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

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Control of the European Cherry Fruit Fly

I.D. No. AAM-21-19-00002-EP
Filing No. 405
Filing Date: 2019-05-01
Effective Date: 2019-05-01

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

Proposed Action: Addition of Part 128 to Title 1 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The European Cherry Fruit Fly (Rhagoletis cerasi) (hereinafter "ECFF"), an insect nonindigenous to the United States, is native to Europe. It was first detected in Ontario, Canada in 2015 and subsequently found in Niagara County in 2017. While ECFF infests both sweet and tart cherries, sweet cherries are ECFF's preferred host material. ECFF also infests honeysuckle (Lonicera sp.), an invasive plant found throughout New York. Honeysuckle may serve as a reservoir for the ECFF to assist in its development. Left unchecked, ECFF has the potential to infest 100% of a cherry crop, rendering the cherries unmarketable.

This regulation establishes regulated and quarantine areas consisting of Niagara and Erie Counties in their entirety and portions of Orleans County to help control the spread of the ECFF and establishes parameters in the form of a systems approach for the movement of cherries out of the regulated and quarantine areas.

The regulated area extends from an ECFF detection by one-half mile. Fruit may only be moved from the regulated area if the cherry growers or handlers have a limited permit or have entered into a compliance agreement which requires a systems approach that minimizes the chance of ECFF spread. If the growers or handlers meet these requirements, they can move cherries anywhere within New York, except for the following cherry producing counties established as restricted areas: Counties of Columbia, Dutchess, Ulster and Wayne.

The quarantine area surrounds the regulated area and extends four miles from the regulated area. Cherries may only be moved from a quarantine area if the cherry grower or handler has a limited permit or has entered into a compliance agreement. Since there is a lower risk of exposure to the ECFF in the quarantine area, cherries in this area may be moved throughout the State, including the established restricted cherry producing areas.

These regulations are necessary to protect the general welfare. The effective control of ECFF in New York generally, and, specifically, in Erie, Niagara, and Orleans Counties is critical for the protection of New York's $4.5 million cherry industry, which includes growers with 450 acres of cherry production. The regulations help ensure that control measures are undertaken in the regulated and quarantine areas, and that the ECFF will not spread beyond those areas via the movement of infested cherries or other hosts.

Based on the facts and circumstances set forth above, the Department has determined that the immediate adoption of this rule is necessary for the preservation of the general welfare and that compliance with 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: Control of the European Cherry Fruit Fly.

Purpose: To help control the spread of the European Cherry Fruit Fly (ECFF), which renders cherries unmarketable if they are infested.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.agriculture.ny.gov/PI/European_Cherry_Fruit_Fly.pdf;): or by visiting www.agriculture.ny.gov/PI/, scrolling down to current quarantine programs, and locating the link entitled "European Cherry Fruit Fly Quarantine Regulations".

This regulation adds a new Part 128 to 1 NYCRR, establishing controls to help prevent the spread in New York of the European Cherry Fruit Fly (ECFF), an insect nonindigenous to the United States, which infests cherries and renders them unmarketable.

A summary of each section of the rule follows.

Section 128.1: Definitions. This is the definition section.

Section 128.2: Establishment and amendment of regulated and quarantine areas map. This section establishes the quarantined areas by map and narrative description and, requires that any change to the map must be done by regulation.

Section 128.3: Movement of regulated articles within regulated and quarantine areas. This section sets forth the parameters for movement of cherries within the regulated and quarantine areas. The cherries may be moved at any time within the regulated or quarantine areas for processing, treatment, use, or disposal at any area within the regulated or quarantine areas.

Section 128.4: Restrictions on intrastate movement of regulated articles originating within or traveling through regulated or quarantine areas. This section prohibits any person from moving cherries from the regulated or quarantine areas to or through to any point outside the regulated or quarantine areas, unless accompanied by a valid limited permit or administrative instructions from the Commissioner of the Department authorizing such movement, or for experimental or scientific purposes. This section also provides that any cherries from outside the regulated or quarantine areas may be moved through the regulated or quarantine areas,

provided the points of origin and destination are set forth on the waybill, or the cherries is being moved directly through the regulated area without stops, except for refueling and traffic conditions.

Section 128.5: Conditions governing compliance agreements for movement of regulated articles out of regulated or quarantine areas. This section addresses conditions governing compliance agreements for movement of the cherries out of the regulated or quarantine areas. It provides that persons moving the cherries intrastate may apply for a compliance agreement with the Department, which would eliminate the requirement of inspections prior to each movement of cherries. A person who enters into a compliance agreement with the Department must agree to comply with this Part and all conditions in the agreement. A compliance agreement is subject to the Department's acceptance in its sole discretion. A compliance agreement may be canceled if the Department determines that person is not complying with this regulation or the conditions of the agreement.

Section 128.6: Conditions governing limited permits for movement of regulated articles out of regulated or quarantine areas. This section sets forth conditions governing limited permits for the movement of cherries out of quarantine or regulated areas. With a limited permit, the cherries can be moved from the regulated or quarantine areas. In respect to a quarantine area, an inspector or an authorized holder of a compliance agreement may issue a limited permit if the cherries have been grown under a recognized systems approach for the control of ECFF; and the cherries are otherwise eligible for unrestricted movement under all other state plant quarantines and regulations applicable to the cherries.

In respect to a quarantine area, an inspector or an authorized holder of a compliance agreement may issue a limited permit if the cherries have been grown under a recognized systems approach for the control of ECFF; the cherries are not moved to counties prohibited under the Systems Approach and compliance agreement; and is otherwise eligible for unrestricted movement under all other state plant quarantines and regulations applicable to the cherries.

An inspector or authorized holder of a compliance agreement may provide additional limited permits pursuant to the terms of a compliance agreement or authorize, in writing, reproduction of the limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These limited permits may then be completed and used, as needed, for the movement out of a regulated or quarantine area provided that the cherries have met all of the requirements of this Part. Any limited permit may be cancelled orally or in writing by an inspector whenever the inspector determines that the holder of the limited permit has not complied with this Part. The cancellation shall take effect upon the giving of the oral notice or the delivery of written notice. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing.

Section 128.7: Shipments of regulated articles for experimental and scientific purposes. This section authorizes the intrastate movement of cherries for experimental or scientific purposes, provided the Department's conditions and safeguards are met. Additionally, the container holding the cherries shall bear an identification tag issued by the Department, showing compliance with the conditions and safeguards.

Section 128.8: Marking Requirements. Every container of cherries intended for intrastate movement shall be plainly marked with the name and address of the consignor and the name and address of the consignee, when offered for shipment, and shall have securely attached to the outside thereof a valid certificate (or limited permit) issued in compliance with this Part.

Section 128.9 Inspection and disposition of shipments. Any vehicle or other conveyance, any package or other container, and any item to be moved, which is moving, or which has been moved intrastate from the regulated or quarantine areas, which may contain cherries, may be examined by an inspector.

Section 128.10: Other laws and regulations; interstate movement of regulated articles. Limits the applicability of this Part to the intrastate movement of cherries. The interstate movement of cherries must comply with applicable federal laws and regulations.

Section 128.11: Effective date. This regulation shall take effect immediately.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire July 29, 2019.

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

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

Regulatory Impact Statement

1. Statutory authority:

Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State, and for the enforcement of their provisions and the provisions of the rules that have been adopted to implement these laws.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of Article 14 of the same. Section 167 also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law.

2. Legislative objectives:

These proposed regulations are consistent with the public policy objectives the Legislature sought to advance when enacting the statutory authority, namely, preventing the spread within the State of an injurious insect, such as the European Cherry Fruit Fly (ECFF).

3. Needs and benefits:

This proposed regulation would establish regulated and quarantine areas in Erie, Niagara, and Orleans Counties to help control the spread of the ECFF. Left unchecked, ECFF has the potential to infest 100% of a cherry crop, rendering the cherries unmarketable.

The ECFF (Rhagoletis cerasi), an insect nonindigenous to the United States, is native to Europe. It was first detected in Ontario, Canada in 2015 and subsequently found in Niagara County in 2017. While ECFF infests both sweet and tart cherries, sweet cherries are ECFF's preferred host material. ECFF also infests honeysuckle (Lonicera sp.), an invasive plant found throughout New York State. Honeysuckle may serve as a reservoir for the ECFF to assist in its unchecked development.

The life cycle of ECFF begins with the emergence of the fruit flies during May and June. They have an average lifespan of two to four weeks. Females usually lay one egg beneath the skin of each piece of fruit. Once the eggs hatch, the larvae develop inside the fruit and feed on it for up to six weeks. As the larvae develop, they damage the fruit pulp. Mature larvae exit the fruit, drop to the ground, and burrow into the soil. Once in the soil, they pupate within a few days and overwinter in the soil underneath or near the host plant. After winter, adult flies emerge from the soil, and the life cycle begins anew.

Evidence of ECFF infestation of cherries includes puncture holes in the cherries. As the larvae develop in the fruit, the puncture hole becomes brown and soft. When cutting or breaking open infested cherries, the larvae and internal fruit damage can be readily seen. Infested cherries may shrivel, display soft spots, and decay. Infested fruit may also exhibit small holes formed when larvae exit the fruit to drop to the ground to pupate. Growers cannot market infested cherries as fresh fruit. Infested cherries, generally sweet cherries, intended for processing also have a high likelihood of being rejected since processors desire primarily tart cherries. Fresh cherries command at least six times the price of processing cherries making it an economic hardship to move fresh cherries to processing even if processors would accept them.

Under the proposal, the regulated area would consist of areas where the ECFF has been found and would extend one-half mile in all directions from each such location. Thus far, ECFF has only been detected in State parks and public lands. Regulated articles would only be moved from the regulated area if a grower or handler has a limited permit issued by the Commissioner or has entered into a compliance agreement which would require a systems approach that minimizes the risk of ECFF spread. If the growers or handlers meet these requirements, they would be able to move regulated articles anywhere within New York, except for the following cherry producing counties established as restricted areas: Counties of Columbia, Dutchess, Ulster and Wayne.

Under the proposed rule, the quarantine area would surround the regulated area and would extend 4 miles from the regulated area. Regulated articles would only be able to be moved from a quarantine area if the grower or handler has a limited permit or has entered into a compliance agreement. Since there is a lower risk of exposure to ECFF in the quarantine area, regulated articles in this area would be able to be moved throughout the State, including the established restricted cherry producing areas.

To date, ECFF has not infested any cherry orchards in the regulated

area in New York State. There are 16 growers in the regulated area, and an additional 36 growers in the quarantine area, which would be affected by this proposed regulation. There are also 110 registered nursery growers and 141 registered nursery dealers in the quarantine area. Those in possession of regulated articles would need a limited permit or compliance agreement in order to move regulated articles outside the regulated and quarantine areas to ensure that no plants bear any host fruit at the time of sale or movement out of the regulated area.

These proposed regulations are necessary to protect the general welfare, since the effective control of ECFF in New York State, generally, and Niagara, Erie and Orleans Counties, specifically, is critical for the protection of New York State's $4.5-million dollar cherry industry, which includes 450 acres of cherry production. The proposed regulations help ensure that as control measures are undertaken in the regulated and quarantine areas, ECFF will not spread beyond those areas via the movement of infested fruit or other host material.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: Growers in the quarantine and regulated areas would be provided the required pesticides and pesticide applications by the United States Department of Agriculture (USDA). Accordingly, growers would not incur any costs for the application of pesticides. Department staff have visited the growers and held meetings in the counties forming part of the proposed regulated and quarantine areas to explain the proposed regulation and the compliance agreements. It is anticipated that each grower would have to spend a maximum of three hours to understand, sign, and comply with requirements of the compliance agreement. This would cost $300.00, based on $100.00 per hour. Growers would be able to self-issue limited permits upon complying with the requirements of the compliance agreement. This time is included in the $300.00. For 52 impacted cherry growers (one grower has fields in both the regulated and quarantine areas), this is a total of $5,200.00.

(b) Costs to the agency, the State and local governments for the implementation and continuation of the rule: Department horticultural Inspectors would be working with growers on the signing and enforcement of the compliance agreements and limited permits. This work would be shared among 2 to 7 people at a cost of approximated $48,000 in staff time.

(c) The information, including the sources of such information and the methodology upon which the cost analysis is based: The costs analysis set forth above is based upon Department records and practices and observations of the industry.

5. Local government mandates:

There are no additional programs, services, duties or responsibilities imposed by this proposed rule upon any county, city, town, village, school district, fire district or any other special district.

6. Paperwork:

Growers would be issued compliance agreements, which would authorize the grower to self-issue limited permits to move regulated articles.

7. Duplication:

The USDA would issue a parallel quarantine that will mirror the State quarantine.

8. Alternatives:

The only alternative considered was to continue with control efforts directed at similar fruit flies in areas where infestation was discovered without a quarantine. This option was rejected since, to do so, could result in the USDA establishing a quarantine throughout New York State, preventing fresh cherries from New York being sold outside the State.

9. Federal standards:

The USDA would be establishing a parallel quarantine which will mirror this one.

10. Compliance schedule:

This proposed rule would take effect immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

This proposed regulation would establish regulated and quarantine areas in Erie, Niagara, and portions of Orleans Counties to help control the spread of the European Cherry Fruit Fly (ECFF) and would establish a systems approach set forth in a compliance agreement for the movement of regulated articles (i.e. cherries, and host material including soil beneath the dripline of the host material) out of the regulated and quarantine areas.

The regulated area would extend from an ECFF detection by one-half mile. To date, the only detection of ECFF has been found in State parks and public land. Regulated articles would only be moved from the regulated area if a grower or handler has a limited permit issued by the Commissioner or has entered into a compliance agreement which requires a systems approach that minimizes the chance of ECFF spread. If the growers or handlers meet these requirements, they would be able to move regulated articles anywhere within New York, except for the following cherry producing counties established as restricted areas: Counties of Columbia, Dutchess, Ulster and Wayne.

The quarantine area would surround the regulated area and would extend 4 miles from the regulated area. Cherries would only be able to be moved from a quarantine area if the grower or handler has a limited permit issued by the Commissioner or has entered into a compliance agreement. Since there is a lower risk of exposure to the ECFF in the quarantine area, regulated articles in this area would be able to be moved throughout the State, including the established restricted cherry producing areas.

It is not anticipated that local governments would be involved in the shipment of cherries from the regulated and quarantine areas.

2. Compliance requirements:

All regulated parties in the regulated and quarantine areas would be required to obtain limited permits issued by the Commissioner (or enter into compliance agreements) to ship regulated articles outside those areas. If growers enter into compliance agreements, they would have to use a systems approach to control the insects as set forth in the compliance agreement that minimizes the chance of ECFF spread.

It is not anticipated that local governments would be involved in the shipment of cherries from the regulated and quarantine areas.

3. Professional services:

Those shipping regulated articles from the regulated and quarantine areas would need a limited permit issued by the Commissioner, or would have to enter into a compliance agreement which would require a systems approach to control the insects as set forth in the compliance agreement that minimizes the chance of ECFF spread.

It is not anticipated that local governments would be involved in the shipment of cherries from the regulated and quarantine areas.

4. Compliance costs:

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the rule: It is anticipated that there would be no such costs.

(b) Annual cost for continuing compliance with the rule: Costs to regulated parties for the implementation of and continuing compliance with the rule: Growers in the quarantine and regulated areas would be provided the required pesticides and application services by the United States Department of Agriculture (USDA). Accordingly, growers would not incur any costs arising from the application of pesticides. Department staff have discussed with growers the proposed regulation and the compliance agreements. It is anticipated that each grower would have to spend a maximum of three hours to understand, sign, and comply with requirements of the compliance agreement. This will cost $300.00, based on $100.00 per hour.

Growers would be able to self-issue limited permits upon complying with the requirements of the compliance agreement. This time is included in the $300.00. For 52 impacted cherry growers (one grower has fields in both the regulated and quarantine area), this is a total of $5,200.00.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the regulated and quarantine areas.

5. Economic and technological feasibility:

The economic and technological feasibility of compliance with the proposed rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Growers shipping regulated articles outside the regulated and quarantine areas would require a limited permit or enter into a compliance agreement which would require a systems approach that minimizes the risk of ECFF spread.

It is not anticipated that local governments would be involved in the shipment of cherries from the regulated and quarantine areas and as such, would incur no costs.

6. Minimizing adverse impact:

Approaches for minimizing adverse economic impact were considered. The Department has sought to minimize adverse impact of ECFF quarantine through the use of limited permits and compliance agreements between the Department and regulated parties, including small businesses. This would facilitate the movement of regulated articles by permitting the shipment of those articles without State or federal inspection, with the exception of regulated articles leaving the regulated area. Those cherries are banned from entry into cherry producing counties restricted by the USDA. There is no charge for a limited permit or compliance agreement. Given all facts and circumstances, the regulations minimize adverse economic impact as much as is currently possible.

It is not anticipated that local governments would be involved in the shipment of cherries from the regulated and quarantine areas.

7. Small business and local government participation:

In anticipation of the regulatory quarantine issued in 2018, which has since expired, the Department mailed an ECFF fact sheet to cherry growers in affected counties and held meetings to discuss ECFF in late 2017.

Most recently, on February 4, 2019 and February 5, 2019, the Department participated in meetings in Lockport and Newark, respectively, to present findings from the 2018 ECFF quarantine and inform growers of the anticipated increase of the regulated and quarantine areas. Approximately 130 fruit growers were in attendance at the meeting in

Lockport and 120 fruit growers at the meeting in Newark. Margaret Kelly, Assistant Director of Plant Industry for the Department presented the findings.

On February 20, 2019 ECFF updates were provided by New York State Integrated Pest Management of Cornell University, at a meeting held in Albany, with 250 fruit growers in attendance.

In November, potentially impacted fruit growers participated in a stakeholder meeting with the USDA Animal and Plant Health Inspection Service (APHIS) attended by various Department officials. The Department officials present were Deputy Commissioner Jacqueline Moody-Czub, Director of Plant Industry Christopher Logue, Assistant Director of Plant Industry Margaret Kelly, and Horticultural Inspector William Ellsworth.

Further, the Department has conducted phone calls with various impacted growers by Commissioner Richard Ball, Deputy Commissioner Jacqueline Moody-Czub, Director Christopher Logue, and Assistant Director Margaret Kelly.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

There are 16 growers in the regulated area and 36 growers in the quarantine area, all of whom are in rural areas as defined by section 481(7) of the Executive Law.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

The proposed rule does not require any reporting or recordkeeping requirements. In terms of professional services, those shipping regulated articles from the regulated and quarantine areas would need a limited permit issued by the Commissioner or a compliance agreement.

3. Costs:

Costs to regulated parties for the implementation of and continuing compliance with the rule: Growers in the quarantine and regulated areas would be provided the required pesticides and application services by the United States Department of Agriculture (USDA). Accordingly, growers would not incur any costs arising from the application of pesticides. Department staff have discussed with growers the proposed regulation and the compliance agreements. It is anticipated that each grower would have to spend a maximum of three hours to understand, sign, and comply with requirements of the compliance agreement. This will cost $300.00, based on $100.00 per hour.

Growers would be able to self-issue limited permits upon complying with the requirements of the compliance agreement. This time is included in the $300.00. For 52 impacted cherry growers (one grower has fields in both the regulated and quarantine area), this is a total of $5,200.00.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the Department has designed the proposed rule to minimize adverse economic impact on regulated parties in rural areas. By limiting ECFF regulated and quarantine areas to regions where infestation exists, the rule minimizes economic impacts without compromising efforts to slow the spread of ECFF.

Approaches for minimizing adverse economic impact were considered. The Department has sought to minimize adverse impact of the ECFF quarantine by continuing the use of limited permits issued by the Commissioner and compliance agreements between the Department and regulated parties, including regulated parties in rural areas. This would facilitate the movement of regulated articles by permitting the shipment of cherries without state or federal inspection, with for the exception of cherries leaving the regulated area. Those cherries are banned from entry into cherry producing counties restricted by the USDA. There is no charge for a compliance agreement. Given all the facts and circumstances, the proposed regulations minimize adverse economic impact as much as is currently possible.

5. Rural area participation:

In anticipation of the regulatory quarantine issued in 2018, which has since expired, the Department mailed an ECFF fact sheet to cherry growers in affected counties and held meetings to discuss ECFF in late 2017.

Most recently, on February 4, 2019 and February 5, 2019, the Department participated in meetings in Lockport and Newark, respectively, to present findings from the 2018 ECFF quarantine and inform growers of the anticipated increase of the regulated and quarantine areas. Approximately 130 fruit growers were in attendance at the meeting in Lockport and 120 fruit growers at the meeting in Newark. Margaret Kelly, Assistant Director of Plant Industry for the Department presented the findings.

On February 20, 2019 ECFF updates were provided by New York State Integrated Pest Management of Cornell University, at a meeting held in Albany, with 250 fruit growers in attendance.

In November, potentially impacted fruit growers participated in a stakeholder meeting with the USDA Animal and Plant Health Inspection Service (APHIS) attended by various Department officials. The Department officials present were Deputy Commissioner Jacqueline Moody-Czub, Director of Plant Industry Christopher Logue, Assistant Director of Plant Industry Margaret Kelly, and Horticultural Inspector William Ellsworth.

Further, the Department has conducted phone calls with various impacted growers by Commissioner Richard Ball, Deputy Commissioner Jacqueline Moody-Czub, Director Christopher Logue, and Assistant Director Margaret Kelly.

Job Impact Statement

1. Nature of impact:

It is anticipated that the proposed rule will not have a negative impact on jobs and employment opportunities in New York, since regulated parties would incur no costs in complying with this proposal.

2. Categories and numbers affected:

It is anticipated that the proposed rule will not affect any jobs or employment. opportunities in New York.

3. Regions of adverse impact:

There are no regions of adverse impact since the proposed rule will not affect any jobs or employment opportunities in New York.

4. Minimizing adverse impact:

Approaches for minimizing adverse economic impact to jobs and employment opportunities were considered. The Department has sought to minimize adverse impact of the ECFF quarantine by proposing the use of limited permits issued by the Commissioner or compliance agreements between the Department and regulated parties. These permits and agreements would allow the shipment of regulated articles without State or federal inspection, with the exception of regulated articles leaving the regulated area which are banned from entry into cherry producing counties restricted by the USDA. There is no charge for a limited permit or compliance agreement. Given all of the facts and circumstances, the proposed regulations minimize adverse economic impact as much as is currently possible.

Department of Corrections and Community Supervision

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Adolescent Offender Facilities

I.D. No. CCS-21-19-00014-P

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

Proposed Action: Amendment of sections 100.6 and 100.75 of Title 7 NYCRR.

Statutory authority: Correction Law, section 70

Subject: Adolescent Offender Facilities.

Purpose: To reclassify two existing correctional facilities to adolescent offender facilities.

Text of proposed rule: 100.6 Adirondack *Adolescent Offender*[Correctional] Facility.

(a) There shall be in the department an institution to be known as Adirondack *Adolescent Offender*[Correctional] Facility, which shall be located in Essex County at Ray Brook, NY 12977, and which shall consist of the property under the jurisdiction of the department at that location.

(b) Such institution shall be a*n adolescent offender*[correctional] facility for males 16 *or 17* years of age [or older] *at the time of their crime and at the time of sentencing*.

(c) Adirondack *Adolescent Offender*[Correctional] Facility shall be *used as a general confinement facility.*[classified as a medium security facility, to be used for general confinement purposes.]

100.75 Hudson *Adolescent Offender* [Correctional] Facility*/Hudson Work Release Facility*.

(a) There shall be in the department a*n adolescent offender* facility to be known as Hudson *Adolescent Offender*[Correctional] Facility, *and a separate Hudson Work Release Facility,* which shall be located in the City of Hudson, State of New York, and which shall consist of the property under jurisdiction of the department at that location.

(b) Hudson *Adolescent Offender*[Correctional] Facility shall be *used as* a [correctional facility] *center* for males *and females who are*[between the ages of] 16 [years] and [25]*17* years *of age at the time of their crime and*

at the time of sentencing. It shall also be used for general confinement of males and all females who are 16 and 17 years of age at the time of sentencing. The facility also has an Adolescent Offender Separation Unit (AOSU) for male youthful inmates and a separate AOSU location for females, who are 16 or 17 years of age at the time of sentencing and are serving disciplinary confinement sanction.

(c) Hudson *Adolescent Offender*[Correctional] Facility shall be *used for the following functions*:

(1) general confinement facility; and

(2) residential treatment facility.

(d) The Hudson Work Release Facility will house inmates meeting placement criteria for assignment to the Industrial Training Program at the Division of Correctional Industries Central Office.

(e) Hudson Work Release Facility shall be classified as a medium security work release facility, to be used for the following functions:

(1) industrial training program; and

(2) work release facility.

[classified as a medium security correctional facility, to be used for the following functions:

(1) general confinement facility;

(2) work release facility; and

(3) residential treatment facility.]

Text of proposed rule and any required statements and analyses may be obtained from: Kevin P. Bruen, Deputy Commissioner and Counsel, Department of Corrections and Community Supervision, 1220 Washington Avenue, Harriman State Campus, Albany, NY 12226-2050, (518) 457-4951, email: Rules@DOCCS.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:

Article 6, section 77, subdivision 1 of the Correction Law provides that the State shall establish one or more facilities with enhanced security features and specially trained staff to serve the adolescent offenders (AO) sentenced to a determinate or indeterminate sentences for committing offenses on or after their sixteenth birthday who are determined to need an enhanced level of secure care in which the security, services and programs shall be managed by the Department of Corrections and Community Supervision with the assistance Office of Children and Family Services.

2. Legislative Objectives:

Establish facilities with enhanced security to serve AOs by changing the classification of certain facilities to comply with Article 6, Section 77, subdivision 1 of Correction Law.

3. Needs and Benefits:

Section 77 of the Correction Law sets forth the criteria for designating and operating AO facilities. Title 7, Chapter III, Parts 100.6 and 100.75 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) set forth the classification for the Adirondack and Hudson correctional facilities. Pursuant to Section 77 of the Correction Law, Hudson and Adirondack will be designated as AO facilities and require a change of their classification in 7 NYCRR, Parts 100.6 and 100.75 respectively. Currently, Adirondack is classified as a medium security facility housing males 16 years of age or older. The proposed rule change classifies Adirondack as a general confinement facility for males 16 or 17 years of age. Currently, Hudson is classified as a medium security facility for males between the ages of 16 years and 25 years and a general confinement; work release; and residential treatment facility. The proposed rule change classifies Hudson as a general confinement facility for males and female ages 16 or 17 years of age and a general confinement; residential treatment facility; and work release facility.

4. Costs:

(a) There are minimal costs anticipated with this proposed rule change associated with mandatory random drug testing of all employees assigned to these facilities. The estimated cost of the random drug testing is $5,100. This proposed rulemaking imposes no costs on any local agency.

(b) As the proposed rulemaking does not apply to private parties, no costs are imposed on private parties.

(c) This cost analysis is based on the Department's requirement to randomly drug test the employees assigned to these facilities pursuant to Article 6, section 77, subdivision 1(c) of the Correction Law.

5. Local Government Mandates:

This rulemaking imposes no program, service, duty or responsibility on any county, city, town, village, school district, or other special district. It applies only to designated officials of the Department and the Office of Children and Family Services.

6. Paperwork:

This rulemaking will not add any new reporting requirements, including forms or other paperwork.

7. Duplication:

There is no overlap or conflict with any other legal requirements of the State or Federal government.

8. Alternatives:

There are no alternatives.

9. Federal Standards:

There are no federal standards that apply to the proposed rulemaking.

10. Compliance Schedule:

Compliance will be achieved upon the filing of a notice of emergency adoption.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. This proposal updates the minimum age of inmates from 16 to 18 at New York State Department of Corrections and Community Supervision correctional facilities, except at those facilities designated as adolescent offender facilities.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice since for the proposed rules will have no adverse impact upon rural areas, nor do the proposed rules impose any reporting, record keeping or other compliance requirements upon rural areas. This proposal updates the minimum age of inmates from 16 to 18 at New York State Department of Corrections and Community Supervision correctional facilities, except at those facilities designated as adolescent offender facilities.

Job Impact Statement

The proposed rule will have no adverse impact upon jobs or employment opportunities and does not impose any additional reporting or recordkeeping. The proposed rule requires compliance with Corrections Law Section 77(c) regarding random drug testing of all employees.

Division of Criminal Justice Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Changes the Accrediting Authority to the ANSI-ASQ National Accreditation Board

I.D. No. CJS-21-19-00004-P

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

Proposed Action: This is a consensus rule making to amend sections 6190.1, 6190.3, 6190.4, 6190.5 and 6190.6 of Title 9 NYCRR.

Statutory authority: Executive Law, sections 837(13), 995-b(1), (9) and (12)

Subject: Changes the accrediting authority to the ANSI-ASQ National Accreditation Board.

Purpose: To change the accrediting authority to the ANSI-ASQ National Accreditation Board.

Text of proposed rule: 1. Section 6190.1 of 9 NYCRR is amended to read as follows:

Section 6190.1 Definitions.

(a) When used in this Part:

(1) The term forensic laboratory shall have the same meaning as set forth in Executive Law (EL) section 995(l) and shall include a forensic DNA laboratory which shall have the same meaning as set forth in EL section 995(2).

(2) The term forensic DNA testing shall have the same meaning as set forth in EL section 995(2).

(3) The term DNA means deoxyribonucleic acid.

(4) The term DNA Subcommittee refers to the subcommittee on forensic DNA laboratories and forensic DNA testing established pursuant to EL section 995-b(l3).

(5) The term Commission refers to the Commission on Forensic Science established pursuant to EL section 995-a.

(6) The term Division refers to the NYS Division of Criminal Justice Services.

(7) The term [ASCLD/LAB] *ANAB* refers to [the American Society of Crime Laboratory Directors/Laboratory Accreditation Board] *ANSI National Accreditation Board* Current [ASCLD/LAB] *ANAB* accreditation requirements are contained in the I SO/IEC [17025-2005] *17025:2017* "General Requirements for the competence [and testing of] *of testing and* calibration laboratories," which can be obtained from ISO at *www.iso.org* or from the American National Standards Institute (ANSI) at www.ansi.org, and the [2011 ASCLD/LAB International Supplemental Requirements] *ISO/IEC 17025:2017 Forensic Testing and Calibration Laboratories Accreditation Requirements*, which may be obtained from [ASCLD/LAB at www.ascld-lab.org] *ANAB at www.anab.org*. These requirements may also be viewed at the Division of Criminal Justice Services, 80 South Swan Street, Albany, NY 12210

(8) The phrase Quality Assurance Standards for Forensic DNA Testing Laboratories and Quality Assurance Standards for DNA Databasing Laboratories refers to standards issued by the Federal Bureau of Investigation, which took effect September 1, 2011. These standards may be obtained from [ASCLD/LAB at www.ascld-lab.org] *ANAB at www.anab.org* and the Federal Bureau of Investigation at www.fbi.gov. These standards may also be viewed at the Division of Criminal Justice Services, 80 South Swan Street, Albany, NY 12210.

(9) The term laboratory director refers to the director of the forensic laboratory.

(10) The term ABFT refers to the American Board of Forensic Toxicology, Inc. The current ABFT laboratory accreditation program is found in the 2013 Forensic Toxicology Laboratory Accreditation Program Checklist, which may be obtained from ABFT at *www.abft.org*. This program may also be viewed at the Division of Criminal Justice Services, 80 South Street, Albany, NY 12210.

(11) The terms disciplines or categories of testing refer to the type of forensic examination being conducted by the forensic laboratory.

(12) The term scope of accreditation refers to the disciplines or categories of testing for which the forensic laboratory has been granted accreditation. Note: ASCLD/LAB offers accreditation in disciplines and categories of testing and calibration. ABFT offers accreditation only in the discipline of forensic toxicology.

(13) The term mock cases means simulated cases instead of actual or real cases.

2. Section 6190.3 of 9 NYCRR is amended to read as follows:

6190.3 NYS accreditation standards.

(a) The commission has determined that all forensic laboratories must meet the following standards to receive NYS accreditation in disciplines other than forensic DNA testing: (1) the laboratory must be accredited by [ASCLD/LAB] *ANAB*; or (2) if the laboratory is performing only toxicology analysis, it must be accredited by either [ASCLD/LAB] *ANAB* or ABFT.

(b) The commission has further determined, upon the binding recommendation of the DNA subcommittee, that any forensic laboratory performing forensic DNA testing must be accredited by [ASCLD/LAB] *ANAB* to include forensic DNA testing, and must comply with all conditions of the FBI's Quality Assurance Standards.

(c) Once a forensic laboratory has been accredited by [ASCLD/LAB] *ANAB* or ABFT using mock cases, the commission may receive and review the results of the mock cases.

3. Subdivision (a) of Section 6190.4 of 9 NYCRR is amended to read as follows:

6190.4 NYS accreditation procedures.

(a) A forensic laboratory seeking NYS accreditation must apply to the division in a form prescribed by the division. A forensic laboratory seeking accreditation shall provide the following supporting documentation, access thereto or authorization for [ASCLD/LAB] *ANAB* or ABFT, as appropriate, to release:

(1) documentation of accreditation by [ASCLD/LAB] *ANAB* or ABFT, if obtained;

(2) all documentation submitted to [ASCLD/LAB] *ANAB* or ABFT, as part of such accreditation application process, the continuing compliance requirements, if any, and any other related matters; and

(3) all documentation received by the laboratory from [ASCLD/LAB] *ANAB* or ABFT, which may include, but not be limited to any of the following, if appropriate: information pertaining to the application process; the accreditation inspection; the summation conference; the final inspection report; and disciplinary actions or proceedings.

4. Subdivision (a) of Section 6190.5 of 9 NYCRR is amended to read as follows:

(a) A forensic laboratory that is accredited will retain its NYS accreditation for the same period as its [ASCLD/LAB] *ANAB* or ABFT accreditation, unless such NYS accreditation is revoked pursuant to section 6190.6 of this Part. To retain NYS accredited status, such laboratory shall continue to meet the standards under which it was accredited and shall participate in any proficiency testing mandated by the commission or, with respect to forensic DNA laboratories, the DNA subcommittee. Such laboratory must submit to the division a copy of any documentation submitted to [ASCLD/LAB] *ANAB* or ABFT or received from it as part of the continuing compliance requirements, including any notification of disciplinary action taken by [ASCLD/LAB] *ANAB* or ABFT against such laboratory. Such documentation shall be reviewed by the commission, or with respect to forensic DNA laboratories, the DNA subcommittee, and appropriate action may be taken against such laboratory, if necessary.

5. Subdivisions (a) and (e) of Section 6190.6 of 9 NYCRR is amended to read as follows:

(a) In accordance with Executive Law, section 995-b(3) (e), the commission (and with respect to forensic DNA laboratories, upon the binding recommendation of the DNA subcommittee to the commission) may revoke, suspend or otherwise limit the NYS accreditation of a forensic laboratory, if the commission, or where appropriate, the DNA subcommittee determines that a forensic laboratory or one or more persons in its employ:

(1) is guilty of misrepresentation in obtaining a forensic laboratory NYS accreditation;

(2) rendered a report on laboratory work actually performed in another forensic laboratory without disclosing the fact that the examination or procedure was performed by such other forensic laboratory;

(3) showed unacceptable error or errors in the performance of forensic laboratory examination procedures;

(4) failed to file any report required to be submitted pursuant to EL article 49-B or violated in a material respect any provision of that article;

(5) violated in a material respect any provision of this Part, including the continuing compliance requirements of [ASCLD/LAB] *ANAB* or ABFT;

(6) failed to participate in or to meet the standards of any proficiency test required by the DNA subcommittee and/or the commission; or

(7) failed to notify the division, in writing, of any significant change in the management or management structure of such laboratory within the time period provided for in subdivision (b) of section 6190.5 of this Part. A forensic laboratory found to be in violation of this paragraph shall be subject to a warning for the first violation.

(e) The outcome of any disciplinary proceeding conducted by [ASCLD/LAB] *ANAB* or ABFT with respect to [ASCLD/LAB] *ANAB* or ABFT accreditation shall not bind the DNA subcommittee or commission with respect to the imposition of sanctions as set forth in this Part.

Text of proposed rule and any required statements and analyses may be obtained from: Danise A. Linen, Division of Criminal Justice Services, 80 South Swan Street, Albany, NY 12210, (518) 457-8413, email: dcjslegalrulemaking@dcjs.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 proposal revises the name of the current accrediting lab from ASCLD/LAB (American Society of Crime Laboratory Directors/Laboratory Accreditation Board) to ANAB (ANSI National Accreditation Board). ANAB has signed an affiliation agreement with ASCLD/LAB, merging ASCLD/LAB into ANAB.

Job Impact Statement

This proposal revises the name of the current accrediting lab from ASCLD/LAB (American Society of Crime Laboratory Directors/Laboratory Accreditation Board), to ANAB (ANSI National Accreditation Board). ANAB has signed an affiliation agreement with ASCLD/LAB, merging ASCLD/LAB into ANAB. Under the merger, all former employees of ASCLD/LAB will be retained and they will continue to work at the former ASCLD/LAB's offices in North Carolina. As such, it is apparent from the nature and purpose of the proposal that it will have no impact on jobs and employment opportunities.

Education Department

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Certification of Manufacturers and Wholesalers for Export Purposes

I.D. No. EDU-21-19-00007-EP
Filing No. 456
Filing Date: 2019-05-07
Effective Date: 2019-05-07

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

Proposed Action: Amendment of section 63.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2), 6801(1), 6802(7), (16), (18), (21) and 6808(4)

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

Specific reasons underlying the finding of necessity: The proposed amendment to the Regulations of the Commissioner of Education is necessary, so that the Department can immediately resume performing the function of issuing free sale certificates to New York State registered manufacturers or wholesalers seeking to sell their drugs and/or devices in foreign countries. Education Law § 6808(4) requires that in order to sell drugs and/or devices in foreign countries, a New York State manufacturer or wholesaler must, inter alia, obtain a certificate from the Department that verifies that it is currently registered as a manufacturer, wholesaler-repacker and/or wholesaler of drugs and/or devices and that it offers the drugs and/or devices listed on the certificate for sale in New York State. These certificates are commonly referred to as "free sale certificates."

Currently, paragraph (6) of subdivision (c) of section 63.6 of the Regulations of the Commissioner of Education states that "[a]ny registered manufacturer or wholesaler may be issued a certificate by the executive secretary of the State Board of Pharmacy, authenticating said registration and identifying the specified drugs and/or devices as articles regularly offered for sale in New York. . . ."

However, since departure of the former executive secretary of the State Board of Pharmacy in January 2019, the Department has been unable to issue any free sale certificates because 8 NYCRR § 63.6(c)(6) only permits the executive secretary to do so. Therefore, the proposed amendment paragraph (6) of subdivision (c) of section 63.6 of the Regulations of the Commissioner of Education is designed to address this issue by permitting either the executive secretary or a designee of the Commissioner of Education to issue these certificates.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for adoption, after expiration of the required 60-day comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the September 9-10, 2019 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be September 25, 2019 the date the Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary at the May 2019 Regents meeting for the preservation of the public health and general welfare so that the Department can immediately resume performing the function of issuing free sale certificates to New York State registered manufacturers or wholesalers seeking to sell their drugs and/or devices in foreign countries.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the September 9-10, 2019 Regents meeting, which is the first scheduled meeting after the 60-day public comment period prescribed in SAPA for State agency rule makings.

Subject: Certification of Manufacturers and Wholesalers for Export Purposes.

Purpose: To clarify who may issue free sale certificates to New York State registered manufacturers or wholesalers.

Text of emergency/proposed rule: 1. Paragraph (6) of subdivision (c) of section 63.6 of the Regulations of the Commissioner of Education is amended, as follows:

Certification of manufacturers and wholesalers for export purposes. Any registered manufacturer or wholesaler may be issued a certificate by the executive secretary of the State Board of Pharmacy[,] *or a designee of the Commissioner of Education,* authenticating said registration and identifying the specified drugs and/or devices as articles regularly offered for sale in New York. The fee for each certificate shall be $5.

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 4, 2019.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, New York State Education Department, 89 Washington Avenue, Room 148, Albany, NY 12234, (518) 474-8966, email: legal@nysed.gov

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

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

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

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

Education Law section 6801 defines the practice of the profession of pharmacy.

Paragraphs (a) through (d) of subdivision (7) of section 6802 of the Education Law defines the term drugs.

Paragraphs (a) and (b) of subdivision (16) of section 6802 of the Education Law defines the term device.

Paragraphs (a) through (d) of subdivision (7) of section 6802 of the Education Law defines the term drugs.

Subdivision (18) of section 6802 of the Education Law defines the term wholesaler.

Subdivision (21) of section 6802 of the Education Law defines the term manufacturer.

Subdivision (4) of section 6808 of the Education Law establishes the registration requirements for wholesalers and manufacturers.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative intent of the aforementioned statutes that the Board of Regents and the Department regulate the admission to and the practice in the professions.

Education Law § 6808(4) requires that any drug manufacturer or wholesaler of drugs be registered with the Department prior to offering such drugs and/or devices for sale in New York. Additionally, if such New York State registered manufacturer or wholesaler wishes to sell drugs and/or devices in foreign countries the registered manufacturer or wholesaler must, inter alia, obtain a certificate from the Department that verifies that it is currently registered as a manufacturer, wholesaler-repacker and/or wholesaler of drugs and/or devices and that it offers the drugs and/or devices listed on the certificate for sale in New York State. These certificates are commonly referred to as "free sale certificates."

To obtain such authorization, a registered manufacturer or wholesaler must submit an application for a free sale certificate to the New York State Board of Pharmacy Office (pharmacy board office) with the required fee. The application requires the manufacturer or wholesaler to provide, among other things, its name and address; identify the type of establishment (manufacturer, wholesaler-repacker and/or wholesaler); the name of the country in which the certificate will be used; the name of each drug and/or device (product) it intends to export; and attach copies of the labels for each product. If the product will be sold under a different name in the identified foreign country, the English name under which the product is sold in New York State must also appear on the label. Finally, the products for which the entity seeks the free sale certificate must appear in a domestic catalog or price list that clearly indicates that they are offered for sale in New York State, for the Department to consider issuing a free sale certificate.

Currently, paragraph (6) of subdivision (c) of section 63.6 of the Regulations of the Commissioner of Education provides that "[a]ny registered manufacturer or wholesaler may be issued a certificate by the executive secretary of the State Board of Pharmacy, authenticating said registration and identifying the specified drugs and/or devices as articles regularly offered for sale in New York. . . ."

The pharmacy board office receives approximately 20 free sale certificate applications a year. Currently, there are three pending applications. However, since the departure of the former executive secretary of the State Board of Pharmacy in January 2019, the Department has been unable to issue any free sale certificates because the regulation only permits the executive secretary issue such certificates. The proposed amendment to paragraph (6) of subdivision (c) of section 63.6 of the Regulations of the Commissioner of Education is designed to address this issue by permitting either the executive secretary or a designee of the Commissioner of Education to issue these certificates.

3. NEEDS AND BENEFITS:

The proposed amendment to paragraph (6) of subdivision (c) of section 63.6 of the Regulations of the Commissioner of Education permits either the executive secretary of the State Board of Pharmacy or a designee of the Commissioner of Education to issue free sale certificates to registered manufacturers and wholesalers seeking to export drugs and/or devices. Since the departure of the former executive secretary of the State Board of Pharmacy in January 2019, the Department has been unable to issue any free sale certificates because the current regulation only permits the executive secretary issue such certificates. By permitting a designee of the Commissioner of Education to issue free sale certificates in addition to the executive secretary of the State Board of Pharmacy, the Department will be able to issue these certificates even when the executive secretary is unavailable to do so or when the position is vacant, as it is currently.

4. COSTS:

The proposed amendment permits a designee of the Commissioner of Education to issue free sale certificates in addition to the executive secretary of the State Board of Pharmacy; it imposes no costs on any parties.

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

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

(c) Costs to private regulated parties. There are no additional costs to private regulated parties.

(d) Costs to the regulatory agency. There are no additional costs to the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed amendment imposes no new forms, reporting requirements, or other recordkeeping or paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

The proposed amendment to paragraph (6) of subdivision (c) of section 63.6 of the Regulations of the Commissioner of Education arose out of concerns that Department would be unable to issue free sale certificates if, as presently is the case, there is a vacancy in the executive secretary of the State Board of Pharmacy position or in instances when the executive secretary is unavailable to issue them. There are no significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

No Federal standards apply to the subject of this proposed rule making. The Federal government does not regulate who, at the State level, can issue free sale certificates. Since there are no applicable federal standards, the proposed amendment does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

If adopted at the May 2019 Regents meeting, the emergency rule will become effective on May 7, 2019. . It is anticipated that regulated parties will be able to comply with the proposed amendment by the effective date.

Regulatory Flexibility Analysis

The purpose of the proposed amendment is to permit either the executive secretary of the State Board of Pharmacy or a designee of the Commissioner of Education to issue free sale certificates to registered manufacturers and/or wholesalers seeking to export drugs and/or devices. Education Law § 6808(4) requires that any drug manufacturer or wholesaler of drugs be registered with the Department prior to offering such drugs and/or devices for sale in New York. Additionally, if such New York State registered manufacturer or wholesaler wishes to sell drugs and/or devices in foreign countries the registered manufacturer or wholesaler must, inter alia, obtain a certificate, commonly referred to as "free sale certificates," from the Department that verifies that it is currently registered as a manufacturer, wholesaler-repacker and/or wholesaler of drugs and/or devices and that it offers the drugs and/or devices listed on the certificate for sale in New York State. Currently, paragraph (6) of subdivision (c) of section 63.6 of the Regulations of the Commissioner of Education provides that "[a]ny registered manufacturer or wholesaler may be issued a certificate by the executive secretary of the State Board of Pharmacy, authenticating said registration and identifying the specified drugs and/or devices as articles regularly offered for sale in New York. . . ."

The pharmacy board office receives approximately 20 free sale certificate applications a year. Currently, there are three pending applications. However, since the departure of the former executive secretary of the State Board of Pharmacy in January 2019, the Department has been unable to issue any free sale certificates because the regulation only permits the executive secretary issue such certificates. The proposed amendment to paragraph (6) of subdivision (c) of section 63.6 of the Regulations of the Commissioner of Education is designed to address this issue by permitting either the executive secretary or a designee of the Commissioner of Education to issue these certificates.

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

Rural Area Flexibility Analysis

The purpose of the proposed amendment is to permit either the executive secretary of the State Board of Pharmacy or a designee of the Commissioner of Education to issue free sale certificates to registered manufacturers and/or wholesalers seeking to export drugs and/or devices. Education Law § 6808(4) requires that any drug manufacturer or wholesaler of drugs be registered with the Department prior to offering such drugs and/or devices for sale in New York. Additionally, if such New York State registered manufacturer or wholesaler wishes to sell drugs and/or devices in foreign countries the registered manufacturer or wholesaler must, inter alia, obtain a certificate, commonly referred to as "free sale certificates," from the Department that verifies that it is currently registered as a manufacturer, wholesaler-repacker and/or wholesaler of drugs and/or devices and that it offers the drugs and/or devices listed on the certificate for sale in New York State. Currently, paragraph (6) of subdivision (c) of section 63.6 of the Regulations of the Commissioner of Education provides that "[a]ny registered manufacturer or wholesaler may be issued a certificate by the executive secretary of the State Board of Pharmacy, authenticating said registration and identifying the specified drugs and/or devices as articles regularly offered for sale in New York. . . ."

The pharmacy board office receives approximately 20 free sale certificate applications a year. Currently, there are three pending applications. However, since the departure of the former executive secretary of the State Board of Pharmacy in January 2019, the Department has been unable to issue any free sale certificates because the regulation only permits the executive secretary issue such certificates. The proposed amendment to paragraph (6) of subdivision (c) of section 63.6 of the Regulations of the Commissioner of Education is designed to address this issue by permitting either the executive secretary or a designee of the Commissioner of Education to issue these certificates.

Neither the current regulation nor the proposed amendment provides any exceptions from these free sale certificate requirements for registered manufacturers and wholesalers located in rural areas. Thus, the proposed amendment does not impact entities in rural areas of New York State because all New York State registered manufacturers and wholesalers must comply with the same requirements. Accordingly, no further steps were needed to ascertain the impact of the proposed amendment on entities in rural areas and none were taken. Thus, a rural flexibility analysis is not required, and one has not been prepared.

Job Impact Statement

It is not anticipated that the propose rule will impact jobs or employment opportunities. This is because the proposed amendment permits either the executive secretary of the State Board of Pharmacy or a designee of the Commissioner of Education to issue free sale certificates to registered manufacturers and/or wholesalers seeking to export drugs and/or devices. Education Law § 6808(4) requires that any drug manufacturer or wholesaler of drugs be registered with the Department prior to offering such drugs and/or devices for sale in New York. Additionally, if such New York State registered manufacturer or wholesaler wishes to sell drugs and/or devices in foreign countries the registered manufacturer or wholesaler must, inter alia, obtain a certificate, commonly referred to as "free sale certificates," from the Department that verifies that it is currently registered as a manufacturer, wholesaler-repacker and/or wholesaler of drugs and/or devices and that it offers the drugs and/or devices listed on the certificate for sale in New York State. Currently, paragraph (6) of subdivision (c) of section 63.6 of the Regulations of the Commissioner of Education provides that "[a]ny registered manufacturer or wholesaler may be issued a certificate by the executive secretary of the State Board of

Pharmacy, authenticating said registration and identifying the specified drugs and/or devices as articles regularly offered for sale in New York. . . ."

The pharmacy board office receives approximately 20 free sale certificate applications a year. Currently, there are three pending applications. However, since the departure of the former executive secretary of the State Board of Pharmacy in January 2019, the Department has been unable to issue any free sale certificates because the regulation only permits the executive secretary issue such certificates. The proposed amendment to paragraph (6) of subdivision (c) of section 63.6 of the Regulations of the Commissioner of Education is designed to address this issue by permitting either the executive secretary or a designee of the Commissioner of Education to issue these certificates.

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

NOTICE OF ADOPTION

Transitional H Pathway for School District Business Leader Certification

I.D. No. EDU-05-19-00007-A
Filing No. 458
Filing Date: 2019-05-07
Effective Date: 2019-05-22

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

Action taken: Amendment of section 80-5.25 of Title 8 NYCRR.

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

Subject: Transitional H Pathway for School District Business Leader Certification.

Purpose: Expand the Type of Eligible Experiences for the Transitional H Pathway for School District Business Leader Certification.

Text or summary was published in the January 30, 2019 issue of the Register, I.D. No. EDU-05-19-00007-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, 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 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Following publication of the Notice of Proposed Rulemaking in the State Register, the Department received the following comments on the proposed amendment:

COMMENT: As the coordinator of a School District Business Leader program, I strongly support the amendment to expand the scope to the Transitional H pathway for the School District Business Leader certification. Individuals who combine: 1) being a licensed CPA; 2) experience in a business office role such as Treasurer, School Business Administrator, etc.; 3) being enrolled is a state-approved SDBL program; and 4) along with appropriate mentoring are well-positioned to function in a role that requires the SDBL certificate. This pathway expands the pool of candidates for positions that require the SDBL, an area that we know is currently lacking an adequate number of well-qualified candidates.

RESPONSE: Since the comment is supportive, no response is necessary.

NOTICE OF ADOPTION

Administration of Certain Vaccines by Pharmacy Interns

I.D. No. EDU-05-19-00016-A
Filing No. 457
Filing Date: 2019-05-07
Effective Date: 2019-05-22

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

Action taken: Amendment of sections 63.4 and 63.9 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2), 6527(7), 6801(2), (4), 6802(22), 6806, 6902(1) and 6909(7); L. 2018, ch. 359

Subject: Administration of certain vaccines by pharmacy interns.

Purpose: To implement the provisions of chapter 359 of the Laws of 2018.

Text of final rule: 1. Subdivision (d) of section 63.4 of the Regulations of the Commissioner of Education is added, as follows:

(d) Requirements for a certificate to administer immunizations. No pharmacy intern shall administer immunizing agents without a certificate of administration issued by the department. For purposes of this section, a certified pharmacy intern shall mean a limited permit holder who is issued a certificate of administration pursuant to this subdivision. To meet the requirements for a certificate of administration, the pharmacy intern shall submit an application, on a form prescribed by the department. Each application shall contain an attestation by the dean or other appropriate official of the registered program that the applicant has completed the required training as specified in section 6806 of the Education Law and present satisfactory evidence of completion of the requirements set forth in one of the following subparagraphs:

(1) Training course. Completion of a training course in the administration of immunizations acceptable to the Commissioner and the Commissioner of Health, within the three years immediately preceding application for a certificate of administration. Such course shall include, but not be limited to, instruction in:

(i) techniques for screening patients and for obtaining informed consent;

(ii) techniques in the administration of immunizing agents, including the injection of a harmless, non-medicinal saline solution into voluntary recipients;

(iii) indications, precautions and contraindications in the use of immunizing agents;

(iv) handling of emergencies including needlestick injuries and anaphylaxis, including the use of medications required for emergency treatment of anaphylaxis;

(v) cardio-pulmonary resuscitation techniques; and

(vi) recordkeeping and reporting of immunizations and information; or

(2) A pharmacy intern that has completed a training course associated with Doctor of Pharmacy degree pursuant to the requirements in section 63.9(b)(3)(ii).

2. Subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education is amended, as follows:

(b) Immunizations

(1) ...

(2) ...

(3) ...

(4) With the exception of a certified pharmacy intern, a certified pharmacist shall not delegate the administration of immunizations to another person. For purposes of this section, a certified pharmacy intern shall mean a pharmacy intern who is certified to administer immunization as specified in section 6806 of the Education Law and has completed the requirements set forth in subdivision (d) of section 63.4 of this Part. Such a certified pharmacy intern may only administer immunizations under the immediate personal supervision of the certified pharmacist.

[(4)] *(5)* Standards, procedures and reporting requirements for the administration of immunization agents. Each certified pharmacist shall comply with the following requirements when administering an immunization agent pursuant to either a patient specific order or a non-patient specific order and protocol:

(i) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) a certified pharmacist shall not allow a certified pharmacy intern to administer immunizations unless the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, is informed that the pharmacy intern will be administering the immunization and the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, consents to administration of the immunization by the certified pharmacy intern. If the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, does not consent to administration by the certified pharmacy intern, then the option to receive the immunization from a certified pharmacist shall be provided.

[(v)] *(vi)* a certified pharmacist shall provide written instructions to the recipient regarding the appropriate course of action in the event of contraindications or adverse reactions, which statements are required to be

developed by a competent entity knowledgeable about the adverse reactions of the immunization agent which shall be administered, such as the Centers for Disease Control of the U.S. Department of Health and Human Services, which issues vaccine information statements;

[(vi)] *(vii)* a certified pharmacist, when administering an immunization in a pharmacy, shall provide for an area that provides for the patient's privacy, such area shall include:

(a) a clearly visible posting of the most current "Recommended Adult Immunization Schedule" published by the advisory committee for immunization practices (ACIP);

(b) education materials on influenza vaccines for children as determined by the commissioner and the commissioner of the department of health.

[(vii)] *(viii)* a certified pharmacist shall provide a copy of the appropriate vaccine information statement to the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, before administering the immunization;

[viii] *(ix)* a certified pharmacist shall provide to each recipient or other person legally responsible when the recipient is incapable of consenting to immunization, a signed certificate of immunization with the recipient's name, date of immunization, address of administration, administering pharmacist, immunization agent, manufacturer and lot number. With the consent of the recipient or a person legally responsible when the recipient is incapable of consenting, the certified pharmacist shall communicate this information to the recipient's primary health care practitioner, if one exists, within one month of the administration of such immunization, and such communication may be transmitted in electronic format;

[(ix)] *(x)* a certified pharmacist shall report any adverse outcomes as may be required by Federal law on the vaccine adverse event reporting system form of the Centers for Disease Control of the U.S. Department of Health and Human Services, or on the successor form;

[(x)] *(xi)* a certified pharmacist shall ensure that a record of all persons immunized including the recipient's name, date, address of administration, administering pharmacist, immunization agent, manufacturer and lot number is recorded and maintained in accordance with section 29.2(a)(3) of this Title;

[(xi)] *(xii)* to the extent required by the Public Health Law, the Education Law and/or the New York City Health Code, a certified pharmacist shall report the administration of any immunizations to the New York State Department of Health and/or the New York City Department of Health and Mental Hygiene, in a manner required by the Commissioner of Health of the State of New York or of the City of New York, as applicable. Such report shall not include any individually identifiable health information unless:

(a) such information is otherwise required by law; or

(b) the recipient has consented to the disclosure of such information, in which case the information may be included to the extent permitted by law; and

[(xii)] *(xiii)* each certified pharmacist shall provide information to recipients on the importance of having a primary health care practitioner, in a form or format developed by the Commissioner of Health;

[(xiii)] *(xiv)* each certified pharmacist shall, prior to administering the immunization or immunizations, inform the recipient, or the person legally responsible for the recipient when the patient is incapable of consenting to the immunization, of the total cost of the immunization or immunizations, subtracting any health insurance subsidization, if applicable. In the case where the immunization is not covered, the pharmacist shall inform the recipient, or other person legally responsible for the recipient when the patient is incapable of consenting to the immunization, that the immunization may be covered when administered by a primary care physician or health care practitioner; and

[(xiv)] *(xv)* Reporting of administration of immunizing agent;

(a) when a licensed pharmacist administers an immunizing agent, he or she shall report such administration by electronic transmission or facsimile to the patient's attending primary health care practitioner or practitioners, if any, unless the patient is unable to communicate the identity of his or her primary health care practitioner, and, to the extent practicable, make himself or herself available to discuss the outcome of such immunization, including any adverse reactions, with the attending primary health care practitioner, or to the statewide immunization registry or the citywide immunization registry, as established pursuant to sections 2168 of the Public Health Law and 11.07 of the New York City Health Code, respectively.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 63.4(d) and 63.9(b)(4).

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) 473-2183, email: legal@nysed.gov

Revised Regulatory Impact Statement

A Notice of Emergency Adoption and Proposed Rulemaking was published in the State Register on January 30, 2019. A second Notice of Emergency Adoption was published in the State Register on April 24, 2019. Technical amendments were made to the proposed rulemaking to correct an error in §§ 63.4(d) and 63.9(b)(4) which incorrectly cited Education Law § 6808 instead of Education Law § 6806. However, no revisions are required to the previously published Regulatory Impact Statement published on April 24, 2019.

Revised Regulatory Flexibility Analysis

A Notice of Emergency Adoption and Proposed Rulemaking was published in the State Register on January 30, 2019. A second Notice of Emergency Adoption was published in the State Register on April 24, 2019. However, no revisions are required to the previously published Regulatory Flexibility Analysis published on April 24, 2019.

Revised Rural Area Flexibility Analysis

A Notice of Emergency Adoption and Proposed Rulemaking was published in the State Register on January 30, 2019. A second Notice of Emergency Adoption was published in the State Register on April 24, 2019. However, no revisions are required to the previously published Rural Area Flexibility Analysis published on April 24, 2019.

Revised Job Impact Statement

A Notice of Emergency Adoption and Proposed Rulemaking was published in the State Register on January 30, 2019. A second Notice of Emergency Adoption was published in the State Register on April 24, 2019. However, no revisions are required to the previously published Job Impact Statement published on April 24, 2019.

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 Emergency Adoption and Proposed Rule Making in the January 30, 2019 State Register, the State Education Department received the following comments:

1. COMMENT:

A New York State school of pharmacy professor noted that the citations to Education Law § 6808 in §§ 63.4(d) and 63.9(b)(4) of the proposed rule appeared to be incorrect.

This commenter also supported the amendments to § 63.4(d) because they provide schools the opportunity to train student interns in the specifics of becoming competent to administer vaccines under the supervision of a certified pharmacist. Commenter further asserted that New York's schools of pharmacy are eminently well-qualified to do this. Commenter sought clarification on how the required training courses in the administration of immunizations would be approved by the Commissioner and the Commissioner of Health.

Additionally, commenter asked whether a properly qualified pharmacy intern, under 63.4(d), in the beginning of his/her second year of pharmacy school and engaged clinically (administering vaccines) through the next third year, would need to repeat the required training to become certified to administer immunizations once he/she became a licensed pharmacists Commenter asserted that this would be unnecessarily duplicative and a waste of resources.

DEPARTMENT RESPONSE:

Subsequent to the publication of the proposed rule in the State Register, Department staff discovered that the proposed rule inadvertently cited Education Law § 6808 in two of its provisions, instead of Education Law § 6806. Consequently, non-substantial revisions were made to replace the citations to Education Law § 6808 with citations to Education Law § 6806.

Regarding the approval of training programs, registered pharmacy programs need not obtain separate approval from SED to provide the training required for pharmacy interns to obtain a certificate of administration. Most, if not all, of these registered pharmacy programs presently include immunization administration as part of their respective curriculum and use the American Pharmacists Association (APhA) immunization certification program. Thus, the vaccination administration training that pharmacy interns will be taking has already been approved by SED.

In addition to the APhA immunization certification program, SED currently accepts completion of training in the administration of immunization agents received as part of a Doctor of Pharmacy degree program for licensed pharmacists seeking immunization certification. SED will accept this same training for pharmacy interns seeking immunization certification.

Students that have been engaged in continuous practice in the administration of immunization will not have to repeat this training to become certified to administer immunizations once they become licensed pharmacists. But they will have to submit the pharmacist immunization certification

form to SED and attach a copy of an approved course completion certificate in immunization, as well as a copy of a current valid course completion card in Basic Life Support or its equivalent. As stated above, acceptable training for this purpose includes completion of training in the administration of immunization agents received as part of a Doctor of Pharmacy degree program.

In cases where a student has not been engaged in continuous practice in the administration of immunizations, he/she would be required to retake the 20-hour coursework in order to obtain immunization certification once he/she becomes a licensed pharmacist. SED disagrees with the commenter's position that this retraining issue needs to be explicitly addressed in the final regulations and does not believe amendments are necessary. However, the commenter's suggestions are noted and may be addressed by the Department in future guidance.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Continuing Teacher and Leader Education (CTLE) for Educators in Nonpublic Schools

I.D. No. EDU-21-19-00008-P

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

Proposed Action: Amendment of section 80-6.1 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 205, 207, 305, 3001, 3004, 3006, 3006-a and 3009

Subject: Continuing Teacher and Leader Education (CTLE) for Educators in nonpublic schools.

Purpose: To make technical amendments to the CTLE regulations for educators employed in nonpublic schools.

Text of proposed rule: Subdivisions (c) and (d) of section 80-6.1 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(c) Continuing teacher and leader education certificate holder (CTLE certificate holder) means all holders of a professional certificate in the classroom teaching service or educational leadership service (i.e., school building leader, school district leader, school district business leader) and holders of a level III teaching assistant certificate employed in a school district or board of cooperative educational services *or nonpublic school* in New York State.

(d) Practicing means employed 90 days or more during a school year by a single applicable school in New York [in a position requiring certification] pursuant to this Part. For the purposes of this definition, a day of employment shall include a day actually worked in whole or in part, or a day not actually worked but a day paid. In addition, the City School District of the City of New York and any of its components, including but not limited to community school districts, high school divisions, special education divisions, the chancellor's district shall be considered together a single applicable school in New York.

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 148, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Data, views or arguments may be submitted to: Petra Maxwell, NYS Education Department, Office of Higher Education, 89 Washington Avenue, Room 975 EBA, Albany, NY 12234, (518) 474-2238, email: regcomments@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 305(1) and (3) authorizes the Commissioner to enforce the educational policies of this State and execute all educational policies determined by the Regents and shall prescribe the licensing of teachers employed in this State.

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 3006 establishes that the Commissioner may issue life state certificates upon examinations which shall entitle its holder to teach for life in the public schools without further examination.

Education Law 3006-a establishes the registration and continuing teacher and leader education requirements for holders of professional certificates in the classroom teaching service, holders of level III teaching assistant certificates, and holders of professional certificates in the educational leadership service.

Education Law 3009 prohibits school districts from paying the salary of an unqualified teacher.

2. LEGISLATIVE OBJECTIVES:

The purpose of the proposed amendment to make technical amendments to two definitions listed in § 80-6.1 is to align them with the amended Education Law § 3006-a. The definition of a "CTLE certificate holder" would include educators who work in a nonpublic school in addition to a school district or BOCES in New York State. Also, the definition of "practicing" would no longer be limited to employment in a position requiring certification because educators in nonpublic schools are not required to be certified.

3. NEEDS AND BENEFITS:

Education Law § 3006-a requires educators who hold at least one of the following certificates to register with the Department every five years: Permanent or Professional classroom teacher, Permanent or Professional educational leadership, or Teaching Assistant Level III. These certificate holders, with the exception of Permanent certificate holders, must complete 100 clock hours of CTLE during the five-year registration period.

Chapter 311 of the Laws of 2017 amended Education Law § 3006-a to add nonpublic schools to the provisions relating to CTLE. At their January 2018 meeting, the Board of Regents amended the definition of an applicable school for the purposes of CTLE in section 80-6.1 of the Commissioner's Regulations to include nonpublic schools. An applicable school currently means a school district, BOCES, or nonpublic school in New York State.

The Department is proposing to make technical amendments to two definitions listed in § 80-6.1 to align them with the amended Education Law § 3006-a. The definition of a "CTLE certificate holder" would include educators who work in a nonpublic school in addition to a school district or BOCES in New York State. Also, the definition of "practicing" would no longer be limited to employment in a position requiring certification because educators in nonpublic schools are not required to be certified.

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 amendments do not impose any costs on private regulated parties.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed 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:

Following the 60-day public comment period required under the State Administrative Procedure Act, it is anticipated that the proposed amendment will be presented to the Board of Regents for adoption at its September 2019 meeting. If adopted at the September 2019 meeting, the proposed amendment will become effective on September 25, 2019.

Regulatory Flexibility Analysis

The purpose of the proposed amendment to two definitions listed in § 80-6.1 is to align them with the amended Education Law § 3006-a. The definition of a "CTLE certificate holder" would include educators who work in a nonpublic school in addition to a school district or BOCES in New York State. Also, the definition of "practicing" would no longer be limited to employment in a position requiring certification because educators in nonpublic schools are not required to be certified.

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 educators who hold at least one of the following certificates to register with the Department every five years: Permanent or Professional classroom teacher, Permanent or Professional educational leadership, or Teaching Assistant Level III 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 technical amendments to two definitions listed in § 80-6.1 is to align them with the amended Education Law § 3006-a. The definition of a "CTLE certificate holder" would include educators who work in a nonpublic school in addition to a school district or BOCES in New York State. Also, the definition of "practicing" would no longer be limited to employment in a position requiring certification because educators in nonpublic schools are not required to be certified.

3. COSTS:

The proposed amendment does not impose any additional costs.

4. MINIMIZING ADVERSE IMPACT:

The technical amendments were made to conform to the law. No alternatives were considered.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed amendment to make technical amendments to two definitions listed in § 80-6.1 is to align them with the amended Education Law § 3006-a. The definition of a "CTLE certificate holder" would include educators who work in a nonpublic school in addition to a school district or BOCES in New York State. Also, the definition of "practicing" would no longer be limited to employment in a position requiring certification because educators in nonpublic schools are not required to be certified.

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

Creation of Safety Nets for the Science Content Specialty Tests (CSTs)

I.D. No. EDU-21-19-00009-P

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

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

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

Subject: Creation of safety nets for the science Content Specialty Tests (CSTs).

Purpose: Allow candidates to be held harmless during a one-year transition period from the predecessor CSTs to the revised CST's.

Text of proposed rule: Subparagraph (v) of paragraph (2) of subdivision (c) of section 80-1.5 of the Regulations of the Commissioner of Education shall be added to read as follows:

(v) When the revised content specialty examination(s) in biology, chemistry, earth science and physics become available, a candidate may take either the applicable revised content specialty examination or the applicable predecessor content specialty examination in biology, chemistry, earth science or physics, for one year after the applicable revised content specialty examination(s) become operational.

Text of proposed rule and any required statements and analyses may be obtained from: Kirti Goswami, 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: Petra Maxwell, Education Department, Office of Higher Education, 89 Washington Avenue, Room 975 EBA, Albany, NY 12234, (518) 474-2238, email: regcomments@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 305(1) and (3) authorizes the Commissioner to enforce the educational policies of this State and execute all educational policies determined by the Regents and shall prescribe the licensing of teachers employed in this State.

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

Education Law 3003 authorizes the Commissioner to issue permanent certificates to school superintendents.

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 districts from paying the salary of an unqualified teacher.

2. LEGISLATIVE OBJECTIVES:

The Department is proposing to create safety nets for the CSTs in Biology, Chemistry, Earth Science and Physics that would become effective when the revised CSTs in Biology, Chemistry, Earth Science and Physics become operational. When these revised CSTs become operational, a candidate would be able to take either the applicable revised CST or the applicable predecessor CST in Biology, Chemistry, Earth Science or Physics for one year after the revised CSTs becomes operational. The proposed safety nets allow candidates to be held harmless during a one-year transition period from the predecessor CSTs to the revised CSTs.

3. NEEDS AND BENEFITS:

In December 2016, the Department adopted the New York State P-12 Science Learning Standards. The new standards prompted the Department to redevelop the Content Specialty Tests (CSTs) for certification in Biology, Chemistry, Earth Science and Physics. Through the test redevelopment process, the test frameworks and items were redesigned to ensure that candidates in the science subject areas demonstrated the knowledge reflected in the new standards.

It is anticipated that the revised CSTs in Biology, Chemistry, Earth Science and Physics will become operational in Fall 2019. The test frameworks for the revised science CSTs are available online for candidates and teacher preparation programs to assist in the preparation of candidates for the revised tests.

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 does 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:

Following the 60-day public comment period required under the State Administrative Procedure Act, it is anticipated that the proposed amendment will be presented to the Board of Regents for adoption at its September 2019 meeting. If adopted at the September 2019 meeting, the proposed amendment will become effective on September 25, 2019.

Regulatory Flexibility Analysis

The purpose of the proposed amendment to Section 80-1.5 of the Regulations of the Commissioner of Education is to create safety nets for the CSTs in Biology, Chemistry, Earth Science and Physics that would become effective when the revised CSTs in Biology, Chemistry, Earth Sci-

ence and Physics become operational. When these revised CSTs become operational, a candidate would be able to take either the applicable revised CST or the applicable predecessor CST in Biology, Chemistry, Earth Science or Physics for one year after the revised CSTs becomes operational. The proposed safety nets allow candidates to be held harmless during a one-year transition period from the predecessor CSTs to the revised CSTs.

In December 2016, the Department adopted the New York State P-12 Science Learning Standards. The new standards prompted the Department to redevelop the Content Specialty Tests (CSTs) for certification in Biology, Chemistry, Earth Science and Physics. Through the test redevelopment process, the test frameworks and items were redesigned to ensure that candidates in the science subject areas demonstrated the knowledge reflected in the new standards.

It is anticipated that the revised CSTs in Biology, Chemistry, Earth Science and Physics will become operational in Fall 2019. The test frameworks for the revised science CSTs are available online for candidates and teacher preparation programs to assist in the preparation of candidates for the revised tests.

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 candidates of the CST in Biology, Chemistry, Earth Science and Physics, 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 Section 80-1.5 of the Regulations of the Commissioner of Education is to create safety nets for the CSTs in Biology, Chemistry, Earth Science and Physics that would become effective when the revised CSTs in Biology, Chemistry, Earth Science and Physics become operational. When these revised CSTs become operational, a candidate would be able to take either the applicable revised CST or the applicable predecessor CST in Biology, Chemistry, Earth Science or Physics for one year after the revised CSTs becomes operational. The proposed safety nets allow candidates to be held harmless during a one-year transition period from the predecessor CSTs to the revised CSTs.

In December 2016, the Department adopted the New York State P-12 Science Learning Standards. The new standards prompted the Department to redevelop the Content Specialty Tests (CSTs) for certification in Biology, Chemistry, Earth Science and Physics. Through the test redevelopment process, the test frameworks and items were redesigned to ensure that candidates in the science subject areas demonstrated the knowledge reflected in the new standards.

It is anticipated that the revised CSTs in Biology, Chemistry, Earth Science and Physics will become operational in Fall 2019. The test frameworks for the revised science CSTs are available online for candidates and teacher preparation programs to assist in the preparation of candidates for the revised tests.

3. COSTS:

The proposed amendment does not impose any costs on CST 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 Section 80-1.5 of the Regulations of the Commissioner of Education is to create safety nets for the CSTs in Biology, Chemistry, Earth Science and Physics that would become effective when the revised CSTs in Biology, Chemistry, Earth Science and Physics become operational. When these revised CSTs become operational, a candidate would be able to take either the applicable revised CST or the applicable predecessor CST in Biology, Chemistry, Earth Science or Physics for one year after the revised CSTs becomes operational. The proposed safety nets allow candidates to be held harmless during a one-year transition period from the predecessor CSTs to the revised CSTs.

In December 2016, the Department adopted the New York State P-12 Science Learning Standards. The new standards prompted the Department to redevelop the Content Specialty Tests (CSTs) for certification in Biology, Chemistry, Earth Science and Physics. Through the test redevelopment process, the test frameworks and items were redesigned to ensure that candidates in the science subject areas demonstrated the knowledge reflected in the new standards.

It is anticipated that the revised CSTs in Biology, Chemistry, Earth Science and Physics will become operational in Fall 2019. The test frameworks for the revised science CSTs are available online for candidates and teacher preparation programs to assist in the preparation of candidates for the revised tests.

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

Conditional Initial Certificate Requirements

I.D. No. EDU-21-19-00010-P

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

Proposed Action: Amendment of section 80-5.17 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 305, 3001, 3004, 3006, 3006-a and 3009

Subject: Conditional initial certificate requirements.

Purpose: Provides that candidates may be eligible for an Initial certificate even after their conditional initial certificate expires.

Text of proposed rule: Subdivision (c) of section 80-5.17 of the Regulations of the Commissioner of Education is repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Kirti Goswami, 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: Petra Maxwell, Education Department, Office of Higher Education, 89 Washington Avenue, Room 975 EBA, Albany, NY 12234, (518) 474-2238, email: regcomments@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 305(1) and (3) authorizes the Commissioner to enforce the educational policies of this State and execute all educational policies determined by the Regents and shall prescribe the licensing of teachers employed in this State.

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

Education Law 3004 authorizes the Commissioner to promulgate regulations governing the certification requirements for teachers employed in public schools.

Education Law 3006 establishes that the Commissioner may issue life state certificates upon examinations which shall entitle its holder to teach for life in the public schools without further examination.

Education Law 3009 prohibits school districts from paying the salary of an unqualified teacher.

2. LEGISLATIVE OBJECTIVES:

The purpose of the proposed amendment is to repeal Section 80-5.17(c) to confirm that candidates may be eligible for an Initial certificate during the entire validity period of the Conditional Initial certificate and even after their Conditional Initial certificate expires.

3. NEEDS AND BENEFITS:

Currently, section 80-5.17(c) of the Commissioner's Regulations describes when candidates must submit evidence of meeting their examination requirement(s) and is set forth below:

(c) To meet the requirements for a full initial certificate in the certificate title of the conditional initial certificate, the candidate shall be required to submit to the commissioner, at least 60 days prior to the expiration of the conditional initial certificate, satisfactory evidence of meeting the examination requirement for the initial certificate title sought, as prescribed in this Part. If the candidate meets such examination requirement and all other requirements for the initial certificate title sought, the commissioner shall issue the initial certificate.

Section 80-5.17(c) of the Commissioner's Regulations could be

interpreted to mean that candidates must submit evidence of satisfactory completion of the examination requirement(s) at least 60 days prior to expiration of the Conditional Initial certificate, and that they can only be eligible for an Initial certificate during the validity period of the Conditional Initial certificate or they cannot earn the Initial certificate. The proposed amendment repeals Section 80-5.17(c) to confirm that candidates may be eligible for an Initial certificate during the entire validity period of the Conditional Initial certificate and even after their Conditional Initial certificate expires.

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 does 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:

Following the 60-day public comment period required under the State Administrative Procedure Act, it is anticipated that the proposed amendment will be presented to the Board of Regents for adoption at its September 2019 meeting. If adopted at the September 2019 meeting, the proposed amendment will become effective on September 25, 2019.

Regulatory Flexibility Analysis

The purpose of the proposed amendment is to repeal Section 80-5.17(c) to confirm that candidates may be eligible for an Initial certificate during the entire validity period of the Conditional Initial certificate and even after their Conditional Initial certificate expires.

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 educators who are eligible or who currently hold a Conditional Initial certificate, 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 is to repeal Section 80-5.17(c) to confirm that candidates may be eligible for an Initial certificate during the entire validity period of the Conditional Initial certificate and even after their Conditional Initial certificate expires if they meet the requirements for the initial certificate.

3. COSTS:

The proposed amendment does not impose any additional costs on educators, and/or the New York State nonpublic schools, 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 the Rural Advisory Committee for review and comment.

Job Impact Statement

The purpose of the proposed amendment is to repeal Section 80-5.17(c) to confirm that candidates may be eligible for an Initial certificate even after their Conditional Initial certificate expires.

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

Educational Broadcast Councils and Radio Stations

I.D. No. EDU-21-19-00011-P

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

Proposed Action: Amendment of sections 179.3 and 179.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 236; L. 1975, ch. 50

Subject: Educational Broadcast Councils and Radio Stations.

Purpose: Reduce costs incurred by each Council and Radio Station for redundant annual certified audits and to streamline reporting process.

Text of proposed rule: 1. Section 179.3 of the Regulations of the Commissioner of Education is amended, to read as follows:

Section 179.3 Schedule of payments.

(a) Each council and public radio station shall be paid according to the following procedure:

(1) Reports required.

(i) Each council shall submit the following reports:

(a) . . .

(b) . . .

(c) a certified audit within [five] *six* months of the close of the fiscal year.

(d) . . .

(e) . . .

(f) [the Education Department financial report within five months of the close of the fiscal year] *an annual financial report in a form prescribed by the Commissioner within six months of the close of the fiscal year*.

(g) A quarterly education report within one month of the close of the quarter.

(ii) Each radio station shall submit the following reports:

(a) . . .

(b) a certified audit within [five] *six* months of the close of the fiscal year.

(c) . . . . . .

(d) . . .

(e) [the Education Department financial report within five months of the close of the fiscal year] *an annual financial report in a form prescribed by the Commissioner within six months of the close of the fiscal year*.

(iii) . . .

2. Section 179.5 of the Regulations of the Commissioner of Education is amended, to read as follows:

Section 179.5 Educational Telecommunications service committee.

(a) Purpose. An educational telecommunications service committee shall be formed by each of the councils in each of the several regions of the State. The geographical boundaries of each region shall be defined by the commissioner, based on State needs and on advice from the council in each region. Each committee shall mutually develop an educational service with the regional council. The committee(s) shall represent public and private schools and other educational organizations*, and for purposes of this section, cultural education institutions which shall include but not be limited to museums, historical societies, libraries, science centers, zoos, planetariums, and university art galleries* within that region, in order to meet the educational needs of learners.

(b) Organization. Representatives from educational organizations must reflect the diversity and proportional representation of the region. Participating representatives shall elect the officers of the committee(s) and [shall enact bylaws necessary for the operation of the committee(s)] *committees shall function according to bylaws approved by each council's trustees.* Each committee shall submit to the commissioner a plan for the committee to develop the lifelong learning goals/objectives and services of the council. Actions taken by the committee(s) shall be filed in the quarterly report to the commissioner. There shall be a permanent seat on the executive committee for a district superintendent appointed by the commissioner.

Text of proposed rule and any required statements and analyses may be obtained from: Kirti Goswami, 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: Julie Daniels, Education Department,, 222 Madison Avenue, Room 10A33 CEC, Albany, NY 12230, (518) 473-8495, email: regcomments@nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Subdivision (3) of Education Law section 236 authorizes the Board of Regents to charter and regulate nonprofit and noncommercial public television stations or public television and/or radio stations. Subdivision (5) of section 236 authorizes the Regents to make rules, or authorize the Commissioner to make regulations, providing for the implementation of section 236, including provision for annual audited reports of the financial records of such corporations as the Regents or the Commissioner may require.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the aforementioned statutes and is necessary to update regulatory language with respect to the annual financial report, annual certified audit, the time period for submitting these reports, and Educational Telecommunications Service Committee bylaws and representatives.

3. NEEDS AND BENEFITS:

The proposed amendments to Section 179.3 of the Commissioner's regulations, last updated in 2003, are necessary to reduce costs incurred by each Council and Radio Station for redundant annual certified audits and to streamline the reporting process. The amendments include the following changes:

• Updates language related to the required annual financial report and the time period for submitting this report, making it possible for councils and radio stations to each prepare one annual financial report, one annual certified audit and have one submission time period that complies with both State Education Department and Corporation for Public Broadcasting reporting requirements. With this change, councils and radio stations reduce redundancy and save money.

The proposed amendment also amends Section 179.5 of the Commissioner's regulations relating to the councils' Educational Telecommunications Service Committees. The amendments include the following changes:

• Requires the Committee's composition to include representatives from "cultural education institutions" and provides examples of these organizations, such as: museums, archives, libraries, science centers, zoos, planetariums, university art galleries, etc. This change will expand the pool of qualified educators from which to recruit committee representatives and help with finding the diversity and expertise the councils' work requires.

• Updates language related to the enacting of committee bylaws. Currently committee representatives enact their own bylaws. The proposed amendment will give each councils' trustees final approval of committee bylaws.

4. COSTS:

(a) Costs to State government: None.

(b) Cost to local government: None. The proposed amendment is applicable only to educational broadcast councils and public radio stations and does not impose any costs upon local governments.

(c) Costs to private, regulated parties: The proposed amendment does not impose any additional costs on regulated parties. The proposed amendment will provide cost savings to educational broadcast councils and public radio stations by eliminating redundant reporting.

(d) Costs to the regulating agency for implementation and continued administration of the rule: The proposed amendment does not generate any additional cost for the Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is applicable only to educational broadcast councils and public radio stations and does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

As stated in the Needs and Benefits section, the proposed amendment would reduce paperwork requirements.

7. DUPLICATION:

The proposed amendment will not duplicate, overlap or conflict with State or federal rules or other legal requirements.

8. ALTERNATIVES:

No alternatives were considered.

9. FEDERAL STANDARDS:

The proposed amendment relates to State requirements of public broadcasting councils and public radio stations. There are no applicable federal standards.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

The proposed amendments relate to public broadcasting councils and public radio stations chartered by the Board of Regents and financial reporting of public broadcasting councils and public radio stations approved by the Commissioner. The proposed amendments do not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendments that they do not affect small businesses or local governments, no further measures were needed to ascertain that fact, and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment relates to the nine Regents chartered public broadcasting councils, and the seven Regents chartered public radio stations in New York State. These councils and stations broadcast public television and public radio to the entire state of New York. The offices, studios, and transmitter facilities are in or near: Plainview and Southampton, Long Island; New York City; Albany; Plattsburgh; Binghamton; Syracuse; Oswego; Watertown; Canton; Rochester; and Buffalo.

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

The proposed amendments to Section 179.3 of the Commissioner's regulations, last updated in 2003, are necessary to reduce costs incurred by each Council and Radio Station for redundant annual certified audits and to streamline the reporting process. The amendments include the following changes:

• updates language related to the required annual financial report and the time period for submitting this report, making it possible for councils and radio stations to each prepare one annual financial report, one annual certified audit and have one submission time period that complies with both State Education Department and Corporation for Public Broadcasting reporting requirements. With this change, councils and radio stations reduce redundancy and save money.

The proposed amendment also amends Section 179.5 of the Commissioner's regulations relating to the councils' Educational Telecommunications Service Committees. The amendments include the following changes:

Requires the Committee's composition to include representatives from "cultural education institutions" and provides examples of these organizations, such as: museums, archives, libraries, science centers, zoos, planetariums, university art galleries, etc. This change will expand the pool of qualified educators from which to recruit committee representatives and help with finding the diversity and expertise the councils' work requires.

Updates language related to the enacting of committee bylaws. Currently committee representatives enact their own bylaws. The proposed amendment will give each councils' trustees final approval of committee bylaws.

3. COSTS:

The proposed amendment does not impose additional costs on the regulated parties. The proposed reporting requirements were shared with educational broadcasting councils and public radio stations prior to proposing this rule. Educational broadcasting councils and public radio stations indicated that the proposed amendment will eliminate redundant reporting, saving them time and money.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to update language related to the required annual financial report, the certified audit and the time period for submitting these reports, making it possible for educational broadcasting councils and public radio stations to each prepare one annual financial report, one annual certified audit and have one submission time period that complies with both State Education Department and Corporation of Public Broadcasting reporting requirements. The proposed amendment will reduce redundant reporting.

Since these requirements must have State-wide application in order to ensure uniform, consistent practices relating to educational broadcast councils and public radio stations chartered by the Board of Regents, it is not feasible to impose a lesser standard on, or otherwise exempt, rural areas. The proposed rule has no adverse economic impact.

5. RURAL AREA PARTICIPATION:

The proposed amendment has been under development for two years. The final version was shared with the managers of all sixteen affected stations. All support the proposed amendment.

Job Impact Statement
The proposed amendments relate to the organization of public broadcasting councils and public radio stations chartered by the Board of Regents and the financial reporting of public broadcasting councils and public radio stations approved by the Commissioner. Because it is evident from the nature of the proposed amendments that it will have no impact on jobs or employment opportunities, no further measures were needed to ascertain that fact, and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Requirements for Transitional D Programs That Lead to School District Leader Certification

I.D. No. EDU-21-19-00012-P

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

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

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

Subject: Requirements for Transitional D Programs that Lead to School District Leader Certification.

Purpose: Certificate enables the candidates to work in a school district/BOCES as a school district leader while they complete their requirement.

Text of proposed rule: Paragraph (4) of section 52.21 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(4) Alternative school district leader certification program. Specific requirements for programs preparing candidates for the professional certificate as a school district leader (superintendent of schools, district superintendent, deputy superintendent, associate superintendent, assistant superintendent, and any other person having responsibility for general district-wide administration, except those responsibilities defined for school district business leaders). [Such alternative programs are for exceptionally qualified candidates who do not have three years of classroom teaching service, and/or pupil personnel service, and/or educational leadership service.]

(i) General requirements. [Programs shall meet the general requirements for all programs preparing education leaders in paragraph (1) of this subdivision.]

(a) Programs shall meet the general requirements for all programs preparing education leaders in paragraph (1) of this subdivision.

(b) Programs shall submit an institutional recommendation for the Transitional D certificate upon a candidate's enrollment in the program.

(c) Prior to admission into a program, the institution shall provide written notification to candidates that they must apply for the Transitional D certificate upon enrollment in the program.

Text of proposed rule and any required statements and analyses may be obtained from: Kirti Goswami, 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: Petra Maxwell, Education Department, Office of Higher Education, 89 Washington Avenue, Room 975 EBA, Albany, NY 12234, (518) 474-2238, email: regcomments@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 305(1) and (3) authorizes the Commissioner to enforce the educational policies of this State and execute all educational policies determined by the Regents and shall prescribe the licensing of teachers employed in this State.
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 districts from paying the salary of an unqualified teacher.
2. LEGISLATIVE OBJECTIVES:
The purpose of the proposed amendment to § 52.21 of the Regulations of the Commissioner of Education is to require that Transitional D programs provide written notification to candidates that they must apply for the Transitional D certificate upon enrollment in the program and submit an institutional recommendation for certification immediately upon the candidates' enrollment.
The Department is also proposing to remove the stipulation that limits admission to Transitional D programs to candidates with limited or no school experience.
3. NEEDS AND BENEFITS:
The Department has encountered several situations where candidates did not apply for a Transitional D certificate while matriculating in their Transitional D program. By not obtaining this certificate, they worked in a school district or BOCES without certification in a position that requires certification per State law. In addition, the administrative experience that candidates gain during their program cannot count towards the three-year experience requirement for the Professional School District Leader certificate unless they held a Transitional D certificate throughout the experience; experience in a school district or BOCES can only count towards certification while holding a valid certificate.
One of the Transitional D certification requirements is an institutional recommendation by the program for the certificate. Programs that submit this institutional recommendation for certification immediately upon the candidates' enrollment in the program avoid delaying the certification process.
The Department is also proposing to remove the stipulation that limits admission to Transitional D programs to candidates with limited or no school experience. As currently written, candidates with three or more years of classroom teaching service, pupil personnel service, and/or educational leadership service cannot be admitted to a Transitional D program. This stipulation prevents educators with three years of experience or more, and who may be excellent leaders and have relevant experience, from becoming a school district leader through a Transitional D program.
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 amendments do not impose any costs on private regulated parties.
d. Costs to regulating agency for implementation and continued administration: See above.
5. LOCAL GOVERNMENT MANDATES:
The proposed 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:
Following the 60-day public comment period required under the State Administrative Procedure Act, it is anticipated that the proposed amendment will be presented to the Board of Regents for adoption at its September 2019 meeting. If adopted at the September 2019 meeting, the proposed amendment will become effective on September 25, 2019.

Regulatory Flexibility Analysis
The purpose of the proposed amendment to § 52.21 of the Regulations of the Commissioner of Education is to require that Transitional D programs provide written notification to candidates that they must apply for the Transitional D certificate upon enrollment in the program and submit an institutional recommendation for certification immediately upon the candidates' enrollment. The revisions would ensure that candidates know they must apply for certification and would receive an institutional recommendation for certification in a timely manner.
The Department is proposing to require that Transitional D programs provide written notification to candidates that they must apply for the Transitional D certificate upon enrollment in the program and submit an institutional recommendation for certification immediately upon the candidates' enrollment. The revisions would ensure that candidates know

they must apply for certification and would receive an institutional recommendation for certification in a timely manner.

By knowing about the need to apply and having the institutional recommendation for certification, candidates can optimize the amount of experience that can count towards the Professional School District Leader certificate and comply with State laws regarding working in a school district or BOCES in a position that requires certification.

The Department is also proposing to remove the stipulation that limits admission to Transitional D programs to candidates with limited or no school experience. As currently written, candidates with three or more years of classroom teaching service, pupil personnel service, and/or educational leadership service cannot be admitted to a Transitional D program. This stipulation prevents educators with three years of experience or more, and who may be excellent leaders and have relevant experience, from becoming a school district leader through a Transitional D program.

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 candidates for the Transitional D certificate, 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 § 52.21 of the Regulations of the Commissioner of Education is to require that Transitional D programs provide written notification to candidates that they must apply for the Transitional D certificate upon enrollment in the program and submit an institutional recommendation for certification immediately upon the candidates' enrollment. The revisions would ensure that candidates know they must apply for certification and would receive an institutional recommendation for certification in a timely manner.

By knowing about the need to apply and having the institutional recommendation for certification, candidates can optimize the amount of experience that can count towards the Professional School District Leader certificate and comply with State laws regarding working in a school district or BOCES in a position that requires certification.

The Department is also proposing to remove the stipulation that limits admission to Transitional D programs to candidates with limited or no school experience. As currently written, candidates with three or more years of classroom teaching service, pupil personnel service, and/or educational leadership service cannot be admitted to a Transitional D program. This stipulation prevents educators with three years of experience or more, and who may be excellent leaders and have relevant experience, from becoming a school district leader through a Transitional D program.

3. COSTS:

The proposed amendment does not impose any costs on Transitional D certificate 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 § 52.21 of the Regulations of the Commissioner of Education is to require that Transitional D programs provide written notification to candidates that they must apply for the Transitional D certificate upon enrollment in the program and submit an institutional recommendation for certification immediately upon the candidates' enrollment. The Department is also proposing to remove the stipulation that limits admission to Transitional D programs to candidates with limited or no school experience.

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.

State Board of Elections

NOTICE OF ADOPTION

Political Campaign Contribution Limits

I.D. No. SBE-07-19-00020-A
Filing No. 451
Filing Date: 2019-05-03
Effective Date: 2019-05-22

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

Action taken: Amendment of section 6214.0 of Title 9 NYCRR.

Statutory authority: Election Law, sections 14-114(1)(c) and 3-102(17)

Subject: Political Campaign Contribution Limits.

Purpose: Adjust contribution limits to reflect the consumer price index.

Text of final rule: Section 6214.0 Campaign Contribution Limits.

The following limits will apply to campaign contributions until such time as the State Board of Elections adjusts the limits to reflect changes in the consumer price index:

Previous Limit	Current Limit	Office/Election
[$ 6,500.00	$ 7,000.00	State senate primary Statewide primary minimum NYC citywide primary minimum
$19,700.00	$21,100.00	Statewide primary maximum NYC citywide primary minimum
$41,100.00	$44,000.00	Statewide general NYC citywide general
$10,300.00	$11,000.00	State senate general
$ 4,100.00	$ 4,400.00	State assembly primary State assembly general
$102,300.00	$109,600.00	Party committees]
$ 7,000.00	*$ 7,500.00*	*State senate primary Statewide primary minimum NYC citywide primary minimum**
$21,100.00	*$22,600.00*	*Statewide primary maximum NYC citywide primary maximum**
$44,000.00	*$47,100.00*	*Statewide general NYC citywide general**
$11,000.00	*$11,800.00*	*State senate general*
$ 4,400.00	*$ 4,700.00*	*State assembly primary State assembly general*
$109,600.00	*$117,300.00*	*Party committees*

** NOTE: Section 1052 of the New York City Charter supersedes New York Election Law campaign contribution limits with respect to certain New York City offices.*

Final rule as compared with last published rule: Nonsubstantive changes were made in section 6214.0.

Text of rule and any required statements and analyses may be obtained from: Nicholas Cartagena, Esq., New York State Board of Election, 40 North Pearl Street, Suite 5, (518) 474-2064, email: nicholas.cartagena@elections.ny.gov

Revised Job Impact Statement

A revised Job Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text merely makes reference to current law.

Assessment of Public Comment

The agency received no public comment.

Department of Financial Services

EMERGENCY RULE MAKING

Assessment of Entities Regulated by the Banking Division of the Department of Financial Services

I.D. No. DFS-21-19-00001-E
Filing No. 403
Filing Date: 2019-05-01
Effective Date: 2019-05-01

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

Action taken: Addition of Part 501 to Title 3 NYCRR.

Statutory authority: Banking Law, section 17; Financial Services Law, section 206

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

Specific reasons underlying the finding of necessity: Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision (including examination) of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of in the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

Litigation commenced in June, 2011 challenged the methodology used by the Banking Department to assess mortgage bankers. On May 3, 2012, the Appellate Division invalidated this methodology for the 2010 State Fiscal Year, finding that the former Banking Department had not followed the requirements of the State Administrative Procedures Act.

In response to this ruling, the Department has determined to adopt this new rule setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

The emergency adoption of this regulation is necessary to implement the requirements of Section 17 of the Banking Law and Section 206 of the Financial Services Law in light of the determination of the Court and the ongoing need to fund the operations of the Department without interruption. Accordingly, it is imperative that Part 501 of the Superintendent's Regulations be promulgated on an emergency basis for the public's general welfare.

Subject: Assessment of entities regulated by the Banking Division of the Department of Financial Services.

Purpose: New Part 501 implements section 17 of the Banking Law and section 206 of the Financial Services Law and sets forth the basis for allocating all costs and expenses attributable to the operation of the Banking Division of the Department of Financial Services among and between any person or entity licensed, registered, incorporated or otherwise formed pursuant the Banking Law.

Text of emergency rule: *Part 501*

BANKING DIVISION ASSESSMENTS

§ 501.1 Background.

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated on October 3, 2011 into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL. Effective October 3, 2011, assessments are governed by Section 206 of the FSL, provided that Section 17 of the BL continues to apply to assessments for the fiscal year commencing on April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (including, but not limited to, compensation, lease costs and other overhead costs) of the Department attributable to institutions subject to the BL are to be charged to, and paid by, such regulated institutions. These institutions ("Regulated Entities") are now regulated by the Banking Division of the Department. Under both Section 17 of the BL and Section 206 of the FSL, the Superintendent is authorized to assess Regulated Entities for its total costs in such proportions as the Superintendent shall deem just and reasonable.

The Banking Department has historically funded itself entirely from industry assessments of Regulated Entities. These assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This regulation sets forth the basis for allocating such expenses among Regulated Entities and the process for making such assessments.

§ 501.2 Definitions.

The following definitions apply in this Part:

(a) "Total Operating Cost" means for the fiscal year beginning on April 1, 2011, the total direct and indirect costs of operating the Banking Division. For fiscal years beginning on April 1, 2012, "Total Operating Cost" means (1) the sum of the total operating expenses of the Department that are solely attributable to regulated persons under the Banking Law and (2) the proportion deemed just and reasonable by the Superintendent of the other operating expenses of the Department which under Section 206(a) of the Financial Services Law may be assessed against persons regulated under the Banking Law and other persons regulated by the Department.

(b) "Industry Group" means the grouping to which a business entity regulated by the Banking Division is assigned. There are three Industry Groups in the Banking Division:

(1) The Depository Institutions Group, which consists of all banking organizations and foreign banking corporations licensed by the Department to maintain a branch, agency or representative office in this state;

(2) The Mortgage-Related Entities Group, which consists of all mortgage brokers, mortgage bankers and mortgage loan servicers; and

(3) The Licensed Financial Services Providers Group, which consists of all check cashers, budget planners, licensed lenders, sales finance companies, premium finance companies and money transmitters.

(c) "Industry Group Operating Cost" means the amount of the Total Operating Cost to be assessed to a particular Industry Group. The amount is derived from the percentage of the total expenses for salaries and fringe benefits for the examining, specialist and related personnel represented by such costs for the particular Industry Group.

(d) "Industry Group Supervisory Component" means the total of the Supervisory Components for all institutions in that Industry Group.

(e) "Supervisory Component" for an individual institution means the product of the average number of hours attributed to supervisory oversight by examiners and specialists of all institutions of a similar size and type, as determined by the Superintendent, in the applicable Industry Group, or the applicable sub-group, and the average hourly cost of the examiners and specialists assigned to the applicable Industry Group or sub-group.

(f) "Industry Group Regulatory Component" means the Industry Group Operating Cost for that group minus the Industry Group Supervisory Component and certain miscellaneous fees such as application fees.

(g) "Industry Financial Basis" means the measurement tool used to distribute the Industry Group Regulatory Component among individual institutions in an Industry Group.

The Industry Financial Basis used for each Industry Group is as follows:

(1) For the Depository Institutions Group: total assets of all institutions in the group;

(2) For the Mortgage-Related Entities Group: total gross revenues from New York State operations, including servicing and secondary market revenues, for all institutions in the group; and

(3) For the Licensed Financial Services Providers Group: (i.) for budget planners, the number of New York customers; (ii.) for licensed lenders, the dollar amount of New York assets; (iii.) for check cashers, the dollar amount of checks cashed in New York; (iv.) for money transmitters, the dollar value of all New York transactions; (v.) for premium finance companies, the dollar value of loans originated in New York; and (vi.) for sales finance companies, the dollar value of credit extensions in New York.

(h) "Financial Basis" for an individual institution is that institution's portion of the measurement tool used in Section 501.2(g) to develop the Industry Financial Basis. (For example, in the case of the Depository Institutions Group, an entity's Financial Basis would be its total assets.)

(i) "Industry Group Regulatory Rate" means the result of dividing the Industry Group Regulatory Component by the Industry Financial Basis.

(j) "Regulatory Component" for an individual institution is the product of the Financial Basis for the individual institution multiplied by the Industry Group Regulatory Rate for that institution.

§ 501.3 Billing and Assessment Process.

The New York State fiscal year begins April 1 and ends March 31 of the following calendar year. Each institution subject to assessment pursuant to this Part is billed five times for a fiscal year: four quarterly assessments (each approximately 25% of the anticipated annual amount) based on the Banking Division's estimated annual budget at the time of the billing, and a final assessment (or "true-up"), based on the Banking Division's actual expenses for the fiscal year. Any institution that is a Regulated Entity for any part of a quarter shall be assessed for the full quarter.

§ 501.4 Computation of Assessment.

The total annual assessment for an institution shall be the sum of its Supervisory Component and its Regulatory Component.

§ 501.5 Penalties/Enforcement Actions.

All Regulated Entities shall be subject to all applicable penalties, including late fees and interest, provided for by the BL, the FSL, the State Finance law or other applicable laws. Enforcement actions for nonpayment could include suspension, revocation, termination or other actions.

§ 501.6 Effective Date.

This Part shall be effective immediately. It shall apply to all State Fiscal Years beginning with the Fiscal Year starting on April 1, 2011.

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 29, 2019.

Text of rule and any required statements and analyses may be obtained from: George Bogdan, Esq., Department of Financial Services, One State Street, New York, New York 10004, (212) 480-4758, email: george.bogdan@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department (the "Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services (the "Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

In response to a court ruling, In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al., 944 N.Y.S. 2d 649 (2012) ("Homestead"), that held that the Department should adopt changes to its assessment methodology for mortgage bankers through a formal assessment rule pursuant to the requirements of the State Administrative Procedures Act ("SAPA"), the Department has determined to adopt this new regulation setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

2. Legislative Objectives

The BL and the FSL make the industries regulated by the former Banking Department (and now by the Banking Division of the new Department) responsible for all the costs and expenses of their regulation by the State. The assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This reflects a long-standing State policy that the regulated industries are the appropriate parties to pay for their supervision in light of the financial benefits it provides to them to engage in banking and other regulated businesses in New York. The statute specifically provides that these costs are to be allocated among such institutions in the proportions deemed just and reasonable by the Superintendent.

While this type of allocation had been the practice of the former Banking Department for many decades, Homestead found that a change to the methodology for mortgage bankers to include secondary market and servicing income should be accomplished through formal regulations subject to the SAPA process. Given the nature of the Banking Division's assessment methodology - - the calculation and payment of the assessment is ongoing throughout the year and any period of uncertainty as to the applicable rule would be extremely disruptive - - the Department has determined that it is necessary to adopt the rule on an emergency basis so as to avoid any possibility of disrupting the funding of its operations.

3. Needs and Benefits

The Banking Division regulates more than 250 state chartered banks and licensed foreign bank branches and agencies in New York with total assets of over $2 trillion. In addition, it regulates a variety of other entities engaged in delivering financial services to the residents of New York State. These entities include: licensed check cashers; licensed money transmitters; sales finance companies; licensed lenders; premium finance companies; budget planners; mortgage bankers and brokers; mortgage loan servicers; and mortgage loan originators.

Collectively, the regulated entities represent a spectrum, from some of the largest financial institutions in the country to the smallest, neighborhood-based financial services providers. Their services are vital to the economic health of New York, and their supervision is critical to ensuring that these services are provided in a fair, economical and safe manner.

This supervision requires that the Banking Division maintain a core of trained examiners, plus facilities and systems. As noted above, these costs are by statute to be paid by all regulated entities in the proportions deemed just and reasonable by the Superintendent. The new regulation is intended to formally set forth the methodology utilized by the Banking Division for allocating these costs.

4. Costs

The new regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division. Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities.

5. Local Government Mandates

None.

6. Paperwork

The regulation does not change the process utilized by the Banking Division to determine and collect assessments.

7. Duplication

The regulation does not duplicate, overlap or conflict with any other regulations.

8. Alternatives

The purpose of the regulation is to formally set forth the process employed by the Department to carry out the statutory mandate to assess and collect the operating costs of the Banking Division from regulated entities. In light of Homestead, the Department believes that promulgating this formal regulation is necessary in order to allow it to continue to assess all of its regulated institutions in the manner deemed most appropriate by the Superintendent. Failing to formalize the Banking Division's allocation methodology would potentially leave the assessment process open to further judicial challenges.

9. Federal Standards

Not applicable.

10. Compliance Schedule

The emergency regulations are effective immediately. Regulated institutions will be expected to comply with the regulation for the fiscal year beginning on April 1, 2011 and thereafter.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The regulation does not have any impact on local governments.

The regulation simply codifies the methodology used by the Banking Division of the Department of Financial Services (the "Department") to assess all entities regulated by it, including those which are small businesses. The regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division.

Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with

supervising mortgage banking entities. It is expected that the effect of this change will be that larger members of the mortgage banking industry will pay an increased proportion of the total cost of regulating that industry, while the relative assessments paid by smaller industry members will be reduced.

2. Compliance Requirements:

The regulation does not change existing compliance requirements. Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the Banking Law are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division. Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

3. Professional Services:

None.

4. Compliance Costs:

All regulated institutions are currently subject to assessment by the Banking Division. The regulation simply formalizes the Banking Division's assessment methodology. It makes only one change from the allocation methodology used by the Banking Department in the previous state fiscal years. That change affects only one of the industry groups regulated by the Banking Division. Regulatory costs assessed to the mortgage banking industry are now divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. Even within the one industry group affected by the change, additional compliance costs, if any, are expected to be minimal.

5. Economic and Technological Feasibility:

All regulated institutions are currently subject to the Banking Division's assessment requirements. The formalization of the Banking Division's assessment methodology in a regulation will not impose any additional economic or technological burden on regulated entities which are small businesses.

6. Minimizing Adverse Impact:

Even within the mortgage banking industry, which is the one industry group affected by the change in assessment methodology, the change will not affect the total amount of the assessment. Indeed, it is anticipated that this change may slightly reduce the proportion of mortgage banking industry assessments that is paid by entities that are small businesses.

7. Small Business and Local Government Participation:

This regulation does not impact local governments.

This regulation simply codifies the methodology which the Banking Division uses for determining the just and reasonable proportion of the Banking Division's costs to be charged to and paid by each regulated institution, including regulated institutions which are small businesses. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those that are small businesses.

Thereafter, the Banking Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Banking Department changed its overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market and servicing activities. Litigation was commenced challenging this latter change, and in a recent decision, In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al., 944 N.Y.S. 2d 649 (2012), the court determined that the Department should adopt a change to its assessment methodology for mortgage bankers through a formal assessment rule promulgated pursuant to the requirements of the State Administrative Procedures Act. The challenged change in methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants, including those which are small businesses.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas: There are entities regulated by the New York State Department of Financial Services (formerly the Banking Department) located in all areas of the State, including rural areas. However, this rule simply codifies the methodology currently used by the Department to assess all entities regulated by it. The regulation does not alter that methodology, and thus it does not change the cost of assessments on regulated entities, including regulated entities located in rural areas.

Compliance Requirements: The regulation would not change the current compliance requirements associated with the assessment process.

Costs: While the regulation formalizes the assessment process, it does not change the amounts assessed to regulated entities, including those located in rural areas.

Minimizing Adverse Impact: The regulation does not increase the total amount assessed to regulated entities by the Department. It simply codifies the methodology which the Superintendent has chosen for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution.

Rural Area Participation: This rule simply codifies the methodology which the Department currently uses for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution, including regulated institutions located in rural areas. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those located in rural areas. It followed the loss of several major banking institutions that had paid significant portions of the former Banking Department's assessments.

Thereafter, the Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Department changed this overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market income and servicing income. This latter change was challenged by a mortgage banker, and in early May, the Appellate Division determined that the latter change should have been made in conformity with the State Administrative Procedures Act. The challenged part of the methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants.

Job Impact Statement

The regulation is not expected to have an adverse effect on employment.

All institutions regulated by the Banking Division (the "Banking Division") of the Department of Financial Services are currently subject to assessment by the Department. The regulation simply formalizes the assessment methodology used by the Banking Division. It makes only one change from the allocation methodology used by the former Banking Department in the previous state fiscal years.

That change affects only one of the industry groups regulated by the Banking Division. It somewhat alters the way in which the Banking Division's costs of regulating mortgage banking industry are allocated among entities within that industry. In any case, the total amount assessed against regulated entities within that industry will remain the same.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Continuing Care Retirement Communities

I.D. No. DFS-21-19-00005-P

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

Proposed Action: Amendment of Part 350 (Regulation 140) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 302; Insurance Law, sections 201, 301, 1119; Public Health Law, sections 4604(4)(a), 4607 and 4611

Subject: Continuing Care Retirement Communities.

Purpose: Amend rules related to permitted investments, financial transactions, reporting requirements and add new optional contract type.

Substance of proposed rule (Full text is posted at the following State website: https://www.dfs.ny.gov/industry_guidance/regulations/proposed_insurance): Section 350.1 adds definitions necessitated by the addition of new language in the regulation and revises current definitions to provide greater clarity.

Section 350.2 is amended to replace the term "life care community" with "continuing care retirement community" ("CCRC") for consistency and to add reference to the new continuing care at home contract type.

Section 350.3 is amended to replace the term "life care community" with "continuing care retirement community" ("CCRC") for consistency and to clarify the calculation requirements for actuarial reserve liabilities.

Section 350.5 corrects the reference to section 350.6(c)(5)(iv) to read section 350.6(e)(1)(iv).

Section 350.6 is amended to broaden the range of permissible investments a CCRC may invest in to include shares of investment companies (money market and non-money market), which previously were not permitted investments, subject to limitations and restrictions. Section 350.6 is also amended to add a requirement that a CCRC be in operation for at least 60 months and that the occupancy rate of the independent living units in the CCRC has exceeded 90 percent for six consecutive months prior to making certain types of investments.

Section 350.7 is amended to clarify when distributions of paid in surplus/capital may be made. Specifically, the amendment requires these

types of distributions to be documented in writing, strengthens the criteria for allowing returns of paid in capital, and subjects certain distributions to review and approval by the Superintendent of Financial Services ("Superintendent").

Section 350.9 is amended to add references to the new continuing care at home contract type.

Section 350.10 is amended to add references to the new continuing care at home contract type and to add an annual exhibit regarding population flow projections in the actuarial study.

Section 350.11 adds a new section specifying parameters for transactions between a CCRC and its parent corporation, affiliate or subsidiary. The current rule contains no parameters regarding those transactions. The section, modeled after Insurance Law Article 15 regarding insurer holding companies, requires, among other things, transactions between a CCRC and an affiliated entity to be fair and equitable; clearly and accurately disclosed; and subject to written agreements. Section 350.11 is also amended to add a requirement that a CCRC obtain the Superintendent's approval prior to entering into certain transactions with its parent corporation or any affiliate or subsidiary. It also adds a requirement that a CCRC notify the Superintendent, in writing, at least 30 days prior to entering into certain other transactions with its parent corporation or any affiliate or subsidiary, and that the Superintendent has not disapproved the transaction within that period. Further, this section bars a CCRC from guaranteeing the obligations of its parent corporation or any affiliate or subsidiary.

Section 350.12 is amended to add a requirement that a CCRC submit a copy of any report submitted to a trustee pursuant to a mortgage loan, bond indenture or other long-term financing agreement to the Superintendent. It also adds a requirement that a CCRC notify the Superintendent at least 30 days prior to the sale or transfer to another entity of a class 1 or class 2 capital asset worth more than $250,000.

Text of proposed rule and any required statements and analyses may be obtained from: Martin Wojcik, Department of Financial Services, 1 Commerce Plaza, Albany, NY 12257, (518) 486-7815, email: martin.wojcik@dfs.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 authority of the Superintendent of Financial Services ("Superintendent") to promulgate the Second Amendment to Insurance Regulation 140 derives from Financial Services Law Sections 202 and 302; Insurance Law Sections 201, 301, and 1119; and Public Health Law Sections 4604(4)(a), 4607 and 4611.

Financial Services Law Section 202 establishes the office of the Superintendent.

Financial Services Law Section 302 and Insurance Law Sections 201 and 301 authorize the Superintendent to effectuate any power accorded by the Financial Services Law, Banking Law, Insurance Law, or any other law, and to prescribe regulations interpreting the Insurance Law, among other things.

Insurance Law Section 1119 authorizes the Superintendent to permit a continuing care retirement community ("CCRC") subject to Public Health Law Article 46 to operate without being licensed under the Insurance Law and authorizes the Superintendent to prescribe regulations.

Public Health Law Section 4604(4)(a) authorizes the Superintendent to review and approve the actuarial principles of the proposed CCRC project, the financial feasibility of the proposed CCRC project, and the form and content of the proposed contracts to be entered into with residents prior to the Department of Health's approval of the CCRC's certificate of authority.

Public Health Law Section 4607 authorizes the Superintendent to review and approve a CCRC's annual statement.

Public Health Law Section 4611 provides the Superintendent with the authority to monitor and review the reserves and supporting assets of a CCRC.

2. Legislative objectives: This amendment adds a new section specifying parameters for transactions between a CCRC and its parent, affiliate or subsidiary. The section, modeled after Insurance Law Article 15 regarding insurer holding companies, requires, among other things, transactions between a CCRC and an affiliated entity to be fair and equitable; clearly and accurately disclosed; and subject to written agreements. The amendment also: (i) requires that a CCRC obtain the Superintendent's approval prior to enter into certain transactions with its parent corporation or any affiliate or subsidiary; (ii) requires that a CCRC notify the Superintendent, in writing, at least 30 days prior to entering into certain transactions with its parent corporation or any affiliate or subsidiary, and that the Superintendent has not disapproved the transaction within that period; (iii) bars a CCRC from guaranteeing the obligations of its parent corporation or any affiliate or subsidiary; (iv) requires a CCRC to submit a copy of any report submitted to a trustee pursuant to a mortgage loan, bond indenture or other long-term financing agreement to the Department of Financial Services ("Department"); (v) adds a requirement that a CCRC notify the Department at least 30 days prior to the sale or transfer to another entity of a class 1 or class 2 capital asset worth more than $250,000.

The amendment also expands the types of permissible investments a CCRC may invest in to include shares of investment companies (money market and non-money market), which previously were not permitted investments, subject to limitations and restrictions. It also adds a requirement that a CCRC be in operation for at least 60 months and that the occupancy rate of the independent living units in the CCRC has exceeded 90 percent for six consecutive months prior to making certain types of investments.

3. Needs and benefits: The current regulation has not been amended since 2007 and prescribes a rather outdated framework for the financial oversight of CCRCs. The Department had previously proposed an amendment to this regulation in 2017, which was not adopted. The Department received comments from interested parties during the previous proposal's public comment period and incorporated some of those comments into the current proposal. This amendment modernizes the framework parameters to better fit the needs of both CCRCs and the Department by broadening the range of permitted investments for CCRCs, clarifying the oversight of numerous financial transactions between CCRCs and affiliated entities, adding an annual financial reporting requirement related to the transfer or sale of capital assets, and adding a reference to the new type of optional contract, the continuing care at home contract.

4. Costs: CCRCs should not incur any significant costs associated with the implementation of this amendment, because CCRCs already have existing personnel available to administer the minimal additional annual financial reporting required by this rulemaking. Also, because the amendment does not require, but makes elective, the adoption of the new continuing care at home contract, a CCRC will not be subject to additional costs unless it opts to adopt the new contract. The Department will not incur any costs associated with the implementation of this amendment. Local governments are not affected by this rulemaking and thus will not incur any costs.

5. Local government mandates: These rules do not impose any program, service, duty or responsibility upon a city, town, village, school district or fire district.

6. Paperwork: There will be minimal additional paperwork caused by the amendment, which imposes a minor amount of additional annual financial reporting.

7. Duplication: Changes to CCRC oversight made by this amendment do not duplicate or conflict with any existing federal or state requirements.

8. Alternatives: This amendment accommodates the desire of CCRCs to expand the range of permitted investments, clarifies the existing oversight of financial transactions, adds an additional minimal annual financial reporting requirement, and adds a new type of optional contract, the continuing care at home contract. The Department believes that there are no viable alternatives to accomplish the objectives of this amendment.

9. Federal standards: This amendment will not affect compliance with any federal standard in any manner.

10. Compliance schedule: The rule will take 30 days after the notice of adoption is published in the State Register.

Regulatory Flexibility Analysis

1. Small businesses: The Department of Financial Services ("Department") finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses. The basis for this finding is that the amendment is directed at Continuing Care Retirement Communities ("CCRCs"), none of which falls within the definition of a "small business" as defined by State Administrative Procedure Act Section 102(8). The Department of Financial Services ("Department") reviewed filed reports on examination and annual statements of these entities and believes that there are none that are both independently owned and employ fewer than 100 persons.

2. Local governments: The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at CCRCs, which are not local governments.

Rural Area Flexibility Analysis

The Department of Financial Services finds that this rule does not impose any additional burden on persons located in rural areas and that it will not have an adverse impact on rural areas. This rule applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State.

Job Impact Statement

This amendment will not adversely impact job or employment opportunities in New York State. The amendment broadens the range of permitted

investments for Continuing Care Retirement Communities (CCRCs), clarifies the oversight of numerous financial transactions between CCRCs and affiliated entities, adds an annual financial reporting requirement related to the transfer or sale of capital assets, and adds a new type of optional contract, the continuing care at home contract.

Department of Health

NOTICE OF ADOPTION

Controlled Substances

I.D. No. HLT-07-19-00006-A
Filing No. 454
Filing Date: 2019-05-06
Effective Date: 2019-05-22

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

Action taken: Amendment of section 80.3 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3307(5)

Subject: Controlled Substances.

Purpose: To reclassify cannabidiol (CBD) from a Schedule I controlled substance to a Schedule V controlled substance.

Text or summary was published in the February 13, 2019 issue of the Register, I.D. No. HLT-07-19-00006-P.

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

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

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2024, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Division of Housing and Community Renewal

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Low-Income Housing Qualified Allocation Plan

I.D. No. HCR-21-19-00019-P

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

Proposed Action: Amendment of Part 2040 of Title 9 NYCRR.

Statutory authority: Executive Order No. 135, dated February 27, 1990, as continued by Executive Order No. 11, dated March 2, 2011; U.S. Internal Revenue Code, section 42(m); Public Housing Law, section 19

Subject: Low-Income Housing Qualified Allocation Plan.

Purpose: To amend definitions, threshold criteria and application scoring for the allocation of low-income housing tax credits.

Public hearing(s) will be held at: 1:00 p.m., July 22, 2019 at Division of Housing and Community Renewal, 38-40 State St., 1st Fl., Albany, NY; 1:00 p.m., July 22, 2019 at 25 Beaver St., Rm. 642, New York, NY; 1:00 p.m., July 22, 2019 at 620 Erie Blvd. W, Suite 312, Syracuse, NY; and 1:00 p.m., July 22, 2019 at 535 Washington St., Suite 105, Buffalo, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule (Full text is posted at the following State website: https://hcr.ny.gov/unified-funding- materials-2018): 2040.2(d): Amends definition "Cost certification" clarifying that audited certification of project costs required at completion must disclose all amounts paid for syndication fees associated with tax credits and other sources of financing. This change implements a National Council of State Housing Agencies (NCSHA) recommended practice seeking to ensure full disclosure of all transaction fees being charged.

2040.2(h): Clarifies existing QAP definition related to feasibility. Existing QAP provides a definition for "Feasibility review" despite the term not being used in the document. Instead QAP refers repeatedly to DHCR's responsibility to review and/or ensure "financial feasibility" and "project feasibility" of proposed projects. Under the clarification, "feasibility" is defined to include all factors that indicate whether the project can be financed, completed and operated in compliance with tax credit requirements.

2040.2(k): Adds definition for "Housing opportunity projects" which is used in competitive scoring criteria, designation for an eligible basis boost, and set-aside of credits. This definition helps implement a new NCSHA recommended practice.

2040.2(q): Amends definition of "Persons with special needs" to update outdated language used to describe special needs populations.

2040.2(t): Amends definition of "State designated building" to specify "housing opportunity projects" are included in the definition and qualify for discretionary eligible basis boost that State allocating agencies are allowed to provide under the Code. NCSHA recommends that allocating agencies establish standards in their QAP for determining what projects are eligible for this State-designated basis boost.

2040.2(v): Amends definition of "Supportive housing" to clarify that percentage of units to be targeted to persons with special needs can be set forth in a request for proposals (RFP). This change is consistent with other references to RFPs made throughout the QAP.

2040.3(c): Clarifies existing policy on waiving processing fees for nonprofits to make clear that fees may be deferred until carryover allocation.

2040.3(d)(5): Adds requirement to "DHCR allocation process" that applicants must notify the agency immediately of material changes to the project. This change implements a NCSHA recommended practice that seeks to ensure the full disclosure of all material changes.

2040.3(e): Amends "threshold eligibility review criteria" to clarify that applicants must meet the eligibility criteria established in the QAP, and also minimum requirements described elsewhere in any other manual or document issued by the Division. This change implements a NCSHA recommended practice that QAPs identify documents that provide additional details on selection criteria.

2040.3(e)(3): Amends an existing threshold eligibility requirement clarifying that applicants must "identify all required government approvals" needed to construct or operate the project at time of application. Currently applicants are required to have "taken all steps necessary" at the time of application to secure required government approvals. This change implements an NCSHA recommended practice intended to minimize the ability of localities to unreasonably withhold approvals as a means of blocking the development of affordable housing.

2040.3(e)(4): Deletes threshold eligibility requirement that evidence be provided showing the project is consistent with HUD consolidated plan for the locality. This change implements a NCSHA recommended practice that seeks to reduce potential local barriers to the development of affordable housing.

2040.3(e)(4): Amends threshold eligibility requirement for the notification of chief executive officer of the local jurisdiction where the project is located to delete the requirement that applicant take reasonable steps to address objections to the proposed project. This change implements a NCSHA recommended practice.

2040.3(e)(9): Amends threshold eligibility requirement for a Phase I Environmental Site Assessment to clarify that assessment meet the "current" American Society for Testing and Materials (ASTM) standards. This change will allow the agency to accept Phase I Assessments that meet updated standards that might be issued by ASTM in the future. Also amends threshold eligibility requirement for a comprehensive market study to be conducted. Current QAP requires a market study be conducted by a market study analyst pre-approved by the Division. This change will allow DHCR to accept a comprehensive market study from a larger pool of qualified market analysts.

2040.3(e)(21): Establishes general threshold eligibility requirement that project applicant, developer, owner, general contractor and/or manager and their principals must be in compliance with relevant federal, State, and Division policies and requirements and local laws and regulations, including nondiscrimination, marketing, guidelines and requirements.

2040.3(e)(22): Establishes general threshold eligibility requirement that

project applicant, developer, owner and/or manager and their principals does not include anyone, which has initiated or been the decision maker in a request for a Qualified Contract for a Year 15 project previously financed by LIHC.

2040.3(f): Amends "Project scoring and ranking criteria" to clarify that QAP's scoring criteria may be further described in a notice of credit availability, request for proposals, or other manual or document issued by DHCR. This change implements a NCSHA recommended practice that QAPs identify any related documents that provide details on selection criteria or describe other Agency requirements and policies relevant to allocation of Credit.

2040.3(f)(1): Reduces maximum points from 15 to 10 for "Community impact/revitalization" scoring to reflect establishment of existing five-point scoring for "limited or no subsidized affordable housing production/unmet demand" as freestanding criterion titled "Investment in Underserved Areas".

2040.3(f)(1)(i): Removes existing five-point scoring "limited or no subsidized affordable housing production/unmet demand" from "Community impact/revitalization" and establishes a free-standing five-point scoring criterion titled "Investment in Underserved Areas" (see 2040.3(f)(16).

2040.3(f)(1)(i): Amends "Community impact/revitalization" scoring to strengthen requirements met by a neighborhood specific revitalization plan/effort to qualify for points. This change implements a NCSHA recommended practice.

2040.3(f)(1)(ii): Capitalizes "Regional Economic Development Council."

2040.3(f)(2),(3),(4),(6),(7),(8),(10),(11): Clarifies the Division may award "up to" number of points available under these scoring criteria.

2040.3(f)(2): Reduces points for "Financial leveraging" scoring criterion from 13 to 12 and adds point to 2040.3(f)(7) "Individuals with children". This change implements NCSHA recommended practice.

2040.3(f)(5): Amends existing scoring for "Fully accessible and adapted, move-in ready units" to require applicants certify they will enter into written agreement with an experienced service organization to provide referrals for adapted units. This change streamlines review of applications by requiring applicants who provide these adapted units to commit to entering into referral agreements with experienced service providers.

2040.3(f)(6): Increases the points for existing "Affordability" scoring from five to eight by providing additional points to applicants evidencing a Public Housing Authority will make referrals. Eliminates an existing five-point scoring for applications preferencing persons from public housing and other waiting lists. Points eliminated from waitlist scoring are redistributed to "Affordability".

2040.3(f)(7): Amends existing "Individuals with children" scoring to require proposed project either be a housing opportunity project or advance neighborhood specific revitalization plan to qualify for the maximum points. Increases points available to 7 points from 5 points (1 point 2040.3(f)(2) "Financial leveraging" and 1 point 2040.3(f)(11) "Mixed income"). Change implements NCSHA recommended practice.

2040.3(f)(8): Deletes existing five-point "Marketing plan/public assistance" scoring.

2040.3(f)(9): Amends scoring for "Persons with special needs" to clarify persons with special needs will obtain supportive services from service provider experienced in meeting service needs of the population. This amendment ensures service providers have the requisite experience to offer appropriate services.

2040.3(f)(10): Amends existing "Participation of non-profit organizations" scoring eliminates point available for participation of non-local non-profit organizations. This change increases value of existing competitive points offered to locally-based non-profits.

2040.3(f)(11): Reduces points for "Mixed income" scoring to 4, adding one point to 2040.3(f)(7) "Individuals with children". This change implements a NCSHA recommended practice.

2040.3(f)(14): Amends "Housing opportunity" scoring increasing to five if a project is located in an area of opportunity as scoring considerations to be met for maximum points. This change implements a NCSHA recommended practice.

2040.3(f)(15): Establishes "Investment in underserved areas" as separate five point criterion. This five-points was formerly under "Community/impact revitalization" scoring at 2040.3(f)(1)(i). It is established as criterion to clarify it advances an objective separate and apart from Community/impact revitalization scoring.

2040.3(f)(16): Expands scoring for "Minority and Women Owned Business Enterprise participation" to include points for participation of Service-Disabled Veteran-Owned Businesses. This addresses requirements of The Service-Disabled Veteran-Owned Business Act encouraging businesses to participate indevelopment of affordable housing.

2040.3(g)(2)(i): Revises reference from "general requirements" to "general conditions." This conforms to industry standards.

2040.3(g)(5): Amends General administration provisions to add DHCR reserves right to allocate credit in a manner affirmatively advanceing fair housing. This establishes furtherance of fair housing as overarching consideration in allocating credits. Adds provision which provides DHCR flexibility to assign points in a request for proposals for projects meeting the agency's underwriting and design standards.

2040.3(g)(6): Adds "housing opportunity projects" to project types for which DHCR may set-aside credits to implement State goals. Adding "housing opportunity projects" to the list of set-aside eligible projects helps implement a new NCSHA recommended practice.

2040.5(b): Amends Regulatory Agreement provisions requiring project owner waive right to request a Qualified Contract and to stipulate the extended use period will not be subject to early termination underSection 42(h)(6)(F) of the Code.

2040.7: Amends under heading to include "administration". This better describes content in following sections.

2040.7(a): Adds "and administration". This better describes the content in sections that follow.

2040.7(c): Amends the existing authorization to chargea "Monitoring fee" allowing DHCR to charge reasonable "Administrative fees". This implements a NCSHA recommended practice.

Section 2040.8(b)(2)(i): Deletes references to income tests allowed the. This amendment gives DHCR flexibility to implement new income tests allowed under recent changes to the Code, such asallowing for income averaging.

2040.13: Clarifies existing hold harmless provision of QAP that DHCR's obligation to monitor for compliance does not impose liability on DHCR for noncompliance.

2040.14(b)(2): Amended deleting incorrect reference to Internal Revenue Code, 42(c).

2040.14(b)(3): Amended delete incorrect reference to Code, 42(c).

2040.14(b)(4): Corrected spelling.

2040.14(d): Amended to clarify scoring may be described in notice of credit availability, request for proposals, other documents document issued by DHCR.

2040.14(d)(1): Reduces points for "Community impact/revitalization" scoring reflecting establishment of the existing five-point criterion "limited or no subsidized affordable housing production/unmet demand" as freestanding scoring - "Investment in Underserved Areas".

2040.14(d)(1)(i): Removes criterion - "limited or no subsidized affordable housing production/unmet demand" from "Community impact/revitalization" scoring, establishing it as criterion - "Investment in Underserved Areas" (2040.14(d)(14)).

2040.14(d)(1)(i): Amends "Community impact/revitalization" scoring clarifying a neighborhood specific revitalization plan/effort necessary to qualify for points.

2040.14(d)(1)(ii): Capitalizes "Regional Economic Development Council."

2040.14(d)(2),(3),(4),(5),(7),(9),(10): Clarifies DHCR may award "up to" points.

2040.14(d)(2): Reduces points - "Financial Leveraging" - and adds point 2040.14(d)(9) "Individuals with children", implementing NCSHA recommendation promoting choice and opportunity for residents.

2040.14(d)(5): Increases overall points - "Income mixture" criterion by making points available to applicants evidencing a Public Housing Authority will make referrals. This eliminates scoring for projects preferencing persons from public housing and other waiting lists. This is a NCSHA recommendation promoting choice and opportunity.

2040.14(d)(6): Amends scoring - "Fully accessible and adapted, move-in ready units" so applicants certify entering into written agreement with experienced service organization providing referrals for adapted units. This streamlines application review; applicants intending to provide these units affirmatively commit to referral agreements with providers.

2040.14(d)(8): Amends scoring -"Persons with special needs" clarifying persons with special needs be offered supportive services by experienced service provider offering specific services for the population, ensuring providers have requisite experience.

2040.14(d)(9): Deletes "Marketing plan/public assistance" scoring. These five points are redistributed to "Income mixture" and "Housing opportunity" scoring.

2040.14(d)(9): Amends "Individuals with children" scoring requiring proposed project be housing opportunity project or advance neighborhood specific revitalization plan. Increases points from 5 to 7.

2040.14(d)(10): Amends "Participation of non-profit organizations" scoring eliminating point for non-local non-profits, increasing value of points for locally-based non-profits.

2040.14(d)(13): Amends "Housing opportunity" scoring increasing points and including whether project is located in area of opportunity to qualify for maximum.

2040.14(d)(14): Establishes "Investment in underserved areas" as

criterion. This five-point scoring formerly under "Community/impact revitalization" criterion is established as free-standing criterion as a distinct policy objective.

2040.14(d)(15): Expands scoring - "Minority and Women Owned Business Enterprise participation" for participation of Service-Disabled Veteran-Owned Businesses, as set forth in The Service-Disabled Veteran-Owned Business Act.

2040.14(e): Clarifies that DHCR determines SLIHC amount as LIHC amount.

2040.14(f): Amends General administration provisions that DHCR reserves right to allocate credit which affirmatively advances fair housing, establishing fair housing as overarching consideration. A provision n added provides DHCR with flexibility to assign scoring points in a request for proposals for projects meeting underwriting and design standards.

2040.14(g): Amends set aside language for consistency with QAP.

Text of proposed rule and any required statements and analyses may be obtained from: Arnon Adler, Division of Housing and Community Renewal, 38-40 State Street, Albany, NY, (518) 486-5044, email: Comments.2019LIHCQAP@nyshcr.org

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

Public comment will be received until: Five days after the last scheduled public hearing.

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:

Executive Order Number 11 (March 2, 2011) authorizes the Division of Housing and Community Renewal's ("DHCR") Commissioner to administer New York State's annual allotment of federal low-income housing tax credits ("low-income housing credit", "LIHC" or "Credit"). U.S. Internal Revenue Code ("IRC") Section 42(m) requires that Credit be allocated pursuant to a "qualified allocation plan" ("QAP"), which DHCR promulgates as a rule.

Public Housing Law Article 2-A (the "Act") created the New York State Low-Income Housing Tax Credit Program ("SLIHC"). The Act authorizes DHCR to allocate NYS tax credits to those investing in eligible housing and promulgate rules necessary to administer the SLIHC program (the "Regulation"). The Act provides that IRC Section 42 shall apply to the SLIHC program. 9 NYCRR Sections 2040.1 - 2040.13 provide the framework for LIHC program administration, and 9 NYCRR Section 2040.14, the framework for SLIHC program administration.

2. Legislative Objectives:

The LIHC and SLIHC programs were enacted to encourage private investment in affordable housing.

3. Needs and Benefits:

The purpose of the proposed amendments is to clarify program enrollment and implementation requirements, and the contractual obligations of participating owners. In addition, the amendments clarify certain defined terms to facilitate program usage, add provisions relating to recent IRS amendments to the Code and eliminate sections that are not significant to the current administration of the programs.

The proposed amendments revise the QAP and Regulation so they have greater impact in achieving program goals. In particular, there are revisions to implement the National Council of State Housing Agencies (NCSHA) recommended practice of promoting choice and opportunity for project residents by adding a scoring category for Housing Opportunity Projects (i.e., family projects in an area of opportunity linked to schools that meet or exceed minimum performance standards and that meet or exceed other measures of opportunity; herein referred to as "HOPS"). Conforming changes have been made in the QAP and Regulation to promote HOPS, including (i) modifying governmental notification and approval requirements, (ii) clarifying compliance requirements regarding non-discrimination and fair housing marketing laws and policies, (iii) allowing HOPS to qualify for a discretionary eligible basis boost, (iv) increasing points for projects with individuals with children, and (iv) including a potential funding set-aside for HOPS. The amendments expand the criteria and increase the point allocation for projects which are part of a larger community revitalization plan, including mixed-income development projects, in furtherance of promoting HOPS. The amendment adds "investment in underserved areas" (an area with limited or no subsidized affordable housing and/or an unmet demand for affordable housing) as a scoring separate criterion to foster HOPS.

The amendments strengthen project disclosure and compliance requirements, including increased financial disclosure. This change implements the NCSHA recommended practice seeking to ensure full disclosure of all project costs and transaction fees charged in connection with the Credit program.

The amendment clarifies which QAP-related documents provide information on selection criteria, requirements, policies and procedures relevant to scoring. This change implements the NCSHA recommended practice that QAPs identify which Agency documents describe requirements relevant to Credit allocation.

The amendment restricts project owners' right to request a Qualified Contract at the end of the tax credit compliance period, ensuring the long term affordability of projects through the entire extended use period.

The amendment strengthens requirements for service providers topersons with special needs.

The amendment adds a reference to "Service-Disabled and Veteran Owned Business" to promote their participation in projects. This change encourages qualified businesses to participate in the development of affordable housing, consistent with the provisions of Article 17-B of the Executive Law, Participation by Service-Disabled Veterans with Respect to State Contracts.

The amendment broadens the Agency's fee structure to include reasonable "Administrative fees." This implements the NCSHA recommended practice that agencies use a reasonable administrative fee structure be to account for both the cost of monitoring during the project regulatory term and other Agency administrative costs.

The amendment deletes reference to various income tests, providing the Agency flexibility to implement new income tests permitted by the Code, such as income averaging.

Finally, the amendment clarifies and modifies defined terms to update and replace outdated terminology.

The proposed amendments are necessary to (i) conform with the Agency's current application review and award processes and its overall program administration, (ii) provide the Agency with flexibility in assessing which projects qualify for Credit and (iiI) update the Agency program requirements to conform with current trends in the housing industry and State housing goals.

4. Costs:

(1) Costs to State Government:

There will be no costs to state government because of the proposed amendments to the Existing Rule. LIHC and SLIHC will continue to be implemented with existing staff resources.

(2) Costs to local government:

None.

(3) Cost to private regulated parties:

The proposed rule could result in increased costs to regulated parties due to changes in administrative fee policy. As noted above, however, this change addresses a NCSHA recommended practice. Any increased cost to projects would likely be offset by improved Agency administration and monitoring, ensuring projects are better operated and maintained, thereby reducing long-term costs of project maintenance.

5. Local Government Mandates:

None.

6. Paperwork:

The rule permits the filing of an on-line application and supporting documentation to request Credit financing.

7. Duplication:

None.

8. Alternatives:

The alternative to the Proposed Rule is to retain the Existing Rule, which does not address necessary changes and clarifications of definitions, recent changes to the Code (including Income Averaging), funding process, threshold eligibility, scoring criteria, State goals and program efficiency. Specifically:

1. The alternative to expanding the definition of "Cost Certification," Section 2040.2(d), is failing to require adequate financial disclosure.

2. The alternative to clarifying the definition of "Feasibility," Section 2040.2(h), is an unclear definition.

3. The alternative to not adding a "Housing opportunity projects" definition, Section 2040.2(k), is failing to (i) address this NCSHA recommended practice and, (ii) decrease barriers to building affordable housing in areas with unmet demand.

4. The alternative to updating the definition of "Persons with special needs," Section 2040.2(q), would be retaining an outdated definition.

5. The alternative to updating the definition of "State Designated Building," Section 2040.2(t), would be failing to include HOPS, thereby not allowing such projects a discretionary eligible basis boost.

6. The alternative to modifying the definition of "Supportive Housing," Section 2040.2(v), would be failing to use a consistent reference to a request for proposals.

7. The alternative to modifying "Processing Fees," Section 2040.3(c), would be to retain an incorrect reference.

8. The alternative to adding language to "Other notifications," Section 2040.3(d)(5), would result in less disclosure to the Agency of significant material changes to projects.

9. The alternative to adding language to "Threshold eligibility review criteria," Section 2040.3(e), would be applicant confusion regarding where

to find additional information on eligibility and scoring criteria, , requirements, policies and procedures relevant to Agency review.

10. The alternative to revising Section 2040.3(e)(3) would be requiring applicants to demonstrate that all steps necessary to secure local approvals have been taken prior to application, thereby exposing projects to local barriers to development.

11. The alternative to deleting former Section 2040.3(e)(4) would be retaining an outdated eligibility requirement.

12. The alternative to revising Section 2040.3(e)(9) would be failing to ensure the use of current American Society for Testing and Materials standards and the use of market study analysts familiar with Agency market study requirements.

13. The alternative to adding Section 2040.3(e)(21) would be failing to ensure ongoing projectcompliance with laws and regulations, including those relating to marketing and non-discrimination.

14. The alternative to adding Section 2040.3(e)(22) would be failing to impose eligibility restrictions on parties who requested a Qualified Contract.

15. The alternative to revising Section 2040.3(f) would be failing to inform applicants where to find additional information on eligibility and scoring criteria, Agency requirements, policies and procedures relevant to application review and program administration.

16. The alternative to reducing the points allocated under Section 2040.3(f)(1) would result in a failure to revise this scoring criterion to correctly reflect its purpose.

17. The alternative to deleting Section 2040.3(f)(1)(i) would result in a failure to move this provision to a new separate scoring which better reflects its purpose.

18. The alternative to capitalizing "Regional Economic Development Council," Section 2040.3(f)(1)(ii), is less clarity.

19. The alternative to clarifying that the Agency may award "up to" the number of points available under scoring criteria 2040.3(f)(2),(3),(4),(6),(7),(8),(10),(11) is ambiguity in Agency scoring criteria.

20. The alternative to modifying Section 2040.3(f)(1)(i) would be a failure to adopt a NCSHA recommended practice for evaluating community revitalization plans.

21. The alternative to reducing points in scoring criterion "Financial leveraging," Section 2040.3(f)(2), is would be a failure to allot additional points for "Individuals with children," Section 2040.3(f)(7), to affirmatively promote this important State goal.

22. The alternative to modifying Section 2040.3(f)(5) would result in applicants entering into a written agreement with an experienced service provider at the time of initial application rather than certifying they will enter into an agreement at the appropriate time.

23. The alternative to modifying Section 2040.3(f)(6) is retaining scoring which does not allocate sufficient points for new criteria to address State goals.

24. The alternative to adding points and language to Section 2040.3(f)(7) is reducing the Agency's ability to promote State goals, including housing opportunity projects and community revitalization plans.

25. The alternative to deleting Section 2040.3(f)(8) is retaining scoring which does not allocate sufficient points to address State goals.

26. The alternative to modifying the language in Section 2040.3(f)(9) is failure to address the potential use of inexperienced service providers for persons with special needs.

27. The alternative to deleting language in Section 2040.3(f)(10)(iii) would be failing to eliminate a scoring point for projects involving non-local nonprofits, contrary to Agency preference.

28. The alternative to reducing points in scoring criterion "Mixed Income," Section 2040.3(f)(11), is not allocating additional points for "Individuals with children," Section 2040.3(f)(7), to affirmatively encourage this State goal.

29. The alternative to increasing scoring points and modifying language in Section 2040.3(f)(14), , would be failing to address the NCHSA recommended practice of promoting housing choice and opportunity.

30. The alternative to not adding "Investment in underserved areas," Section 2040.3(f)(15), as a separate scoring criterion is failing to promote housing opportunity projects.

31. The alternative to adding "Service-Disabled Veteran- Owned Business," Section 2040.3(f)(16), is failing to encourage projects to address this State goal.

32. The alternative to modifying language in Section 2040.3(g)(2)(i) is to retain incorrect terminology.

33. The alternative to adding "affirmatively advances fair housing" to Section 2040.3(g)(5) is failing to affirmatively encourage this State goal.

34. The alternative to adding language to Section 2040.3(g)(5) is failing to encourage projects to meet these standards.

35. The alternative to adding housing opportunity projects to Agency set-asides, Section 2040.3(g)(6), is failing to promote HOPS.

36. The alternative to adding language to Section 2040.5(b) is a lack of clarity about the Agency's policy on Qualified Contracts.

37. The alternative to broadening the types of fees the Agency may collect, Sections 2040.7 and 2040.7(c), is limiting Agency discretion to charge administrative fees necessary to administer the program.

38. The alternative to deleting language in "Certification Content," Section 2040.8(b)(2)(i), is less Agency flexibility in implementing income averaging.

39. The alternative to the modifications in "Liability, "Section 2040.13, is to leave the Agency at risk for potential liability claims.

40. The alternate to amending Section 2040.14(d), "Project Scoring and ranking criteria," is retaining SLIHC scoring criteria which does not track changes to the LIHC QAP.

9. Federal Standards:

This Rule does not exceed the minimum standards of the federal government for the LIHC program or SLIHC program.

10. Compliance Schedule:

Not applicable. The rule changes will affect only those who apply to DHCR for allocations of Credit after the Rule amendments are effective.

Regulatory Flexibility Analysis

The Division of Housing and Community Renewal has found that the proposed amendments to the rule at 9 NYCRR Part 2040 (the "Proposed Rule") will have no negative impact on small businesses.

The Proposed Rule provides a potential benefit of creating jobs and opportunities for self-employment by expanding the existing scoring criterion for "Minority and Women Owned Business Enterprise participation" to include participation by Service-Disabled Veteran-Owned Businesses. This change encourages qualified businesses to participate in the development of affordable housing in response to the provisions of Article 17-B of the Executive Law, Participation by Service-Disabled Veterans with Respect to State Contracts.

DHCR sought and utilized the advice of persons who represent small businesses in order to ensure that the Proposed Rule would have no negative impact on small businesses. Prior to drafting the Proposed Rule, DHCR held two roundtable discussions in the Upstate and Downstate regions of the State. The invitees included for-profit and not-for-profit housing developers, attorneys, Credit syndicators and representatives of government agencies with an interest in the Credit program. No participant expressed an opinion indicating that any of the roundtable's discussion topics would adversely affect small businesses. Based upon the roundtables, its prior experience in the allocation of Credit to projects which utilize small business services, and the nature of the amendments, DHCR does not anticipate that the proposed Rule will have any adverse impact on small businesses or local government.

Rural Area Flexibility Analysis

The Division of Housing and Community Renewal (DHCR) has found that the proposed amendments to the Rule at 9 NYCRR Part 2040 will not impose any adverse economic impact on rural areas or reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The changes to the existing Rule which would be made by the proposed amendments impose no further requirements in rural areas, will not impose additional capital or compliance costs on person/entities which are located in rural areas, and will have no other adverse impacts on rural areas.

Prior to drafting the Proposed Rule, DHCR held two roundtable discussions in the Upstate and Downstate regions of the State with members of the affordable housing industry who have been active in the Credit program. The invitees included for-profit and not-for-profit housing developers, attorneys, Credit syndicators and representatives of government agencies. No invitee expressed an opinion indicating that the roundtable discussion items would adversely affect rural areas. DHCR's experience with the Low-Income Housing Credit Program and the nature of the amendments are such that no such impact should be anticipated.

Job Impact Statement

The Division of Housing and Community Renewal (DHCR) has found that the proposed amendments to the Rule at 9 NYCRR Part 2040 (the "Proposed Rule") will have no adverse impact on jobs and employment opportunities. DHCR's experience with the Low-Income Housing Credit Program and the nature of the amendments are such that no adverse impact should be anticipated. In addition, the Proposed Rule does not include any diminution of the quality or materials of the affordable housing to be built which could result in a decrease of employment opportunities. The Proposed Rule provides a potential benefit of creating jobs and opportunities for self-employment by expanding the existing scoring criterion for "Minority and Women Owned Business Enterprise participation" to include participation by Service-Disabled Veteran-Owned Businesses. This change encourages qualified businesses to participate in the development of affordable housing in response to the provisions of Article 17-B of

the Executive Law Participation by Service-Disabled Veterans with Respect to State Contracts.

Housing Finance Agency

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Low-Income Housing Qualified Allocation Plan

I.D. No. HFA-21-19-00020-P

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

Proposed Action: Amendment of Part 2188 of Title 21 NYCRR.

Statutory authority: Executive Order No. 135, dated February 27, 1990, as continued by Executive Order No. 11, dated March 2, 2011; U.S. Internal Revenue Code, section 42(m)

Subject: Low-Income Housing Qualified Allocation Plan.

Purpose: To amend definitions, threshold criteria and application scoring for the allocation of low-income housing tax credits.

Public hearing(s) will be held at: 1:00 p.m., July 22, 2019 at Division of Housing and Community Renewal, 38-40 State St., 1st Fl., Albany, NY; 1:00 p.m., July 22, 2019 at 25 Beaver St., Rm. 642, New York, NY; 1:00 p.m., July 22, 2019 at 620 Erie Blvd. W, Suite 312, Syracuse, NY; and 1:00 p.m., July 22, 2019 at 535 Washington St., Suite 105, Buffalo, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule (Full text is posted at the following State website: https://hcr.ny.gov/low-income-housing- tax-credit): The proposed rule modifies the language of Part 2188.1 Introduction to increase clarity and stress that The New York State Housing Finance Agency ("HFA" or "Agency") does not currently expect to allocate any "9%" LIHC.

The proposed modifications of Part 2188.2, Definitions (1) eliminate unnecessary definitions; (2) conform abbreviations and definitions with 9 NYCRR 2040 ("DHCR QAP") including in 2188.2(n) adopting "LIHC" as the abbreviation for Low Income Tax Credits; (3) add several definitions including 2188.2(a), Adjusted Project Cost, 2188.2(k), Housing Opportunity Projects, 2188.2(i), Identity of Interest, and 2188.2(gg), Visitability Standards.

The proposed rule eliminates 2188.3, Goals and Needs Assessment as unnecessary.

The proposed rule modifies 2188.4, HFA Allocation Process by separating the processes for Private Activity Bond Credits and State Credit Ceiling Credits. The proposed 2188.3 sets forth the HFA Private Activity Bond Credits Allowance Process which, except for some language changes for clarity, is substantially the same as the current process. The proposed 2188.4 sets forth the HFA State Credit Ceiling Credits Allocation Process which substitutes the DHCR QAP allocation definitions, processes, procedures and requirements for the current QAP process.

The proposed rule modifies 2188.5, Threshold Eligibility Requirements for LIHC Allocation by clarifying language, modifying several Threshold Requirements and adding several new Threshold Requirements.

The proposed substantive modifications of Part 2188.5, Definitions, Threshold Eligibility Requirements for LIHC Allocation include:

Revising 2188.5(b) to require all applicants to waive to waive the right to request a Qualified Contract and provide that the extended use period will not be subject to early termination pursuant to the Qualified Contract provisions of the IRC § 42.

Revising 2188.5(i) to not require all necessary governmental approvals in place at the time of application.

Revising 2188.5(k) to delay requiring the credit and background check to be completed until the time of second underwriting which usually occurs just prior to closing.

Revising 2188.5(l) prevents the project developer, owner and/or manager and their principals from including anyone who, in sole judgement of the Agency, has initiated or been the decision maker in requesting a qualified contract under § 42(h)(6)(F) for a project in New York State.

Revising 2188.5(q) to clarify language and update the Agency's "Green" requirements.

Adding 2188.5(r) to require projects to comply with the Agency's Visitability Standards.

Adding 2188.5(s) to require projects' qualified basis for rehabilitation expenditures to equal or exceed three times the per low-income unit qualified basis amount under § 42(e)(3)(A)(ii)(II) in effect at the time of a project's construction closing. The per low-income unit qualified basis amount under § 42(e)(3)(A)(ii)(II) in effect in 2019 is $7,000 per unit. The minimum qualified basis for rehabilitation expenditures for projects closing in 2019 would therefore be $21,000 per low income unit.

Adding 2188.5(t) to require the applicant to agree to permit HFA to commission a cost audit of all the project related costs, agree to permit the Agency to commission an energy and green performance audit and include a provision in all contracts with contractors, design professionals and consultants that permits the Agency's auditors to examine the books and records relevant to the project.

Adding 2188.5(t) to require the project applicant to agree not to contract for any services related to the project with any entity on any Federal or New York State debarment list and include a provision in all contracts related to the project barring the participation of entities on such lists.

Adding 2188.5(t) to require the project applicant, developer, owner, general contractor and/or manager and their principals to remain in compliance with all relevant federal, New York State, Division, and Agency policies and requirements and local laws and regulations, including but not limited to the prohibition against discriminating against Section 8 Housing Choice Voucher holders, nondiscrimination and marketing policies, guidelines, and requirements.

The proposed rule modifies 2188.6, Scoring Criteria for State Credit Ceiling LIHC Allocation by substituting evaluating the applications using the Definition, Process, Threshold Eligibility Requirements, General, and Scoring Criteria contained in the DHCR QAP.

The proposed rule modifies 2188.7, Procedures for Monitoring of Projects, by revising language, both to make substantive changes and clarify language, and adding a new section.

The most substantively significant revisions are adding the ability for the Agency to adjust monitoring fees based on administrative or other cost increases to monitor overall compliance in 2188.7(d)(3); deleting specific references to various income tests to give the Agency flexibility to implement income averaging in tax credit projects in 2188.7(g)(2); and requiring all 100% tax credit projects monitored under this QAP must seek HFA's written concurrence prior to implementing waivers of the tenant income recertification requirement in 2188.7(i).

The proposed rule adds 2188.7(b) delegating all HFA administrative functions related to the operation of qualified low-income buildings shall be the responsibility of the LIHC Monitoring Officer who will be responsible for enforcing all regulatory agreements and reporting noncompliance to the IRS.

The proposed rule modifies 2188.8, Miscellaneous Provisions, in addition to minor language changes, by substantially revising 2188.8(e), Requests for Qualified Contracts and adding 2188.8(f) concerning maintenance of records of vacancies.

The revisions to 2188.8(e) limits the applicability of the section to projects in which the project owner has a regulatory agreement executed by the Agency which specifically grants the right to request a qualified contract. Other language added allows the Agency to specify the checklist of items required to be submitted as part of a Request for a Qualified Contract. The addition also provides that a nonrefundable fee, in a reasonable amount determined by the Agency, is due upon submission of a Request for a Qualified Contract and that the owner shall be required to pay for any services reasonably determined by HFA to be necessary the technical review of a Request for a Qualified Contract to an accountant, appraiser or other relevant expert.

The added 2188.8(f) requires all projects to at all times maintain adequate records, in the Agency's sole discretion, concerning vacancies. The section also states that these records should be updated at least monthly and, upon HFA's request, provided to the Agency in order to maintain the State's ability to quickly respond to natural disasters and other emergencies.

Text of proposed rule and any required statements and analyses may be obtained from: Mark Flescher, New York State Housing Finance Agency, 641 Lexington Ave., New York, NY 10022, (212) 872-0493, email: mark.flescher@nyshcr.org

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

Public comment will be received until: Five days after the last scheduled public hearing.

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:

Executive Order Number 11 (March 2, 2011) authorizes the Commis-

sioner of Housing to administer New York State's annual allotment of federal low-income housing tax credits ("low-income housing credit", "LIHC" or "Credit") and permits the Commissioner to delegate allocation authority to other qualified instrumentalities of the State of New York. The Commissioner has delegated a portion of such authority to the New York State Housing Finance Agency (HFA). U.S. Internal Revenue Code ("IRC") Section 42(m) requires that Credit be allocated pursuant to a "qualified allocation plan" ("QAP"), which is promulgated as a rule.

2. Legislative Objectives:

The LIHC program was enacted to encourage private investment in affordable housing.

3. Needs and Benefits:

The purpose of the proposed amendments is to clarify program enrollment and implementation requirements, and the contractual obligations of participating owners. In addition, the amendments clarify certain defined terms to facilitate program usage, add provisions relating to recent IRS amendments to the Code and eliminate sections that are not significant to the current administration of the program.

The amendments strengthen project disclosure and compliance requirements, including increased financial disclosure. This change implements the National Council of State Housing Agencies (NCSHA") recommended practice seeking to ensure full disclosure of all project costs and transaction fees charged in connection with the Credit program.

The amendment restricts project owners' right to request a Qualified Contract at the end of the tax credit compliance period, ensuring the long term affordability of projects through the entire extended use period.

The amendment broadens the Agency's fee structure to include reasonable "Administrative Fees." This implements the NCSHA recommended practice that agencies use a reasonable administrative fee structure be to account for both the cost of monitoring during the project regulatory term and other agency administrative costs.

The amendment deletes reference to various income tests, providing the Agency flexibility to implement new income tests permitted by the Code, such as income averaging.

Finally, the amendment clarifies and modifies defined terms to update and replace outdated terminology.

The proposed amendments are necessary to (i) conform with the Agency's, and the New York State's, current application review and award processes and its overall program administration, (ii) provide the Agency with flexibility in assessing which projects qualify for Credit and (iii) update the Agency program requirements to conform with current trends in the housing industry and State housing goals.

4. Costs:

(1) Costs to State Government:

There will be no costs to state government because of the proposed amendments to the Existing Rule. LIHC will continue to be implemented with existing staff resources.

(2) Costs to local government:

None.

(3) Cost to private regulated parties:

The proposed rule could result in increased costs to regulated parties due to changes in administrative fee policy. As noted above, however, this change addresses a NCSHA recommended practice. Any increased cost to projects would likely be offset by improved Agency administration and monitoring, ensuring projects are better operated and maintained, thereby reducing long-term costs of project maintenance.

5. Local Government Mandates:

None.

6. Paperwork:

The rule permits the filing of an on-line application and supporting documentation to request Credit financing.

7. Duplication:

None.

8. Alternatives:

The alternative to the Proposed Rule is to retain the Existing Rule, which does not address necessary changes and clarifications of definitions, recent changes to the Code (including Income Averaging), funding process, threshold eligibility, scoring criteria, State goals and program efficiency. Specifically:

1. The alternative to adding a "Commissioner/CEO" definition, Section 2188.2(e) is to not accurately reflect the Agency's management.

2. The alternative to expanding the definition of "Cost Certification," Section 2188.2(f), is failing to require adequate financial disclosure.

3. The alternative to adding a "Housing Opportunity Projects" definition, Section 2188.2(k), is failing to (i) address this NCSHA recommended practice and, (ii) decrease barriers to building affordable housing in areas with unmet demand.

4. The alternative to adding an "Identity of Interest" definition, Section 2188.2(k), is failing to require applicants to provide sufficient information to evaluate the ownership of proposed projects.

5. The alternative to changing the abbreviation of Low Income Housing Tax Credit to "LIHC" from "LIHTC" in Section 2188.2(p) is to not conform the abbreviation to the abbreviation in 9NYSCCRR.

6. The alternative to adding language to "Per Unit Eligible Basis Limit" definition, Section 2188.2(w), is failing to provide applicants sufficient information of the Agency's eligibility requirements, policies and procedures.

7. The alternative to adding and revising language in the "State Designated Building" definition, Section 2188.2(ee) is failing to inform applicants of the Agency's eligibility requirements, policies and procedures.

8. The alternative to adding a "Visitability Standards" definition, Section 2188.2(hh), is failing to define a key term and not providing sufficient information for applicants if their projects qualify for LIHC.

9. Retaining the former 2188.3 Goals and Needs assessment would include extraneous information in the Rule.

10. The alternative to revising 2188.3 HFA Private Activity Bond Credits Allowance Process would be to retain a complicated description of an outdated process, confuse applicant about the Agency's role in the tax credit program, and fail to clarify the Agency's process to approve LIHC.

11. The alternative to revising 2188.3 HFA State Ceiling Credits Allowance Process would be to retain a complicated description of an outdated process, confuse applicant about the Agency's role in the tax credit program, and fail to clarify the Agency's process to approve LIHC.

12. The alternative to revising Section 2188.5(b) would be to continue to allow applicants to have the option of requesting an early termination of project affordability under the Qualified Contract provisions of IRC § 42.

13. The alternative to revising Section 2188.5(f) would be requiring applicants to demonstrate that all steps necessary to secure local approvals have been taken prior to application, thereby exposing projects to local barriers to development.

14. The alternative to revising Section 2188.5(n) would be risking that the Agency would not learn of notices of non-compliance.

15. The alternative to revising Section 2188.5(q) would be to fail to clarify the Agency's "green" requirements.

16. The alternative to adding Section 2188.5(r) would be to allow project to not meet the Agency's Visitability standards.

17. The alternative to adding Section 2188.5(s) would be to allow applicants to invest less in the rehabilitation of existing projects and still have the rehabilitation investment eligible for LIHC.

18. The alternative to adding Section 2188.5(t) would be to limit the Agency's ability to require adequate financial disclosure.

19. The alternative to adding Section 2188.5(w) is to not add an explicit requirement that the applicant will not contract with any entity on any Federal or New York State debarment list and include a provision in all contracts related to the project barring the participation of entities on such lists.

20. The alternative to adding Section 2188.5(x) is to not add an explicit requirement that all applicants and their project development teams be in compliance with all relevant federal, New York State, Division, and Agency policies, requirements, and local laws and regulations.

21. The alternative to revising 2188.6 is to retain the current scoring criteria instead of replacing the criteria with the Definition, Process, Threshold Eligibility Requirements, General, and Scoring Criteria contained in 9NYCRR 2040 and risking that two state agencies under common management would use different criteria to allocate the same limited resource.

22. The alternative to revising 2188.6 is to retain the current LIHC monitoring procedures, record keeping requirement, certification requirements, inspection requirements, and Notification of Noncompliance procedures and not conform them to the LIHC monitoring procedures contained in 9 NYCRR Part 2040.

9. Federal Standards:

This Rule does not exceed the minimum standards of the federal government for the LIHC program.

10. Compliance Schedule:

Not applicable. The rule changes will affect only those who apply to HFA for allocations of Credit after the Rule amendments are effective.

Regulatory Flexibility Analysis

The New York State Housing Finance Agency ("HFA") has found that the proposed amendments to the Rule at 21 NYCRR Part 2188 (the "Proposed Rule") will have no negative impact on small businesses.

HFA sought and utilized the advice of persons who represent small businesses in order to ensure that the Proposed Rule would have no negative impact on small businesses. Prior to drafting the Proposed Rule, HFA held two roundtable discussions in the Upstate and Downstate regions of the State. The invitees included for-profit and not-for-profit housing developers, attorneys, credit syndicators and representatives of government agencies with an interest in the Credit program. No participant expressed an opinion indicating that any of the roundtable's discussion

topics would adversely affect small businesses. Based upon the roundtables, its prior experience in the allocation of credit to projects which utilize small business services, and the nature of the amendments, HFA does not anticipate that the Proposed Rule will have any adverse impact on small businesses or local government.

Rural Area Flexibility Analysis

The New York State Housing Finance Agency (HFA) has found that the proposed amendments to the Rule at 21 NYCRR Part 2188 will not impose any adverse economic impact on rural areas or reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The changes to the existing Rule which would be made by the proposed amendments impose no further requirements in rural areas, will not impose additional capital or compliance costs on person/entities which are located in rural areas, and will have no other adverse impacts on rural areas.

Prior to drafting the Proposed Rule, HFA held two roundtable discussions in the Upstate and Downstate regions of the State with members of the affordable housing industry who have been active in the Credit program. The invitees included for-profit and not-for-profit housing developers, attorneys, Credit syndicators and representatives of government agencies. No invitee expressed an opinion indicating that the roundtable discussion items would adversely affect rural areas. HFA's experience with the Low-Income Housing Credit Program and the nature of the amendments are such that no such impact should be anticipated.

Job Impact Statement

The New York State Housing Finance Agency ("HFA") has found that the proposed amendments to the Rule at 21 NYCRR Part 2188 (the "Proposed Rule") will have no adverse impact on jobs and employment opportunities. HFA's experience with the Low-Income Housing Credit Program and the nature of the amendments are such that no adverse impact should be anticipated. In addition, the Proposed Rule does not include any diminution of the quality or materials of the affordable housing to be built which could result in a decrease of employment opportunities.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Implementation Plan Used to Recover the Costs of ZECs from Load Serving Entities

I.D. No. PSC-21-19-00015-P

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

Proposed Action: The Commission is considering a proposed Zero Emissions Credit (ZEC) Implementation Plan that presents an alternative method for calculating Load Serving Entities' future ZEC obligation payments.

Statutory authority: Public Service Law, sections 4(1), 5(10), (2), 66(2); Energy Law, section 6-104(5)(b)

Subject: Implementation Plan used to recover the costs of ZECs from Load Serving Entities.

Purpose: To more accurately calculate Load Serving Entities' future ZEC obligation payments.

Substance of proposed rule: The Public Service Commission (Commission) is considering a Zero Emissions Credit (ZEC) Implementation Plan (Plan) filed by the New York State Energy Research and Development Authority (NYSERDA) and the New York State Department of Public Service Staff (NYDPS) on August 3, 2018. The Plan proposes an alternative method to calculate future ZEC obligation payments by Load Serving Entities (or LSEs). The existing payment structure is based on a fixed ZEC quantity obligation calculated using the Load Serving Entity's historic annual proportional share of statewide load. The alternative Plan under consideration proposes to use a model, which is based on each Load Serving Entity's monthly load requirements for their retail customers.

NYSERDA and NYDPS propose to modify how each LSE's initial ZEC obligation is calculated, and how LSEs remit ZEC obligation payments to NYSERDA. Under the proposal, each LSE would be required to make monthly payments to NYSERDA, based on the load served by each LSE for the previous month. The monthly obligation would be subject to an interim reconciliation once settled load data is provided by the New York Independent System Operator, Inc. (NYISO) and recorded in the New York Generation Attribute Tracking System (NYGATS), which occurs approximately five months following the close of each month. This modification is proposed to reflect month-to-month changes in an LSE's load and to significantly reduce the magnitude of the settlements between NYSERDA and the LSE during the annual reconciliation period.

For documentation and verification, NYSERDA proposes to create an online system through which LSEs would record their estimated load for the month and the payment amount due to NYSERDA. Also, NYSERDA would develop a verification process to ensure that LSEs' estimated loads are reasonably accurate, based on actual data received. This process would be in addition to the annual reconciliation process. NYSERDA proposes using a quarterly review to verify the accuracy of the submitted estimated load. NYSERDA would provide each LSE with a notice of the results of NYSERDA's review. Based on this interim review, LSEs would be required to make-up any shortfalls in the monthly ZEC payments through payments to NYSERDA within 15 days after notification by NYSERDA.

Should the Plan be approved, NYSERDA will replace its existing ZEC agreements with LSEs to reflect the terms of any Commission Order resulting from this Plan.

The full text of the proposed ZEC Implementation Plan 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.

(15-E-0302SP38)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Use of Electric Metering Equipment

I.D. No. PSC-21-19-00016-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Schweitzer Engineering Laboratories, Inc. requesting the approval to use the SEL-735 Power Quality and Revenue Meter for use in commercial and industrial electric metering applications.

Statutory authority: Public Service Law, section 67(1)

Subject: Use of electric metering equipment.

Purpose: To ensure that consumer bills are based on accurate measurements of electric usage.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Schweitzer Engineering Laboratories, Inc., on February 11, 2019, requesting approval to use the SEL-735 Power Quality and Revenue Meter manufactured by Schweitzer Engineering Laboratories for use in commercial and industrial electric metering applications.

The Commission requires new types of electric meters, transformers, and auxiliary devices used to measure electric service furnished to customers to be tested and must be approved by the Commission before they may be used for the purposes of customer billing.

The full text of the petition 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, modify or reject, 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.

(19-E-0090SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Residential Meter Reading

I.D. No. PSC-21-19-00017-P

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

Proposed Action: The Commission is considering a proposal filed by Corning Natural Gas Corporation to modify its gas tariff schedule, P.S.C. No. 7, regarding a new provision relating to residential meter reading.

Statutory authority: Public Service Law, sections 39(4), 65 and 66

Subject: Residential meter reading.

Purpose: To establish provisions for a special meter read for when service is discontinued to residential customers.

Substance of proposed rule: The Commission is considering a proposal filed by Corning Natural Gas Corporation (Corning) on April 24, 2019, to amend its gas tariff schedule, P.S.C. No. 7.

Corning proposes to modify General Information Section 13 – Discontinuance of Service and Complaints – Residential Customers, to establish a new provision for meter reading for the discontinuation of utility service to residential customers in accordance with the recently enacted Public Service Law Section 39(4), which became effective on August 24, 2018. Corning proposes to include language in its tariff explaining a residential customer's ability to request a meter read on a date other than the customer's regularly scheduled meter read date. The proposed amendment has an effective date of September 1, 2019.

The full text of the tariff 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-M-0679SP19)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Methodology Used to Set Discount Level for Income-Based Discounts to Residential Electric and Gas Utility Bills

I.D. No. PSC-21-19-00018-P

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

Proposed Action: The Commission is considering a petition filed by National Grid to modify the methodology used to annually adjust the Energy Affordability Program discounts for qualifying customers.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Methodology used to set discount level for income-based discounts to residential electric and gas utility bills.

Purpose: To ensure that income-based discounts are adjusted in a manner that moderates annual changes.

Substance of proposed rule: The Commission is considering a petition filed on May 2, 2019 by The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, and Niagara Mohawk Power Corporation d/b/a National Grid (NMPC) (collectively, National Grid) to modify the methodology used to annually adjust the Energy Affordability Program discounts for qualifying customers.

Pursuant to the Commission's orders in Case 14-M-0565, National Grid provides electric and gas bill discounts to income-eligible residential customers. The tiered discounts are set at levels generally intended to keep residential customers' overall energy burden at or below 6% of income. The calculation is based on an income equivalent to 60% of the State's median income. Utilities revise the discount levels annually, based on recent historical data, to account for changes in customers' actual bills and also in the State's median income.

One of National Grid's operating companies, NMPC, calculated the discounts for 2019 and found that would have resulted in a large one-time decrease in the discounts for customers. In order to ameliorate the impact the change would have on customers, National Grid proposes to limit the change in the level of the discounts in any single year. Specifically, National Grid proposes that, if the calculation based on historical data indicates that the discount levels should decrease by 20% or less, the discounts would be modified by the indicated amount. However, if the calculation indicates that the discount levels should decrease by more than 20%, the change in the discount levels will be limited to 20%. If the calculation indicates that the discounts should increase, the discounts would increase in accordance with the calculation. While, over the long-term, the discounts would remain designed to limit residential customers' energy burden to 6% of income, the proposed modifications would phase in dramatic changes to the discount levels over multiple years. The Commission may apply its action in this proceeding to other utilities as well.

The full text of the petition 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.

(19-M-0350SP1)

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-08-19-00007-A

Filing No. 455

Filing Date: 2019-05-07

Effective Date: 2019-05-07

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, 2019 through June 30, 2019.

Text or summary was published in the February 20, 2019 issue of the Register, I.D. No. TAF-08-19-00007-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. Chase, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: Kathleen.Chase@tax.ny.gov

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-21-19-00006-P

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

Proposed Action: Amendment of section 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, 2019 through September 30, 2019.

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 (xcv) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(xciv) April - June 2019					
14.7	22.7	40.4	16.0	24.0	39.95
(xcv) July - Sept. 2019					
15.4	*23.4*	*41.10*	*16.0*	*24.0*	*39.95*

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen D. Chase, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: Kathleen.Chase@tax.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, 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.

Urban Development Corporation

EMERGENCY
RULE MAKING

Life Sciences Initiative Program

I.D. No. UDC-21-19-00003-E
Filing No. 407
Filing Date: 2019-05-02
Effective Date: 2019-05-02

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

Action taken: Amendment of Part 4255 of Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, sections 5(4), 9-c, 16-aa; L. 2017, ch. 58, part TT

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the statutory changes contained in Part TT of Chapter 58 of the Laws of 2017. The emergency rule amends the second component of the Life Sciences Initiative program, the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") Program, to streamline it and make it more attractive to potential applicants.

NYFIRST is intended to encourage the recruitment and retention of exceptional life science researchers and world-class talent at the state's medical schools to accelerate translational research. NYFIRST funds will be used to support the establishment or upgrading of laboratories for these researchers, purchases of capital equipment and specialized supplies needed for their research, and as working capital to cover costs of professional staff (including staff scientists, postdoctoral fellows, and technicians, but excluding the recruited researcher) critical to the proposed research.

The rule updates the administrative procedures for the NYFIRST program. It is critical to implement this program immediately because medical schools are eager to encourage translational research at their institutions, as such research often results in new intellectual property, start-up companies, and products with commercial promise. By waiting for the standard rulemaking process to unfold, the State risks losing important economic development opportunities to states with competing life sciences incentive programs.

Subject: Life Sciences Initiative Program.

Purpose: Amend NYFIRST component of the Life Sciences Initiatives program.

Substance of emergency rule (Full text is posted at the following State website: esd.ny.gov): 21 NYCRR Part 4255 is amended as follows:

21 NYCRR 4255.3 covers the second component of the Life Sciences Initiative, the newly created New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") Program. The authority and purpose section is amended to establish that working capital expenses are included under this program.

Next, the regulation lays out key definitions of this component and adds a new definition of "Specialized Supplies."

In its "Available Program Assistance" section, the regulation next makes clear that grantees shall submit twice yearly invoices, instead of quarterly invoices.

Next, the regulation discusses eligibility criteria for the NYFIRST program. It clarifies that program grants are intended to encourage the recruitment and retention by the state's medical schools of exceptional life science researchers and world-class talent focused on accelerating Translational Research. NYFIRST grants may be used to support the establishment or upgrading of laboratories for these researchers, for purchases of capital equipment and specialized supplies needed for their research, and as working capital to cover costs of professional staff (including staff scientists, postdoctoral fellows, and technicians, but excluding the recruited researcher) critical to the proposed research.

The regulation next covers specifics of the application and the evaluation process for NYFIRST grants. The specific selection criteria are delineated in the regulation. Importantly, the Corporation intends to make Program grant awards through a competitive grant solicitation to qualify-

ing Applicants, twice annually until the funds under this Program are fully committed.

The regulations now clarify several important administrative items. For example, the offer of employment to the Principal Investigator by the Applicant must be made between the date of availability of the NYFIRST application for a given application cycle and the application deadline for that cycle. Acceptance of such offer also must occur between the date of availability of the NYFIRST application for a given application cycle and the application deadline for that cycle. A copy of the accepted employment offer must be submitted with the NYFIRST application.

Also, the grant term is four years, and all expenditures for which Program funding is approved must be commenced and completed no more than four years from commencement of the grant.

Eligible uses for the funds are then discussed. Program grants may now cover specialized supply purchases and working capital.

The full text of the regulations is available at www.esd.ny.gov

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, 2019.

Text of rule and any required statements and analyses may be obtained from: Thomas P. Regan, Urban Development Corporation, 625 Broadway, Albany, NY 12245, (518) 292-5123, email: thomas.regan@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Part TT of Chapter 58 of the Laws of 2017 requires the New York State Urban Development Corporation ("UDC") to establish criteria for the Life Sciences Initiatives Program via rulemaking.

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance since it implements both the Capital Assistance component of the Life Sciences Initiative Program as well as the second component of the Program, the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") Program.

NEEDS AND BENEFITS:

The Capital Assistance component is designed to attract new life sciences technologies to New York State, promote critical public and private sector investment in emerging life sciences fields in New York State and create and expand life sciences related businesses and employment. It includes a diverse range of programs designed to attract, grow and retain life science companies in regions of the state with existing life science activity. These programs include establishment of the Empire Discovery Institute (EDI), a collaboration among three upstate research institutions to accelerate the pathway from discovery research to commercialization; supporting the launch of JLABS@NYC, an incubator for life-science startups; creation of public-private partnerships with private sector biopharmaceutical companies; and establishment of the New York Fund for Innovation in Research and Scientific Talent (NYFIRST), a medical school grant program.

NYFIRST is intended to encourage the recruitment and retention of exceptional life science researchers and world-class talent at the state's medical schools to accelerate translational research. NYFIRST funds will be used to support the establishment or upgrading of laboratories for these researchers, purchases of capital equipment and specialized supplies needed for their research, and working capital to cover costs of professional staff (including staff scientists, postdoctoral fellows, and technicians, but excluding the recruited researcher) critical to the proposed research.

The rule updates the administrative procedures for the NYFIRST program. It is critical to implement this program immediately because medical schools are eager to encourage translational research at their institutions, as such research often results in new intellectual property, start-up companies, and products with commercial promise. By waiting for the standard rulemaking process to unfold, the State risks losing important economic development opportunities to states with competing life sciences incentive programs.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Life Sciences Initiative Program, only voluntary participants.

B. Costs to the agency, the State, and local governments: UDC does not anticipate substantial extra costs associated with running the program outlined in this rulemaking. The program appropriation makes funding available for the Corporation's administrative costs. There is no additional cost to local governments.

C. Costs to the State government: The money to fund this grant program is part of the Governor's $320 million Life Sciences Initiative passed in FY 2018 budget. The Corporation believes the costs of this program will be offset by the positive economic impact of the program.

LOCAL GOVERNMENT MANDATES:

None. Local governments are not eligible to participate in the Life Sciences Initiatives Program.

PAPERWORK:

The emergency rule will require applicants to fill out an application to participate in the Life Sciences Capital Assistance program and the NYFIRST program. These applications will require applicants to provide certain business financial information to the Corporation. In addition, the Capital Assistance component requires applicant to submit an annual report to the Corporation while the NYFIRST program requires periodic reporting as well. Under NYFIRST, quarterly invoices are required to be submitted prior to the Corporation disbursing grant payments on a semiannual basis.

DUPLICATION:

The emergency rule conforms to provisions of section 16-aa of the New York State Urban Development Corporation Act and does not otherwise duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to implementing this rulemaking.

FEDERAL STANDARDS:

There are no federal standards with regard to the Life Sciences Initiatives Program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible.

Regulatory Flexibility Analysis

The Life Sciences Initiative is composed of the Capital Assistance Program and the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") Program which are both statewide grant programs. Although there are small businesses in New York State that are eligible to participate in the program, participation by the businesses is entirely at their discretion. The emergency rule will not have a substantial adverse economic impact on small businesses and local governments. On the contrary, because the rule creates a grant program designed to attract business and jobs to New York State, it will have a positive economic impact on the State. Accordingly, a regulatory flexibility analysis for small business and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

The Life Sciences Initiative is composed of the Capital Assistance Program and the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") Program, both of which are statewide programs. Although there are businesses in rural areas of New York State that are eligible to participate in the programs, participation by the businesses is entirely at their discretion. The emergency rule imposes no additional reporting, record keeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed rule relates to both the Capital Assistance component and the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") component of the Life Sciences Initiative Program. This Program will enable New York State to provide financial assistance to life sciences companies that commit to create or retain jobs and/or to make significant capital investment in the State. This Program, given its design and purpose, will have a substantial positive impact on job retention and creation, and employment opportunities. Because this rule will authorize the Corporation to immediately begin offering financial incentives to life sciences businesses that commit to creating or retaining jobs, it will only have a positive impact on job and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.