State Department of Transportation, and the New York State Thruway Authority (Petitioners), on April 13, 2018, requesting the Commission direct utilities to shift all customer accounts for publicly accessible Direct Current Fast Charging

(DCFC) equipment to a non-demand metered rate and to consider long-term rate modifications that take into account the low load factors and sporadic usage of DCFC equipment. The Petitioners request that the Commission direct investor-owned utilities to modify their Service Classification 2 (SC-2) or Small General non-demand metered tariffs so that DCFC customers: 1) qualify for non-demand metered SC-2 classification; 2) are exempt from any kW or kWh limit that would jeopardize their entitlement to take non-demand metered service; and 3) are provided a one-time opportunity to elect to take service under the applicable demand-metered service classification. The Petitioners also request that the Commission commence a proceeding to establish principals to guide investor-owned utilities in redesigning rates applicable to DCFC accounts and in the development of broader Electric Vehicle implementation plans. Additionally, the Petitioners request the Commission direct Consolidated Edison Company of New York, Inc. to expand its Business Incentive Rate discounts eligibility to NYPA DCFC accounts served under the Small General non-demand-metered rate. The full text of the filing and the full record of the proceeding 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 action 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: 60 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.

(18-E-0138SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Waiver of PSC Regulations, 16 NYCRR Sections 86.3(a)(1), (2), (b)(1), (2), 86.6, 86.10 and 88.4(a)(4)

I.D. No. PSC-21-18-00045-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 motion by North Bergen Liberty Generating, LLC for a waiver of certain provisions of 16 NYCRR with respect to an application to amend a Certificate of Environmental Compatibility and Public Need pursuant to PSL Article VII.

Statutory authority: Public Service Law, sections 4, 5 and 122

Subject: Waiver of PSC regulations, 16 NYCRR Sections 86.3(a)(1), (2), (b)(1), (2), 86.6, 86.10 and 88.4(a)(4).

Purpose: To ensure application to amend certificate issued under PSL Article VII contains sufficient information for review to proceed.

Substance of proposed rule: The Public Service Commission is considering a motion filed on April 2, 2018, by North Bergen Liberty Generating, LLC (NBLG), for a waiver or partial waiver of certain requirements for the content of an application for an amendment of a Certificate of Environmental Compatibility and Public Need (Certificate) under Public Service Law Article VII. The Certificate, originally issued by the Commission on April 17, 2003 in Case 01-T-1474, and amended by the Commission on October 24, 2004, is currently held by Cross Hudson, LLC (Cross Hudson). NBLG, as Cross Hudson's authorized agent, proposes to build an approximately 9.6-mile submarine and underground, double-circuit, 345 kilovolt (kV) transmission generator lead and associated equipment extending from NBLG's proposed generation facility in North Bergen, New Jersey to the Consolidated Edison Company of New York, Inc.'s substation at West 49th Street in Manhattan. Approximately 3.42 miles of the generator lead will run within New York waters and 40 miles will run underground in Manhattan. The generator lead will run underground from North Bergen to Edgewater, New Jersey, where it will enter the Hudson River. Once in the Hudson River, the generator lead will continue east crossing the 750-foot wide Federal Navigation Channel,

known locally as the Weehawken-Edgewater Reach, with a target burial depth of 15 feet below the river bottom. After crossing the Weehawken-Edgewater Reach, the generator lead will proceed east into New York State waters. The generator lead will turn to the south approximately opposite West 114th Street and run generally parallel to the Hudson River shoreline. The generator lead will then cross over the two 24-inch WGP-Tranco gas pipelines that run between West 76th Street in Manhattan and Guttenberg, New Jersey, and will continue south to enter the 48-foot mean low-water Federal Navigation Channel, which begins at about West 59th Street in Manhattan. The generator lead will be brought ashore at what NBLG says is a "mostly undeveloped" area of the Hudson River Park Trust's Clinton Cove Park, then proceed south underground within the bike path along Route 9A, cross 12th Avenue (also known as the West Side Highway) at West 49th Street and continue into the substation. NBLG filed its Article VII amendment application and waiver motion on April 2, 2018. NBLG specifically seeks waivers of 16 NYCRR 86.3(a)(1) and (a)(2), 86.3(b)(1) and (b)(2), 86.6, 86.10 and 88.4(a)(4), relating to the filing of certain maps, aerial photographs, architectural drawings, total capital cost estimates, and a System Reliability Impact Study. As to the maps showing the right-of-way of the proposed facilities, NBLG seeks to use National Oceanic and Atmospheric Administration (NOAA) navigational charts for the submarine portion of the route instead of New York State Department of Transportation (DOT) topographic maps. NBLG proposes to use maps showing a one-mile area on either side of the proposed facility, rather than the five-mile area required by the regulations. NBLG proposes that, with respect to depicting known archaeological, geologic, historical or scenic area, park or untouched wilderness, the radius be reduced from a three-mile corridor around the underground route to approximately 1,000 feet on DOT topographic maps. In showing the relationship of the proposed facility to NBLG's overall system, NBLG proposes to use DOT maps at a scale of 1:24,000, rather than at a scale of 1:250,000. NBLG proposes the use of NOAA navigational charts of the submarine portion of the generator lead instead of aerial photographs of the Hudson River, and it proposes to use aerial photographs of urban and urbanizing fringe areas taken on September 9, 2016 as depicting actual current conditions in lieu of aerial photographs taken within six months of the date NBLG filed its Article VII amendment application. NBLG proposes to submit engineering drawings showing the design of the project, including cross section of the generator lead installation, rather than architectural drawings and descriptions showing a profile of the centerline of the right-of-way at exaggerated vertical scale. NBLG proposes to provide an overall cost estimate for the project instead of a detailed estimate of the total capital costs of the proposed facilities. Finally, NBLG requests a waiver of the requirement to submit a System Reliability Impact Study with its application and proposes to submit such a study as soon as possible. The full text of the motion and the full record of the proceeding 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 action 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: 60 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.

(18-T-0210SP1)

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-09-18-00007-A

Filing No. 411

Filing Date: 2018-05-04

Effective Date: 2018-05-04

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period April 1, 2018 through June 30, 2018.

Text or summary was published in the February 28, 2018 issue of the Register, I.D. No. TAF-09-18-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O’Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.ny.gov

Assessment of Public Comment

The agency received no public comment.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-21-18-00031-P

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

Proposed Action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period July 1, 2018 through September 30, 2018.

Text of proposed rule: Pursuant to the authority contained in subdivision First of section 171, subdivision (c) of section 301-h, subdivision 7 of section 509, subdivision (b) of section 523, and subdivision (a) of section 528 of the Tax Law, the First Deputy Commissioner of Taxation and Finance, being duly authorized to act due to the vacancy in the office of the Commissioner of Taxation and Finance, hereby proposes to make and adopt the following amendments to the Fuel Use Tax Regulations, as published in Article 3 of Subchapter C of Chapter III of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (xci) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(xc) April-June 2018					
15.0	23.0	39.9	16.0	24.0	39.15

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(xci) July-September 2018					
15.2	23.2	40.10	16.0	24.0	39.15

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen D. O’Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.ny.gov

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

Public comment will be received until: July 16, 2018.

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.

Workers’ Compensation Board

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Workers’ Compensation Board - Legal Internship Program

I.D. No. WCB-21-18-00038-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 302-1.6 of Title 12 NYCRR.

Statutory authority: Workers’ Compensation Law, section 117(1)

Subject: Workers’ Compensation Board - Legal Internship Program.

Purpose: To allow a more expansive group of law school and legal interns to represent parties of interest in Board proceedings.

Text of proposed rule: § 302-1.6 Attorney admitted to practice in another state and law school graduates and senior law students permitted to practice in this State

(a) An attorney duly admitted to practice in another state may be permitted to represent any party in interest before the board, on a particular matter, upon proof submitted with his or her application that reciprocal privileges are accorded attorneys of this State.

(b) Law school graduates and senior law students permitted to practice law pursuant to the Judiciary Law under a program of activities approved by the *appellate division of the supreme court of the department within which such activities are taking place* [Appellate Division as provided in such law], and the board, and designated as law interns or legal interns by a legal aid organization, including programs that provide assistance to persons who are financially unable to pay for legal services and are eligible to qualify for free legal services in accordance with the standards and guidelines of the organization or program in which they are engaged, and whose program of activities has been so approved, may represent any party in interest before the board only in those type of matters that have been authorized by the Board and set forth in the approved program, upon compliance with this subdivision. [Such legal aid organization] The party that has received approval from the appellate division of the supreme court of the department within which such activities are taking place shall submit to the board secretary a certified copy of the order of the Appellate Division granting approval of such program of activities together with a list of law school graduates or senior law students designated as law interns or legal interns by such legal aid organization. Such law interns may, under the general supervision of an attorney, file forms, [and] make applications as required, fully participate in informal adjudicatory proceedings, prepare and enter stipulations other than waiver agreements, [and] appear at hearings before Workers’ Compensation Law judges in noncontroverted claims or at such hearings, other than trial hearings, in controverted claims, and prepare and file applications for administrative review and full board review, and rebuttals, as necessary. Such law interns may, under the immediate supervision of an attorney, appear before Workers’ Compensation Law judges at trial hearings in controverted claims and at all hearings before board panels, and prepare and enter waiver agreements. “Immedi-

ate supervision” of a law intern shall mean that the supervising attorney shall be personally present *with the law intern* throughout the hearing. An attorney supervising such law interns shall be admitted to practice law in this State, shall have two years experience in this State or another state, and shall be associated with the legal aid organization which has designated such law interns. Any such supervising attorney shall be the attorney of record in each case, shall assume personal professional responsibility for any work undertaken by a law intern, and shall supervise the preparation of such work. A law intern may appear before the board, in accordance with the foregoing supervision requirements, on behalf of any party in interest where such party gives written consent to such appearance and representation and provided further that the supervising attorney also gives written consent to such appearance. The written consents herein shall be filed in the board case file, *together with a retainer in the format prescribed by the chair of the board, including retainers limited to the pending issue.* All [legal papers] *formal filings* in the case shall be endorsed by the supervising attorney as attorney of record, and may contain the name of the law intern who participated in their preparation. Law interns may represent a party only when such party is not otherwise represented by an attorney or licensed representative and is eligible to qualify for [free] legal services in accordance with the standards and guidelines of the organization or program in which the law intern is engaged. Such representation of claimants by law interns shall be without fee or any other remuneration, *except that a request to approve reimbursement for disbursements may be submitted to the board and if approved, such disbursement may be payable per section twenty-four of this chapter,* and no law intern or supervising attorney shall request or receive any fee or remuneration for such representation. Failure to comply with this subdivision shall be a sufficient basis for denial or revocation of permission to engage in such representation by law interns.

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

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

Public comment will be received until: 60 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

The Chair of the Workers’ Compensation Board (Board) is authorized to amend 12 NYCRR 302-1.6. The Board’s authority is derived from Workers’ Compensation Law (WCL) § 117(1), which authorizes the Chair to adopt reasonable regulations consistent with and supplemental to the provisions of the WCL and the Labor Law.

2. Legislative Objectives

WCL 117(1) authorizes the Chair to adopt reasonable regulations to supplement the WCL. The WCL was enacted for socio-economic remediation purposes to protect workers and their dependents from economic hardship in case of injury on the job (see *Matter of Post v Burger & Gohlke*, 216 NY 544 [1916]; see also *Matter of LaCroix v Syracuse Exec. Air Serv., Inc.*, 8 NY3d 348 [2007]). The proposed rule will allow law student and legal interns through the state, regardless of their association with a legal aid organization, to represent parties in Board proceedings upon approval of the appellate division in which the law school sits and the claimant’s permission. The Board expects that these amendments will lessen the economic hardship to claimants insofar as the amended regulation will allow previously unrepresented claimants to retain adequate legal counsel. The Board anticipates that claims will be resolved faster with the assistance of a legal intern, as opposed to when a party is unrepresented. As a result, the Board expects that injured workers will receive the benefits they are due more expeditiously as a result of the proposed amendment.

3. Needs and Benefits

The purpose of the proposed rule is to allow a more expansive group of law school and legal interns to represent parties of interest in Board proceedings. Currently, the regulations only allow legal or law school interns, as defined in Third Department Appellate Division rules (22 NYCRR 805.5[b]), to represent a party of interest before the Board if the intern has been designated as a legal or law school intern by a legal aid organization. The proposed amended regulation would allow law school and legal interns statewide to represent parties before the Board by allowing the appellate division in which the intern’s activities are taking place to permit law school graduates and senior law students to practice law, thereby expanding the appellate division departments which may authorize law student interns. Additionally, the term “legal aid organization” is defined to include any organization with a program that provides assistance to persons who are financially unable to pay for legal services and are eligible to qualify for free legal services in accordance with that program’s guidelines.

The Board believes that such amendments are necessary to decrease the total number of unrepresented claimants appearing in Board proceedings, particularly where no indemnity benefits are sought and the only issue is entitlement to medical treatment. Upon review of current internal records, the Board finds that, in 2016, there were 247 unrepresented claimants with cases pending before the Board, in which the claimant did not seek indemnity benefits. This number is largely consistent with past years; in 2014 there were 229 such claimants and in 2015 there were 302. It is the Board’s position that the legal assistance provided by a law school or legal intern will help many of these unrepresented claimants navigate the workers’ compensation law and the adversarial hearing process.

4. Costs

The proposed rule will not impose costs on any party. The Board expects that the costs to the agency will be negligible, however. The proposed regulation will permit the Board to directly hire and supervise law school and legal interns, who will represent parties of interest in Board proceedings. The Board expects to hire such legal interns by working with area law schools to arrange a work-for-credit program. As such, no monetary compensation will be provided to the legal interns.

5. Local Government Mandates

The proposed regulation does not impose any program, service, duty, or responsibility upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork

The proposed regulation does not impose any reporting requirements. Claimants will be required to complete a form, consenting to be represented by a legal intern. The Board does not expect such paperwork to be onerous, and it is necessary to ensure the claimant fully understands his or her rights.

7. Duplication

22 NYCRR 805.5(b) allows law students who have completed at least two semesters of law school and law school graduates appointed as law interns to engage in certain legal activities, including rendering legal services in contested proceedings before administrative agencies when under immediate supervision. 12 NYCRR 302-1.6(b) specifically permits law school and legal interns, as defined in 22 NYCRR 805.5(b), to “represent any party in interest before the [B]oard, on a particular matter[.]” However, 12 NYCRR 302-1.6(b), as currently written, only allows those law school and legal interns who have been designated by a legal aid organization to represent parties of interest before the Board. The proposed rule therefore does not duplicate any relevant rules or legal requirements, but only expands those who may qualify as law school and legal interns to represent claimants in Board proceeds.

8. Alternatives

No significant alternatives to the proposed regulation were considered.

9. Federal Standards

There is no federal standard associated with or similar to the proposed regulatory amendment. As such, the proposed rule does not exceed any minimum standards set forth by the federal government.

10. Compliance Schedule

The proposed rule does not impose obligations on any party. The amendment would merely allow an expanded category of law student and legal interns throughout the State of New York and regardless of their association with a legal aid organization to represent parties in Board proceedings. Accordingly, there is no compliance schedule.

Regulatory Flexibility Analysis

1. Effect of rule

The Board does not expect the proposed rule to have any impact on small businesses or local governments within New York State. The current regulation allows legal interns associated with a legal aid organization to represent parties before the Board. The proposed amendment would merely allow an expanded category of law student and legal interns throughout the State of New York to represent parties in Board proceedings. Because the revised rule would only expand an existing rule that has had no impact on small businesses or local governments, the Board does not predict that small businesses or local governments will have to bear any cost associated with the proposed rule.

2. Compliance requirements

Small businesses and local governments will not have to engage in any reporting, recordkeeping or other affirmative acts as a result of the proposed amendment to 12 NYCRR 302-1.6.

3. Professional services

Small businesses and local governments will not need to obtain any professional services as a result of the proposed amendment to 12 NYCRR 302-1.6 insofar as the proposed rule does not impose any affirmative obligations on small businesses or local governments.

4. Compliance costs

The Board does not expect businesses or local governments to incur any capital costs as a result of the proposed rule, as the proposed rule does not impose any compliance requirements on businesses or local governments.

5. Economic and technological feasibility

The Board does not expect small businesses and local governments to bear economic or technological costs as a result of the amendments to Board Rule 302-1.6. The proposed rule does not impose any affirmative obligations on small businesses or local governments. Further, the proposed amendment would merely allow an expanded category of law student and legal interns throughout the State of New York to represent parties in Board proceedings. Because the revised rule would only expand an existing rule that has had no impact on small businesses or local governments, the Board does not predict that small businesses or local governments will now bear economic or technological costs as a result of the proposed rule.

6. Minimizing adverse impact

The proposed rule will have no adverse economic impact on small businesses or local governments. The proposed amendment to 12 NYCRR 302-1.6 will merely allow the Board to hire and supervise law school and legal interns to represent parties in Board proceedings. The Board expects to recruit legal interns from law schools for this purpose and, whenever feasible, to offer school credit in exchange for the students' participation rather than monetary compensation. The proposed rule imposes no burdens, obligations, or costs on the business community or local governments. The approaches for minimizing adverse economic impact suggested in SAPA § 202-b(1) were considered, but not relevant given that the proposed regulation will not negatively impact small businesses or local governments.

7. Small business and local government participation

The Board will duly consider all public comments made by small business and local government stakeholders in response to the proposed rulemaking.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas

The proposed regulation does not specifically apply to rural areas, nor are there anticipated impacts on rural areas. The proposed rule will allow legal interns from law schools statewide, some of which may be in rural areas, to represent parties in Board proceedings. The proposed rule does not impose any affirmative obligations or costs on localities, including rural areas.

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

Rural areas are not obligated to engage in any reporting, recordkeeping, or other compliance requirements as a result of the proposed rule, nor are they expected to require professional services. The Board and law schools will maintain all records associated with an internship program stemming from the revised regulation.

3. Costs

The Board does not anticipate that rural areas will bear any costs associated with the proposed amendment to 12 NYCRR 302-1.6. Because the revised rule would only expand an existing rule that has had no impact on rural areas, the Board does not predict that rural areas will now have to bear costs associated with the proposed rule.

4. Minimizing adverse impact

Board has reviewed the minimization approaches set forth in SAPA 202-bb(2) and finds them unnecessary to implement because the Board anticipates that the proposed regulation will not negatively affect rural areas. Indeed, the Board expects that the revised regulation will positively impact claimants in rural areas who have been unable to find an attorney, insofar as this proposal will likely make it easier for claimants to retain a law school intern and expeditiously resolve the dispute.

5. Rural area participation

The Board will duly assess all comments received by representatives of rural areas during the public comment period.

Job Impact Statement

1. Nature of impact

The proposed amendment to Board Regulation 302-1.6 is not expected to have any adverse impact on jobs in New York State. Indeed, the Board anticipates that any impact on jobs in New York State will be positive. It is expected that by expanding the number of legal interns who may represent parties of interest before the Board, the proposed regulation will expedite the resolution of certain workers' compensation disputes, allowing claimants to get the treatment they need and, when medically feasible, return to the workforce faster, which will increase employer satisfaction. Further, the proposed amendment will provide crucial, hands-on training to law students, which the Board expects will allow law school graduates to be more competitive job candidates.

2. Categories and numbers affected

As set forth above, the Board anticipates that any impact on jobs in New York will be positive. The Board expects that law school students who have gained valuable practice representing parties in Board proceedings will be more competitive candidates in the legal market.

3. Regions of adverse impact

The Board does not expect the proposed regulation to have a disproportionate adverse impact on a particular region of New York. The proposed regulatory amendment will allow law school students statewide to represent parties of interest in certain Board proceedings.

4. Minimizing adverse impact

The proposed regulation is not expected to have any adverse impact on jobs. Because the proposed regulation would allow Board-supervised interns to represent parties of interest in Board proceedings, one potential adverse impact would be on legal representatives or attorneys who would normally have represented the party if not for the legal intern. The Board will minimize any adverse impact on this population by referring cases to a legal intern only if the claimant was unable to find legal representation on their own. Additionally, prior to proposing the amended regulation, the Board consulted with members of the private bar to ensure that the regulation would supplement, and not supplant, currently available legal representation. These stakeholders agreed that the proposed regulation would not negatively impact the private bar.