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.

Office of Children and Family Services

EMERGENCY RULE MAKING

Protection of Vulnerable Persons

I.D. No. CFS-27-14-00001-E
Filing No. 499
Filing Date: 2014-06-18
Effective Date: 2014-06-18

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

Action taken: Amendment of Part 180 and Subparts 166-1, 182-1 and 182-2 of Title 9 NYCRR; and amendment of Parts 402, 414, 416, 417, 421, 433, 435, 441, 442, 443, 447, 448, 449, 476, 477, 489 and Subparts 418-1 and 418-2 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f); and Executive Law, section 501(5); L. 2012, ch. 501

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

Specific reasons underlying the finding of necessity: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"). The Justice Center is tasked with overseeing and improving consistency in responses to incidents of abuse and neglect of vulnerable people. The Justice Center has also been tasked with establishing standards for tracking and investigating complaints and enforcement against those who commit substantiated acts of abuse and neglect. The legislation requires the Office of Children and Family Services, as a state oversight agency of vulnerable persons, to develop standards consistent with the Justice Center. These standards are to protect vulnerable people against abuse, neglect and other conduct that may jeopardize their health, safety and welfare, and to provide fair treatment and notice to the employees. The Office of Children and Family Services must promulgate regulations to provide notice, guidance and standards to all facilities, provider agencies and employees who are affected by the legislation. The Justice Center took effect June 30, 2013.

Facilities and provider agencies covered by the legislation include voluntary agencies that operate residential programs that are licensed or certified by the Office of Children and Family Services, residential runaway and homeless youth programs, family type homes for adults, certified detention programs, OCFS operated juvenile justice programs, and any local department of social services that runs a detention program or has a contract with an authorized agency for detention services or has a contract(s) for care of foster children in out of state facilities.

Effective on June 30, 2013 reports of suspected child abuse or neglect in a residential program no longer fall under the jurisdiction of the Statewide Central Register of Child Abuse and Maltreatment (SCR). Any concerns regarding abuse or neglect of a child in a residential care program must be reported to the Vulnerable Persons Central Register (VPCR). The VPCR will also register reports of suspected abuse or neglect of persons residing in Family Type Homes for Adults (FTHA). Reports registered by the VPCR will be forwarded to Justice Center investigative staff or to investigative staff at the State Agency that licenses, certifies or operates the facility or provider agency. Regulations are required to provide direction to facilities, provider agencies, employees, local government staff and the public. It is imperative that rules be in place for the proper implementation of the Justice Center legislation.

Promulgating emergency regulations will ensure compliance with legislative requirements and provide the necessary guidance to affected persons. Absent the filing of emergency regulations, guidance, protections and processes will not be available to the aforementioned listed facilities and agencies.

Subject: Protection of Vulnerable Persons.

Purpose: Create a durable set of consistent safeguards for vulnerable persons that protect them against abuse, neglect and other conduct.

Substance of emergency rule: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"). The legislation requires the Office of Children and Family Services ("OCFS) to promulgate regulations consistent with the Justice Center oversight, regulations and enforcement. These regulations enact changes in line with the legislation to protect vulnerable people against abuse, neglect and other conduct that may jeopardize their health, safety and welfare, and to provide fair treatment and notice to the employees. The included additions and amendments allow OCFS to comply with the statutory requirements that became effective June 30, 2013.

The facilities and provider agencies that are license, operated or certified by OCFS that are affected are the following: residential runaway and homeless youth programs; family type homes for adults; certified detention programs; OCFS operated juvenile justice programs; voluntary agency run institutions, group residences, group homes, agency operated boarding homes including supervised independent living programs; and, any local department of social services that runs a detention program or has a contract with an authorized agency for detention services or has a contract(s) for care of foster children in out-of-state facilities. In addition, additional background check requirements were added for Family Foster Boarding Homes, families applying to adopt a child and child care providers. Regulations were added or amended to incorporate reporting, investigative, record keeping, record production, administrative, and personnel requirements, among others.

The first category of regulations added or amended address jurisdiction of the newly created Vulnerable Persons Central Register (VPCR).

Regulations will now reflect that reports of suspected abuse or neglect of persons receiving services in OCFS licensed, certified or operated residential care programs will be reported to the VPCR. Additionally reports regarding significant incidents that harm or put a service recipient at risk of harm at those same programs will be reported to the VPCR.

The second category of regulations added or amended addresses requirements of mandated reporters and what mandated reporters will be required to report to the VCPR. Acts of abuse/neglect and significant incidents are defined and procedures regarding making a report to the VPCR are outlined.

The third category of regulations added or amended provides for the requirement of data collection by the facility or provider agencies in response to requests by the Justice Center and standards for release of that information by the Justice Center.

The fourth category of regulations added or amended provides for the creation of incident review committees to affected facilities and provider agencies.

Lastly, among other areas, criminal history background checks and checks of the Justice Center's list of substantiated category one reports of abuse and neglect prior to hiring certain employees, use of volunteers or contracts with certain entities have been added or amended.

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 September 15, 2014.

Text of rule and any required statements and analyses may be obtained from: Public Information Office, NYS Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12144, (518) 473-7793

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules and regulations to carry out its powers and duties pursuant to the provisions of the SSL.

Section 34(3)(f) of the SSL requires the Commissioner of OCFS to establish regulations for the administration of public assistance and care within the State.

Section 501(5) of the New York State Executive Law authorizes the Commissioner of OCFS to promulgate rules and regulations for the establishment, operation and maintenance of division facilities and programs.

Section 490 of the SSL as found in Chapter 501 of the Laws of 2012 requires the Commissioner of OCFS to promulgate regulations that contain procedures and requirements consistent with guidelines and standards developed by the justice center and addressing incident management programs required by the Chapter Law.

2. Legislative objectives:

The proposed changes to the regulations concerning vulnerable persons in programs licensed, certified or operated by OCFS are necessary to further the legislative objective that vulnerable persons be safe and afforded appropriate care.

3. Needs and benefits:

The proposed changes to the regulations concerning vulnerable persons in programs licensed, certified or operated by OCFS providers is in response to the recognized need to strengthen and standardize the safety net for vulnerable persons, adults and children alike, who are receiving care from New York's human service agencies and programs. The Protection of People with Special Needs Act creates a set of uniform safeguards, to be implemented by a justice center whose primary focus will be on the protection of vulnerable persons. Accordingly, the benefit of this legislation is to create a durable set of consistent safeguards for all vulnerable persons that will protect them against abuse, neglect and other conduct that may jeopardize their health, safety and welfare, and to provide fair treatment to the employees upon whom they depend.

4. Costs:

The proposed regulatory changes are not expected to have an adverse fiscal impact on authorized agencies, family type homes for adults, or on the social services districts with regard to reporting and record keeping requirements. Current laws and regulations impose similar levels of reporting and record keeping. In conforming to and complying with the new statutory and regulatory requirements authorized agencies and other facilities will necessarily have to reconfigure current utilization of staff and duties. The enhancement of services for the protections of Vulnerable Persons will incur additional costs.

5. Local government mandates:

The proposed regulations will not impose any additional mandates on social services districts. Local Districts have been provided with an amended model contract for use in securing out of state residential services for children in foster care. This model contract replaced a model contract already in existence and used by Local Districts.

6. Paperwork:

The proposed regulations do not require any additional paperwork. Requirements regarding documentation are currently in regulation. These regulations will require sharing such documentation with the Justice Center.

7. Duplication:

The proposed regulations do not duplicate any other State or Federal requirements.

8. Alternatives:

These regulations are required to comply with Chapter 501 of the Laws of 2012.

9. Federal standards:

The regulatory amendments do not conflict with any federal standards.

10. Compliance schedule:

The regulations will be effective on June 17, 2013 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Types and estimated number of small businesses and local governments:

Social services districts and voluntary authorized agencies contracting with such social services districts to provide residential foster care services to children, authorized agencies providing juvenile detention services, runaway and homeless youth shelters and adult family type homes will be affected by the proposed regulations, as well as state operated juvenile justice facilities.

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

Prior to Chapter 501 of the Laws of 2012, authorized agencies, facilities and mandated reporters employed by the same were required reporters of suspected child abuse or maltreatment to the New York Statewide Central Register of Child Abuse and Maltreatment. Pursuant to the statutory requirements of Social Services Law Sections 490 and 491, those mandated reporters are now required to report all reportable incidents, which will include but not be limited to those things previously falling within the definitions of abuse and neglect of a child in residential care, to the Vulnerable Persons Central Register. Authorized Agencies and facilities will be required to maintain the same level of practice as it relates to recordkeeping, and prevention and remediation plans. Authorized agencies and facilities will be required to comply with investigations and information requests as required by the Justice Center for the Protection of People with Special Needs, as defined in Article 20 of the Executive Law.

The proposed regulations and amendments alter practice to conform to statutory obligations set forth in Chapter 501 of the Laws of 2012.

3. Costs:

All affected programs such as authorized agencies or facilities are currently subject to requirements governing reporting, record keeping, management of approved procedures and policies. As such the proposed regulations should not impose any additional costs associated with those functions. The statutory and regulatory requirements will necessarily require a reconfiguration of the current utilization of administrative costs to conform and comply with the requirements of the new law and conforming regulations. The statutory scheme provides for the enhancement of services for the protections of Vulnerable Persons, which will have added costs.

4. Economic and technological feasibility:

The proposed regulatory changes would not require any additional technology and should not have any adverse economic consequences for regulated parties.

5. Minimizing adverse impact:

The proposed changes to the regulations will require authorized agencies and facilities to conform to new reporting and record keeping requirements, however inconsistent and duplicative measures have been addressed by the regulations to minimize the impact. Trainings will be taking place across systems, as well as the dissemination of guidance documentation in advance of the effective date of the regulations.

6. Small business and local government participation:

Potential changes to the regulations governing the protection of people with special needs will be thoroughly addressed through statewide trainings and guidance documentation distributed to local representatives of social services, authorized agencies and facilities.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Social services districts in rural areas and voluntary authorized agencies contracting with such social services districts to provide residential foster care services to children, authorized agencies providing juvenile detention services, runaway and homeless youth shelters and adult family type homes will be affected by the proposed regulations, as well as state operated juvenile justice facilities.

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

Prior to Chapter 501 of the Laws of 2012, authorized agencies, facilities and mandated reporters employed by the same were required reporters of suspected child abuse or maltreatment to the New York Statewide Central Register of Child Abuse and Maltreatment. Pursuant to the statutory requirements of Social Services Law Sections 490 and 491, those mandated reporters are now required to report all reportable incidents, which will include but not be limited to those things previously falling within the definitions of abuse and neglect of a child in residential care, to the Vulnerable Persons Central Register. Authorized Agencies and facilities will be required to maintain the same level of practice as it relates to recordkeeping, and prevention and remediation plans. Authorized agencies and facilities will be required to comply with investigations and information requests as required by the Justice Center for the Protection of People with Special Needs, as defined in Article 20 of the Executive Law.

The proposed regulations and amendments alter practice to conform to statutory obligations set forth in Chapter 501 of the Laws of 2012.

3. Costs:

An authorized agency or facility is currently subject to requirements governing reporting, record keeping, management of approved procedures and policies, so the proposed regulations should not impose any additional costs associated with those functions. The statutory and regulatory requirements will necessarily require a reconfiguration of the current utilization of administrative costs to conform and comply with the requirements of the new law and conforming regulations. The statutory scheme provides for the enhancement of services for the protections of Vulnerable Persons, which will have added costs.

4. Minimizing adverse impact:

The proposed changes to the regulations require authorized agencies and facilities approved, licensed, certified or operated by the Office of Children and Family Services to protect Vulnerable Persons as defined by Social Services Law Section 488. The regulations are in direct response to the need to strengthen and standardize the protection of vulnerable people in residential care. The Protection of People with Special Needs Act creates uniform standards across systems to be implemented and monitored by the Justice Center.

5. Rural area participation:

Potential changes to the regulations governing implementation of the statute regarding the protection of people with special needs will be addressed through trainings and guidance documentation distributed to representatives of socials services districts, authorized agencies, including those that serve rural communities.

Job Impact Statement

The proposed regulations are not expected to have a negative impact on jobs or employment opportunities in either public or private sector service providers. A full job statement has not been prepared for the proposed regulations as it is not anticipated that the proposed regulations will have any adverse impact on jobs or employment opportunities.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-27-13-00002-A
Filing No. 509
Filing Date: 2014-06-20
Effective Date: 2014-07-09

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the July 3, 2013 issue of the Register, I.D. No. CVS-27-13-00002-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-27-13-00003-A
Filing No. 511
Filing Date: 2014-06-20
Effective Date: 2014-07-09

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the July 3, 2013 issue of the Register, I.D. No. CVS-27-13-00003-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-27-13-00004-A
Filing No. 508
Filing Date: 2014-06-20
Effective Date: 2014-07-09

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the July 3, 2013 issue of the Register, I.D. No. CVS-27-13-00004-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-27-13-00005-A
Filing No. 512
Filing Date: 2014-06-20
Effective Date: 2014-07-09

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the July 3, 2013 issue of the Register, I.D. No. CVS-27-13-00005-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-27-13-00006-A
Filing No. 513
Filing Date: 2014-06-20
Effective Date: 2014-07-09

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the July 3, 2013 issue of the Register, I.D. No. CVS-27-13-00006-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-28-13-00002-A
Filing No. 510
Filing Date: 2014-06-20
Effective Date: 2014-07-09

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the July 10, 2013 issue of the Register, I.D. No. CVS-28-13-00002-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-28-13-00003-A
Filing No. 507
Filing Date: 2014-06-20
Effective Date: 2014-07-09

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the exempt class.

Text or summary was published in the July 10, 2013 issue of the Register, I.D. No. CVS-28-13-00003-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-28-13-00004-A
Filing No. 506
Filing Date: 2014-06-20
Effective Date: 2014-07-09

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the July 10, 2013 issue of the Register, I.D. No. CVS-28-13-00004-P.

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

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

Assessment of Public Comment
The agency received no public comment.

Education Department

EMERGENCY RULE MAKING

Teacher Education Preparation Programs and Clinically Rich Graduate Level Teacher Preparation Pilot Programs

I.D. No. EDU-10-14-00013-E
Filing No. 554
Filing Date: 2014-06-24
Effective Date: 2014-06-24

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

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

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

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

Specific reasons underlying the finding of necessity: The purpose of the proposed amendment is to provide teaching candidates with the option of completing a single teaching placement instead of two 20 day placements in a registered teacher education programs if certain conditions are met and to extend the sunset date for the clinically rich teacher education pilot program from June 30, 2016 to October 1, 2016.

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 30-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5) for revised rule makings, is the July 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted

at the July 2014 meeting, would be July 30, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare in order to ensure that that programs participating in the graduate clinically rich teacher preparation program have adequate notice that the pilot program will be extended from June 30, 2016 to October 1, 2016. This extension will allow institutions offering pilot programs with summer activities sufficient time to begin a cohort in fall 2014 and have their candidates complete and graduate from the programs by October 1, 2016.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at the July 2014 Regents meeting, which is the first scheduled meeting after expiration of the 30-day public comment period mandated by the State Administrative Procedure Act for revised rulemakings.

Subject: Teacher Education Preparation Programs and Clinically Rich Graduate Level Teacher Preparation Pilot Programs.

Purpose: To provide teaching candidates with the option of completing a single teaching placement instead of two 20 days placements in a registered teacher education program if certain conditions are met and to extend the sunset date for the clinically rich teacher education pilot program from June 30, 2016 to October 1, 2016.

Text of emergency rule: 1. Subclause (2) of clause (c) of subparagraph (ii) of paragraph (2) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective June 24, 2014, to read as follows*:*

(2) Field experiences, student teaching and practica.

(i) (A) All registered programs shall include at least 100 clock hours of field experiences related to coursework prior to student teaching or practica. The program shall include:

(*I*) at least two college-supervised student-teaching experiences of at least 20 school days each; *or*

(*II*) at least two college-supervised practica with individual students or groups of students of at least 20 school days each[.]*; or*

(III) at least one college-supervised student-teaching experience of at least 40 school days, provided that:

(1) the combination of field experience hours and days of student teaching meets or exceeds the specific requirements for the certificate title as described in paragraph (3) of this subdivision; and

(2) the combination of field experience hours and days of student teaching provides the full range of developmental levels required by the certificate title in paragraph (3) of this subdivision; and

(3) the mentoring teacher of record at the school or school district where the student teacher is placed holds a certificate in the certificate title or in a closely related area; and is designated by the school or district as a teacher mentor or coach or is rated effective or highly effective in their most recent annual professional performance review conducted pursuant to section 3012-c of the Education Law or holds a national board certificate. [This requirement] *These requirements* shall be met by student teaching, unless the specific requirements for the certificate title in paragraph (3) of this subdivision require practica.

(B) . . .

(ii) . . .

(iii) . . .

(iv) . . .

2. Subparagraphs (i) through (xvi) of paragraph (3) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective June 24, 2014, to read as follows:

(i) Programs leading to initial certificates valid for teaching early childhood education (birth through grade 2).

(a) . . .

(b) Pedagogical core. In addition to meeting the general requirements for the pedagogical core prescribed in clause (2)(ii)(c) of this subdivision, the pedagogical core shall focus on early childhood education and include, but need not be limited to:

(1) . . .

(2) field experiences and [student teaching] *student-teaching* experiences with children in each of the three early childhood groups, pre-kindergarten, kindergarten, and grades 1 through 2, through the combined field experiences and [student teaching experience] student-teaching experience, and *for programs with at least two student-teaching experiences,* student teaching with at least two of these three groups. The time requirements for field experience, student teaching and practica of item (2)(ii)(c)(2)(i) of this subdivision shall not be applicable for candidates holding another classroom teaching certificate or for candidates who are simultaneously preparing for another classroom teaching certificate and completing the full field experience, student teaching and practica requirement for that other certificate. In such instances, the programs shall require such candidates to complete at least 50 clock hours of field experiences and at least 20 days of practica or student teaching with students in early childhood, including experiences with each of the three early childhood groups.

(ii) . . .

(iii) Programs leading to initial certificates valid for teaching middle childhood education (grades 5 through 9).

(a) . . .

(b) Pedagogical core. In addition to meeting the general requirements for the pedagogical core prescribed in clause (2)(ii)(c) of this subdivision, the pedagogical core shall focus on middle childhood education and include, but need not be limited to:

(1) . . .

(2) *student-teaching experiences in both middle childhood settings, grades 5 through 6 and 7 through 9 for programs with at least two twenty day student-teaching experiences; and for programs with one student-teaching experience, combined field experiences and* student teaching in both middle childhood settings, grades 5 through 6 and grades 7 through 9. The time requirements for field experience, student teaching and practica of item (2)(ii)(c)(2)(i) of this subdivision shall not be applicable for candidates holding another classroom teaching certificate or for candidates who are simultaneously preparing for another classroom teaching certificate and completing the full field experience, student teaching and practica requirement for that other certificate. In such instances, the program shall require such candidates to complete at least 50 clock hours of field experiences, practica, or student teaching with middle childhood students, including experiences in both middle childhood settings, grades 5 through 6 and grades 7 through 9.

(iv) Programs leading to initial certificates valid for teaching adolescence education (grades 7 through 12).

(a) . . .

(b) Pedagogical core. In addition to meeting the general requirements for the pedagogical core prescribed in clause (2)(ii)(c) of this subdivision, the pedagogical core shall focus on adolescence education and include, but need not be limited to:

(1) . . .

(2) *student-teaching experiences in both adolescence education settings, grades 7 through 9 and grades 10 through 12 for programs with at least two twenty day student-teaching experiences; and for programs with one student-teaching experience, combined field experiences and* student teaching in both adolescence education settings, grades 7 through 9 and grades 10 through 12. The time requirements for field experience, student teaching and practica of item (2)(ii)(c)(2)(i) of this subdivision shall not be applicable for candidates holding another classroom teaching certificate or candidates who are simultaneously preparing for another classroom teaching certificate and completing the full field experience, student teaching and practica requirement for that other certificate. In such instances, programs shall require such candidates to complete at least 50 clock hours of field experiences, practica, or student teaching with students in adolescence, including experiences in both adolescence education settings, grades 7 through 9 and grades 10 through 12.

(v) Programs leading to initial certificates valid for teaching a special subject (all grades).

(a) . . .

(b) Pedagogical core. In addition to meeting the general requirements for the pedagogical core prescribed in clause (2)(ii)(c) of this subdivision, the pedagogical core shall include, but need not be limited to:

(1) . . .

(2) *student-teaching experiences of the special subject in both settings, pre-kindergarten through grade 6 and grades 7 through 12 for programs with at least two twenty day student-teaching experiences; and for programs with one student-teaching experience, combined field experiences and* student teaching of the special subject in both settings, pre-kindergarten through grade 6 and grades 7 through 12. The time requirements for field experience, student teaching and practica of item (2)(ii)(c)(2)(i) of this subdivision shall not be applicable for candidates holding another classroom teaching certificate or candidates who are simultaneously preparing for another classroom teaching certificate and completing the full field experience, student teaching and practica requirement for that other certificate. In such instances, the programs shall require such candidates to complete at least 50 clock hours of field experiences, practica, or student teaching with students in the special subject class, including experiences in both settings, pre-kindergarten through grade 6 and grades 7 through 12.

(vi) Programs leading to initial certificates valid for teaching students with disabilities in early childhood, childhood, middle childhood for programs registered prior to September 2, 2011, or adolescence.

(a) . . .

(b) Pedagogical core. In addition to meeting the general requirements for the pedagogical core prescribed in clause (2)(ii)(c) of this subdivision, the pedagogical core shall include the preparation for meet-

ing the pedagogical core requirement for the general teaching certificate at the same developmental level and shall focus on developing comprehensive knowledge, understanding, and skills for teaching students with mild, moderate, severe, and multiple disabilities at the student developmental level of the certificate and include, but need not be limited to:

(1) . . .

(2) field experiences and student-teaching *experiences* with students with disabilities across the age/grade range of the student developmental level of the certificate, through combined field experiences and [student teaching] *student-teaching experiences*, and *for programs with at least two student-teaching experiences*, student teaching in two settings as appropriate to the certificate: pre-K through kindergarten and grades 1 through 2; or grades 1 through 3 and grades 4 through 6; or grades 5 through 6 and grades 7 through 9 for programs registered prior to September 2, 2011; or grades 7 through 9 and grades 10 through 12. The time requirements for field experience, student teaching and practica of item (2)(ii)(c)(2)(i) of this subdivision shall not be applicable for candidates holding another classroom teaching certificate or candidates who are simultaneously preparing for another classroom teaching certificate and completing the full field experience, student teaching and practica requirement for that other certificate. In such instances, the programs shall require such candidates to complete at least the equivalent of 50 clock hours of field experiences and at least 20 days of practica or student teaching with students with disabilities, including experiences across the age/grade range of the student developmental level of the certificate.

(vii) Programs leading to initial certificates valid for teaching students who are deaf or hard-of-hearing (all grades).

(a) . . .

(b) Pedagogical core. In addition to meeting the general requirements for the pedagogical core prescribed in clause (2)(ii)(c) of this subdivision, the pedagogical core shall focus on developing comprehensive knowledge, understanding, and skills for teaching students with disabilities as prescribed in subclause (vi)(b)(1) of this paragraph; and specialized knowledge, understanding and skills for teaching deaf or hard-of-hearing students that includes, but need not be limited to:

(1) . . .

(2) field experiences, student teaching or practica with students who are deaf or hard-of-hearing, which includes experiences at each of the four developmental levels: early childhood, childhood, middle childhood, and adolescence, provided that *if a program has at least two student-teaching experiences,* student teaching shall include experiences at the early childhood or childhood level and also at the middle childhood or adolescence level. The time requirements for field experience, student teaching and practica of item (2)(ii)(c)(2)(i) of this subdivision shall not be applicable for candidates holding another classroom teaching certificate or candidates who are simultaneously preparing for another classroom teaching certificate and completing the full field experience, student teaching and practica requirement for that other certificate. In such instances, the programs shall require such candidates to complete at least 50 clock hours of field experiences and at least 20 days of practica or student teaching with students who are deaf or hard-of-hearing.

(viii) Programs leading to initial certificates valid for teaching students who are blind or visually impaired (all grades).

(a) . . .

(b) Pedagogical core. In addition to meeting the general requirements prescribed in clause (2)(ii)(c) of this subdivision, the pedagogical core shall focus on developing comprehensive knowledge, understanding, and skills for teaching students with disabilities, as prescribed in subclause (vi)(b)(1) of this paragraph; and specialized knowledge, understanding, and skills for teaching students who are blind or visually impaired that includes, but need not be limited to:

(1) . . .

(2) field experiences, student teaching or practica with students who are blind or visually impaired, which includes experiences at each of the four developmental levels: early childhood, childhood, middle childhood and adolescence, provided that *if a program has at least two student-teaching experiences,* student teaching shall include experiences at the early childhood or childhood level and also at the middle childhood or adolescence level. The time requirements for field experience, student teaching and practica of item (2)(ii)(c)(2)(i) of this subdivision shall not be applicable for candidates holding another classroom teaching certificate or candidates who are simultaneously preparing for another classroom teaching certificate and completing the full field experience, student teaching and practica requirement for that other certificate. In such instances, the programs shall require such candidates to complete at least 50 clock hours of field experiences and at least 20 days of practica or student teaching with students who are blind or visually impaired.

(ix) . . .

(x) . . .

(xi) . . .

(xii) Programs leading to initial certificates valid for teaching the career field of agriculture or business and marketing (all grades).

(a) . . .

(b) Pedagogical core. In addition to meeting the general requirements for the pedagogical core prescribed in clause (2)(ii)(c) of this subdivision, the pedagogical core shall focus on middle childhood and adolescence education and include but need not be limited to:

(1) . . .

(2) field experiences in both elementary and secondary schools *and student-teaching experiences at two different grade levels with at least one student-teaching experience in grades 10, 11 and/or 12 for programs with at least two student-teaching experiences. For programs with one student-teaching experience, combined field experiences* and student teaching at two different grade levels with [at least] *one* [student teaching] *student-teaching* experience in grades 10, 11 and/or 12. The time requirements for field experience, student teaching and practica of item (2)(ii)(c)(2)(i) of this subdivision shall not be applicable for candidates holding another classroom teaching certificate or candidates who are simultaneously preparing for another classroom teaching certificate and completing the full field experience, student teaching and practica requirement for that other certificate. In such instances, the programs shall require such candidates to complete at least 50 clock hours of field experiences, practica, or student teaching in the career field in grades 10, 11 and/or 12.

(xiii) . . .

(xiv) . . .

(xv) . . .

(xvi) . . .

(xvii) . . .

3. Subparagraph (ii) of paragraph (5) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective June 24, 2014, to read as follows:

(ii) Limitations. The clinically rich graduate level teacher preparation pilot program shall end on [June 30, 2016] *October 1, 2016*.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-10-14-00013-P, Issue of March 12, 2014. The emergency rule will expire September 21, 2014.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 210 of the Education Law authorizes the Department to fix the value of degrees, diplomas and certificates issued by institutions of other states or countries as presented for entrance to schools, colleges and the professions of the state.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

Paragraph (b) of Subdivision (1) of the Education Law provides that no part of school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment will carry out the objectives of the above referenced statutes by providing teaching candidates with the option of completing a single teaching placement instead of two 20 days placements in a registered teacher education program if certain conditions are met and to extend the sunset date for the clinically rich teacher education pilot program from June 30, 2016 to October 1, 2016.

3. NEEDS AND BENEFITS:

Graduate Level Clinically Rich Teacher Preparation Pilot Programs

At its November 2009 and December 2009 meetings, the Board of Regents approved the conceptual framework for offering graduate level clinically rich teacher preparation pilot programs. At the February 2010 meeting, the Board endorsed the plan to implement the pilot programs through a Request for Proposals (RFP) process. At its April 2010 Board of Regents meeting, the Higher Education Committee voted to amend Part 52.21(b) of the Commissioner's Regulations to adopt, as an emergency measure, regulations establishing graduate level clinically rich teacher preparation pilot programs.

Following submissions through the RFP process and a program quality review by a Board of Regents Blue Ribbon Panel, 11 institutions received approval during 2012 to implement 23 graduate level clinically rich teacher preparation pilot programs. As reported at the January 2014 Board of Regents meeting, the graduate level clinically rich teacher preparation pilot programs require intensive candidate mentoring, supervision and support through a collaborative partnership between the institutions offering the programs and the schools/districts where candidates are placed during their student teaching internships. These internships can be up to one year, considerably longer than the minimum of two 20-day placements currently required in Commissioner's Regulations for most certificate titles, and contain elements such as:

- integration of pedagogy with the internships/on-the-job training;
- rigorous curriculum linking teaching theory with research; and
- guided classroom practice pairing candidates with effective, trained mentors.

The pilot programs were registered to end either June 30, 2014 or August 31, 2014, depending on the institution's program proposal and to correspond with RTTT funding originally ending in 2014. The USDE, however, has extended the time that the Department may use RTTT funds for these programs to September 2015. As a result, the institutions with graduate level clinically rich teacher preparation pilot programs have expressed an interest in continuing their programs, even though there may be no additional RTTT funding after 2015. Accordingly, the Department recommends extending the end date of the graduate level clinically rich teacher preparation pilot programs to October 1, 2016, to provide institutions that have their own funds the opportunity to continue offering the programs beyond the expiration of RTTT funding in 2015, and to allow another cohort of students to graduate from the programs by the 2016 deadline.

Five institutions have pilot programs that end on August 31, 2014, because they have activities in their programs over the summer. For example, the American Museum of Natural History includes a summer internship as part of its pilot program, and students complete the program in August and graduate from the program in September. Therefore, as part of the proposed amendment, the Department recommends extending the end date of the graduate level clinically rich teacher preparation pilot programs from June 30, 2016 to October 1, 2016. This extension will allow institutions offering pilot programs with summer activities sufficient time to begin a cohort in fall 2014 and have their candidates complete and graduate from the programs by October 1, 2016.

Institutions with graduate level clinically rich teacher preparation pilot programs that want to extend their programs beyond the extension date in the proposed amendment (October 1, 2016) will be required to register their programs through the "traditional" teacher preparation program registration process and must have their own degree-granting authority.

Additional Option for the Placement of Teacher Candidates

Currently, under Section 52.21 of the Commissioner's Regulations, candidates in most teacher preparation programs are required to have two separate student teaching or practica placements for a minimum of twenty days each, in two different grade levels and/or developmental levels for the certificate sought, plus a minimum of 100 hours of field experience prior to the student teaching.[1] These regulations also provide for a waiver of the two 20-day student teaching placements if an institution prefers to have its teacher candidates do a single placement and can demonstrate an adequate plan that the alternate model will be successful. [see Commissioner's Regulations Part 52.21(b)(2)(ii)(c)(2)(iii)].

With the implementation of the edTPA, the new State teacher performance assessment required for certification by teaching candidates completing programs on or after May 1, 2014 or for candidates who have applied for certification on or before April 30, 2014 but who have not completed all of the requirements for certification, a greater focus is placed on the student teaching component of the programs. The edTPA requires two video segments of the student teacher's teaching practice to be submitted and scored. A number of New York State institutions have expressed concern that a 20-day student teaching placement may not provide teacher candidates sufficient time to develop their skills and videotape with sufficient frequency to capture exemplary teaching practice. The institutions contend that student teachers are often at the stage of greatest asset when they are required to re-establish themselves in a new classroom at a different developmental level (as required in Regulations under the two 20-day placements.) In an effort to increase a teacher candidate's "value proposition" in P-12 classrooms, institutions and cooperating teachers are advocating lengthier teaching placements.

Commissioner's Regulations currently allow the Commissioner to approve an alternate model of student teaching on a waiver basis. In response to institutional requests for alternate models, in October 2013 the Department issued criteria for evaluating institution requests for alternate student teaching models that included one longer student teaching placement.[2] In December 2013, the Department implemented an application process for requesting Commissioner's approval, simplifying and streamlining an institution's ability to implement a single placement for its teacher candidates.[3]

Given the interest of institutions in creating student teaching placements that are longer and that provide candidates with more opportunities for in-depth and clinically rich experiences, increasing their value in the P-12 classrooms, the Department recommends amending Commissioner's Regulations to provide the option for a single teaching placement. To ensure that teacher candidates are provided with meaningful clinical experiences across the grade level of the certificate, the single teaching placement option must meet the following criteria:

- The field experience must equal or exceed the minimum hours currently required and the single student teaching placement must equal or exceed a minimum of 40 days of student teaching or practica. The combined field experience hours and days of student teaching or practica must provide candidates with the full range of the grades and developmental levels required by the certificate (e.g., a single student teaching placement and field experience in Early Childhood B-2 must be a minimum of 40 days of student teaching, a minimum of 100 hours of field experience, and cover three levels: PreK, K, and Grades 1-2.)
- The mentoring teacher of record at the partnering school/district must hold certification in the area of the certificate sought or a closely related area, and meet one or more of the following criteria: designated by the district as a teacher mentor or coach, rated Effective or Highly-Effective under the school's/district's approved Annual Professional Performance Review (APPR) plan under Education Law Section 3012-c, or hold National Board Certification.

4. COSTS:

(a) Cost to State government. The amendment will not impose any additional cost on State government, including the State Education Department.

(b) Cost to local government. The amendment does not impose additional costs upon local governments, including schools districts and BOCES.

(c) Cost to private regulated parties. The amendment will not impose additional costs on private regulated parties.

(d) Costs to the regulatory agency. As stated above in Costs to State Government, the amendment will not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES. On the contrary, it provides flexibility for teacher preparation programs and school districts to provide alternative student teaching placements for teacher candidates.

6. PAPERWORK:

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

The State Education Department does not believe that making this change for candidates who live or work in rural areas is warranted because the certification requirements and requirements for teacher education programs should be consistent across the State. Moreover, the proposed amendment provides more flexibility and is permissive in nature.

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

Regulated parties must comply with the proposed amendment on its effective date. Because of the nature of the proposed amendment, no additional period of time is necessary to enable regulated parties to comply.

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[1] The two 20-day placement and field requirements do not apply to the Literacy B-6, Literacy 5-12, Career and Technical Subjects and Speech and Language Disabilities certificates.

[2] The criteria was developed with input from the field through visits

across the state in 2013 by Commissioner King and Assistant Commissioner of Higher Education Wood-Garnett.

[3] See http://www.highered.nysed.gov/ocue/aipr/register-te.html#waiver for information on the Student Teaching Waiver process.

Regulatory Flexibility Analysis

a) Small Businesses:

1. Effect of rule:

The purpose of the proposed amendment is to provide teaching candidates with the option of completing a single teaching placement instead of two 20 days placements in a registered teacher education program if certain conditions are met and to extend the sunset date for the clinically rich teacher education pilot program from June 30, 2016 to October 1, 2016. Some of these teacher preparation programs may be small businesses.

2. Compliance requirements:

Graduate Level Clinically Rich Teacher Preparation Pilot Programs

At its November 2009 and December 2009 meetings, the Board of Regents approved the conceptual framework for offering graduate level clinically rich teacher preparation pilot programs. At the February 2010 meeting, the Board endorsed the plan to implement the pilot programs through a Request for Proposals (RFP) process. At its April 2010 Board of Regents meeting, the Higher Education Committee voted to amend Part 52.21(b) of the Commissioner's Regulations to adopt, as an emergency measure, regulations establishing graduate level clinically rich teacher preparation pilot programs.

Following submissions through the RFP process and a program quality review by a Board of Regents Blue Ribbon Panel, 11 institutions received approval during 2012 to implement 23 graduate level clinically rich teacher preparation pilot programs. As reported at the January 2014 Board of Regents meeting, the graduate level clinically rich teacher preparation pilot programs require intensive candidate mentoring, supervision and support through a collaborative partnership between the institutions offering the programs and the schools/districts where candidates are placed during their student teaching internships. These internships can be up to one year, considerably longer than the minimum of two 20-day placements currently required in Commissioner's Regulations for most certificate titles, and contain elements such as:

- integration of pedagogy with the internships/on-the-job training;
- rigorous curriculum linking teaching theory with research; and
- guided classroom practice pairing candidates with effective, trained mentors.

The pilot programs were registered to end either June 30, 2014 or August 31, 2014, depending on the institution's program proposal and to correspond with RTTT funding originally ending in 2014. The USDE, however, has extended the time that the Department may use RTTT funds for these programs to September 2015. As a result, the institutions with graduate level clinically rich teacher preparation pilot programs have expressed an interest in continuing their programs, even though there may be no additional RTTT funding after 2015. Accordingly, the Department recommends extending the end date of the graduate level clinically rich teacher preparation pilot programs to October 1, 2016, to provide institutions that have their own funds the opportunity to continue offering the programs beyond the expiration of RTTT funding in 2015, and to allow another cohort of students to graduate from the programs by the 2016 deadline.

Five institutions have pilot programs that end on August 31, 2014, because they have activities in their programs over the summer. For example, the American Museum of Natural History includes a summer internship as part of its pilot program, and students complete the program in August and graduate from the program in September. Therefore, as part of the proposed amendment, the Department recommends extending the end date of the graduate level clinically rich teacher preparation pilot programs from June 30, 2016 to October 1, 2016. This extension will allow institutions offering pilot programs with summer activities sufficient time to begin a cohort in fall 2014 and have their candidates complete and graduate from the programs by October 1, 2016.

Institutions with graduate level clinically rich teacher preparation pilot programs that want to extend their programs beyond the extension date in the proposed amendment (October 1, 2016) will be required to register their programs through the "traditional" teacher preparation program registration process and must have their own degree-granting authority.

Additional Option for the Placement of Teacher Candidates

Currently, under Section 52.21 of the Commissioner's Regulations, candidates in most teacher preparation programs are required to have two separate student teaching or practica placements for a minimum of twenty days each, in two different grade levels and/or developmental levels for the certificate sought, plus a minimum of 100 hours of field experience prior to the student teaching.[1] These regulations also provide for a waiver of the two 20-day student teaching placements if an institution prefers to have its teacher candidates do a single placement and can demonstrate an adequate plan that the alternate model will be successful. [see Commissioner's Regulations Part 52.21(b)(2)(ii)(c)(2)(iii)].

With the implementation of the edTPA, the new State teacher performance assessment required for certification by teaching candidates completing programs on or after May 1, 2014 or for candidates who have applied for certification on or before April 30, 2014 but who have not completed all of the requirements for certification, a greater focus is placed on the student teaching component of the programs. The edTPA requires two video segments of the student teacher's teaching practice to be submitted and scored. A number of New York State institutions have expressed concern that a 20-day student teaching placement may not provide teacher candidates sufficient time to develop their skills and videotape with sufficient frequency to capture exemplary teaching practice. The institutions contend that student teachers are often at the stage of greatest asset when they are required to re-establish themselves in a new classroom at a different developmental level (as required in Regulations under the two 20-day placements.) In an effort to increase a teacher candidate's "value proposition" in P-12 classrooms, institutions and cooperating teachers are advocating lengthier teaching placements.

Commissioner's Regulations currently allow the Commissioner to approve an alternate model of student teaching on a waiver basis. In response to institutional requests for alternate models, in October 2013 the Department issued criteria for evaluating institution requests for alternate student teaching models that included one longer student teaching placement.[2] In December 2013, the Department implemented an application process for requesting Commissioner's approval, simplifying and streamlining an institution's ability to implement a single placement for its teacher candidates.[3]

Given the interest of institutions in creating student teaching placements that are longer and that provide candidates with more opportunities for in-depth and clinically rich experiences, increasing their value in the P-12 classrooms, the Department recommends amending Commissioner's Regulations to provide the option for a single teaching placement. To ensure that teacher candidates are provided with meaningful clinical experiences across the grade level of the certificate, the single teaching placement option must meet the following criteria:

- The field experience must equal or exceed the minimum hours currently required and the single student teaching placement must equal or exceed a minimum of 40 days of student teaching or practica. The combined field experience hours and days of student teaching or practica must provide candidates with the full range of the grades and developmental levels required by the certificate (e.g., a single student teaching placement and field experience in Early Childhood B-2 must be a minimum of 40 days of student teaching, a minimum of 100 hours of field experience, and cover three levels: PreK, K, and Grades 1-2.)
- The mentoring teacher of record at the partnering school/district must hold certification in the area of the certificate sought or a closely related area, and meet one or more of the following criteria: designated by the district as a teacher mentor or coach, rated Effective or Highly-Effective under the school's/district's approved Annual Professional Performance Review (APPR) plan under Education Law Section 3012-c, or hold National Board Certification.

3. Professional services:

The proposed amendment does not require small businesses to contract for additional professional services to comply.

4. Compliance costs:

The proposed amendment is permissive in nature and does not impose any compliance costs on small businesses.

5. Economic and technological feasibility:

See above response to compliance costs. The proposed amendment would not require institutions to secure special technology to comply.

6. Minimizing adverse impact:

As stated above, the proposed amendment is permissive in nature. It only applies to institutions that wish to participate in a graduate level clinically rich pilot program. Because of the nature of the proposed amendment, it is unnecessary to minimize adverse impacts on small businesses.

7. Small business participation:

The Department has shared the proposed amendment and sought input from the Rural Advisory Committee. These organizations have representatives from small businesses across the State.

b) Local Governments:

1. Effect of rule:

The purpose of the proposed amendment is to provide teaching candidates with the option of completing a single teaching placement instead of two 20 days placements in a registered teacher education program if certain conditions are met and to extend the sunset date for the clinically rich teacher education pilot program from June 30, 2016 to October 1, 2016.

2. Compliance requirements:

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With the implementation of the edTPA, the new State teacher performance assessment required for certification by teaching candidates completing programs on or after May 1, 2014 or for candidates who have applied for certification on or before April 30, 2014 but who have not completed all of the requirements for certification, a greater focus is placed on the student teaching component of the programs. The edTPA requires two video segments of the student teacher's teaching practice to be submitted and scored. A number of New York State institutions have expressed concern that a 20-day student teaching placement may not provide teacher candidates sufficient time to develop their skills and videotape with sufficient frequency to capture exemplary teaching practice. The institutions contend that student teachers are often at the stage of greatest asset when they are required to re-establish themselves in a new classroom at a different developmental level (as required in Regulations under the two 20-day placements.) In an effort to increase a teacher candidate's "value proposition" in P-12 classrooms, institutions and cooperating teachers are advocating lengthier teaching placements.

Commissioner's Regulations currently allow the Commissioner to approve an alternate model of student teaching on a waiver basis. In response to institutional requests for alternate models, in October 2013 the Department issued criteria for evaluating institution requests for alternate student teaching models that included one longer student teaching placement.[5] In December 2013, the Department implemented an application process for requesting Commissioner's approval, simplifying and streamlining an institution's ability to implement a single placement for its teacher candidates.[6]

Given the interest of institutions in creating student teaching placements that are longer and that provide candidates with more opportunities for in-depth and clinically rich experiences, increasing their value in the P-12 classrooms, the Department recommends amending Commissioner's Regulations to provide the option for a single teaching placement. To ensure that teacher candidates are provided with meaningful clinical experiences across the grade level of the certificate, the single teaching placement option must meet the following criteria:

- The field experience must equal or exceed the minimum hours currently required and the single student teaching placement must equal or exceed a minimum of 40 days of student teaching or practica. The combined field experience hours and days of student teaching or practica must provide candidates with the full range of the grades and developmental levels required by the certificate (e.g., a single student teaching placement and field experience in Early Childhood B-2 must be a minimum of 40 days of student teaching, a minimum of 100 hours of field experience, and cover three levels: PreK, K, and Grades 1-2.)
- The mentoring teacher of record at the partnering school/district must hold a permanent or professional certification in the area of the certificate sought or a closely related area, and meet one or more of the following criteria: designated by the district as a teacher mentor or coach, rated Effective or Highly-Effective under the school's/district's approved Annual Professional Performance Review (APPR) plan under Education Law Section 3012-c, or hold National Board Certification.

3. Professional services:

The proposed amendment does not require schools or school districts to contract for additional professional services to comply.

4. Compliance costs:

The proposed amendment is permissive in nature and does not impose any additional compliance costs on local governments.

5. Economic and technological feasibility:

See above response to compliance costs. The proposed amendment would not require schools or school districts to secure special technology to comply.

6. Minimizing adverse impact:

As stated above, the proposed amendment is permissive in nature. It only applies to institutions that wish to participate in a graduate level clinically rich pilot program. Because of the nature of the proposed amendment, it is unnecessary to minimize adverse impacts on small businesses.

7. Local government participation:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy providing for a transition to the New York State Common Core Learning Standards (CCLS) adopted at the January 2011 Regents meeting. Accordingly, there is no need for a shorter review period.

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

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[1] The two 20-day placement and field requirements do not apply to the Literacy B-6, Literacy 5-12, Career and Technical Subjects and Speech and Language Disabilities certificates.

[2] The criteria was developed with input from the field through visits across the state in 2013 by Commissioner King and Assistant Commissioner of Higher Education Wood-Garnett.

[3] See http://www.highered.nysed.gov/ocue/aipr/register-te.html#waiver for information on the Student Teaching Waiver process.

[4] The two 20-day placement and field requirements do not apply to the Literacy B-6, Literacy 5-12, Career and Technical Subjects and Speech and Language Disabilities certificates.

[5] The criteria was developed with input from the field through visits across the state in 2013 by Commissioner King and Assistant Commissioner of Higher Education Wood-Garnett.

[6] See http://www.highered.nysed.gov/ocue/aipr/register-te.html#waiver for information on the Student Teaching Waiver process.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect teacher candidates in all parts of the State and institutions offering clinically rich teacher education programs, 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:

Graduate Level Clinically Rich Teacher Preparation Pilot Programs

At its November 2009 and December 2009 meetings, the Board of Regents approved the conceptual framework for offering graduate level clinically rich teacher preparation pilot programs. At the February 2010 meeting, the Board endorsed the plan to implement the pilot programs through a Request for Proposals (RFP) process. At its April 2010 Board of Regents meeting, the Higher Education Committee voted to amend Part 52.21(b) of the Commissioner's Regulations to adopt, as an emergency measure, regulations establishing graduate level clinically rich teacher preparation pilot programs.

Following submissions through the RFP process and a program quality review by a Board of Regents Blue Ribbon Panel, 11 institutions received approval during 2012 to implement 23 graduate level clinically rich teacher preparation pilot programs. As reported at the January 2014 Board of Regents meeting, the graduate level clinically rich teacher preparation pilot programs require intensive candidate mentoring, supervision and support through a collaborative partnership between the institutions offering the programs and the schools/districts where candidates are placed during their student teaching internships. These internships can be up to one year, considerably longer than the minimum of two 20-day placements currently required in Commissioner's Regulations for most certificate titles, and contain elements such as:

- integration of pedagogy with the internships/on-the-job training;
- rigorous curriculum linking teaching theory with research; and
- guided classroom practice pairing candidates with effective, trained mentors.

The pilot programs were registered to end either June 30, 2014 or August 31, 2014, depending on the institution's program proposal and to correspond with RTTT funding originally ending in 2014. The USDE, however, has extended the time that the Department may use RTTT funds for these programs to September 2015. As a result, the institutions with graduate level clinically rich teacher preparation pilot programs have expressed an interest in continuing their programs, even though there may be no additional RTTT funding after 2015. Accordingly, the Department recommends extending the end date of the graduate level clinically rich teacher preparation pilot programs to October 1, 2016, to provide institutions that have their own funds the opportunity to continue offering the programs beyond the expiration of RTTT funding in 2015, and to allow another cohort of students to graduate from the programs by the 2016 deadline.

Five institutions have pilot programs that end on August 31, 2014, because they have activities in their programs over the summer. For example, the American Museum of Natural History includes a summer internship as part of its pilot program, and students complete the program in August and graduate from the program in September. Therefore, as part of the proposed amendment, the Department recommends extending the end date of the graduate level clinically rich teacher preparation pilot programs from June 30, 2016 to October 1, 2016. This extension will allow institutions offering pilot programs with summer activities sufficient time to begin a cohort in fall 2014 and have their candidates complete and graduate from the programs by October 1, 2016.

Institutions with graduate level clinically rich teacher preparation pilot programs that want to extend their programs beyond the extension date in the proposed amendment (October 1, 2016) will be required to register their programs through the "traditional" teacher preparation program registration process and must have their own degree-granting authority.

Additional Option for the Placement of Teacher Candidates

Currently, under Section 52.21 of the Commissioner's Regulations, candidates in most teacher preparation programs are required to have two separate student teaching or practica placements for a minimum of twenty days each, in two different grade levels and/or developmental levels for the certificate sought, plus a minimum of 100 hours of field experience prior to the student teaching.[1] These regulations also provide for a waiver of the two 20-day student teaching placements if an institution prefers to have its teacher candidates do a single placement and can demonstrate an adequate plan that the alternate model will be successful. [see Commissioner's Regulations Part 52.21(b)(2)(ii)(c)(2)(iii)].

With the implementation of the edTPA, the new State teacher performance assessment required for certification by teaching candidates completing programs on or after May 1, 2014 or for candidates who have applied for certification on or before April 30, 2014 but who have not completed all of the requirements for certification, a greater focus is placed on the student teaching component of the programs. The edTPA requires two video segments of the student teacher's teaching practice to be submitted and scored. A number of New York State institutions have expressed concern that a 20-day student teaching placement may not provide teacher candidates sufficient time to develop their skills and videotape with sufficient frequency to capture exemplary teaching practice. The institutions contend that student teachers are often at the stage of greatest asset when they are required to re-establish themselves in a new classroom at a different developmental level (as required in Regulations under the two 20-day placements.) In an effort to increase a teacher candidate's "value proposition" in P-12 classrooms, institutions and cooperating teachers are advocating lengthier teaching placements.

Commissioner's Regulations currently allow the Commissioner to approve an alternate model of student teaching on a waiver basis. In response to institutional requests for alternate models, in October 2013 the Department issued criteria for evaluating institution requests for alternate student teaching models that included one longer student teaching placement.[2] In December 2013, the Department implemented an application process for requesting Commissioner's approval, simplifying and streamlining an institution's ability to implement a single placement for its teacher candidates.[3]

Given the interest of institutions in creating student teaching placements that are longer and that provide candidates with more opportunities for in-depth and clinically rich experiences, increasing their value in the P-12 classrooms, the Department recommends amending Commissioner's Regulations to provide the option for a single teaching placement. To ensure that teacher candidates are provided with meaningful clinical experiences across the grade level of the certificate, the single teaching placement option must meet the following criteria:

- The field experience must equal or exceed the minimum hours currently required and the single student teaching placement must equal or exceed a minimum of 40 days of student teaching or practica. The combined field experience hours and days of student teaching or practica must provide candidates with the full range of the grades and developmental levels required by the certificate (e.g., a single student teaching placement and field experience in Early Childhood B-2 must be a minimum of 40 days of student teaching, a minimum of 100 hours of field experience, and cover three levels: PreK, K, and Grades 1-2.)
- The mentoring teacher of record at the partnering school/district must hold certification in the area of the certificate sought or a closely related area, and meet one or more of the following criteria: designated by the district as a teacher mentor or coach, rated Effective or Highly-Effective under the school's/district's approved Annual Professional Performance Review (APPR) plan under Education Law Section 3012-c, or hold National Board Certification.

3. COSTS:

There are no additional costs imposed by the proposed amendment.

4. MINIMIZING ADVERSE IMPACT:

The State Education Department does not believe that making this change for candidates who live or work in rural areas is warranted because the certification requirements for teachers should be consistent across the State.

5. RURAL AREA PARTICIPATION:

The State Education Department has sent the proposed amendment to the Rural Advisory Committee, which has members who live or work in rural areas across the State.

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[1] The two 20-day placement and field requirements do not apply to the Literacy B-6, Literacy 5-12, Career and Technical Subjects and Speech and Language Disabilities certificates.

[2] The criteria was developed with input from the field through visits across the state in 2013 by Commissioner King and Assistant Commissioner of Higher Education Wood-Garnett.

[3] See http://www.highered.nysed.gov/ocue/aipr/register-te.html#waiver for information on the Student Teaching Waiver process.

Job Impact Statement

Since publication of the Notice Proposed Rule Making in the State Register on March 12, 2014, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The purpose of the proposed amendment is to provide teaching candidates with the option of completing a single teaching placement instead of two 20 days placements in a registered teacher education programs if certain conditions are met and to extend the sunset date for the clinically rich teacher education pilot program from June 30, 2016 to October 1, 2016. The proposed rule does not impose any reporting, 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 rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Revised Rule Making in the State Register on May 28, 2014, the State Education Department received the following comment.

COMMENT: We fully support the proposed amendment to extend the end date for the Clinically Rich Graduate Level Teacher Preparation Pilot Programs to October 1, 2016. Our Master of Arts in Teaching program is preparing teachers in Earth Science, a critical shortage area, to teach in high-need, low-performing schools. The program's initial cohort graduated in September 2013, and participants are now teaching in schools in and around New York City; the candidates in the second cohort are expected to graduate this September. Our program includes important summer activities, such as a research practicum, with the program completion annually in August. The proposed extension will thus allow candidates in the 2015-2016 cohort to complete the program's scheduled activities, to earn their Regents' conferred MAT degrees, and to graduate by October 1, 2016.

DEPARTMENT RESPONSE: SED agrees; no response is necessary.

EMERGENCY RULE MAKING

Interpretation and Translation Services for Limited English Proficient (LEP) Individuals by Mail Order Pharmacies

I.D. No. EDU-11-14-00002-E

Filing No. 551

Filing Date: 2014-06-24

Effective Date: 2014-06-26

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

Action taken: Amendment of section 63.11 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a), 6810(1) and 6829(4); L. 2012, ch. 57, part V

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

Specific reasons underlying the finding of necessity: The purpose of the proposed amendment is to implement Education Law section 6829(4), as added by Section 3 of Part V of Chapter 57 of the Laws of 2012, which establishes interpretation and translation requirements for all mail order pharmacies conducting business in New York State. The proposed amendment implements the provisions of section 6829(4) of the Education Law that, effective March 30, 2014, requires all mail order pharmacies sending prescriptions to individuals in New York State to provide interpretation and translation services for Limited English Proficient (LEP) individuals. It also subjects mail order pharmacies to the same interpretation and translation services requirements as are now required for covered pharmacies within the state. The information for which competent oral interpretation and translation services shall be provided will be prescription medication labels, warning labels and other written materials.

The proposed amendment was adopted as an emergency action at the March 10-11, 2014 Regents meeting, effective March 30, 2014, and has now been adopted as a permanent rule at the June 23-24, 2014 Regents meeting. Pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment is July 9, 2014, the date a Notice of Adoption will be published in the State Register. However, the emergency rule will expire on June 25, 2014. If the rule were to lapse, some limited English proficient individuals may be unable to obtain free, competent oral interpretation services and translation services from mail order pharmacies. To avoid the adverse effects of a lapse in the emergency rule, a second emergency action at the June 2014 Regents meeting is necessary for the preservation of the public health and general welfare to ensure that the proposed rule adopted by emergency action at the March Regents meeting to implement the requirements of Education Law section 6829(4), as added by Section 3 of Part V of Chapter 57 of the Laws of 2012 remains continuously in effect until the effective date of its permanent adoption, so that limited English proficient individuals can receive free, competent oral interpretation services and translation services from mail order pharmacies.

Subject: Interpretation and translation services for Limited English Proficient (LEP) individuals by mail order pharmacies.

Purpose: To implement section 6829(4) of the Education Law, as added by part V of chapter 57 of the Laws of 2012.

Text of emergency rule:

1. Paragraph (7) of subdivision (a) of section 63.11 of the Regulations of the Commissioner of Education is added, effective June 26, 2014, to read as follows:

(7) Mail order pharmacy shall mean a pharmacy that dispenses most of its prescriptions through the United States postal service or other delivery system.

2. Subdivision (b) of section 63.11 of the Regulations of the Commissioner of Education is amended, effective June 26, 2014, as follows:

(b) Provision of competent oral interpretation services and translation services. Except as otherwise provided in subdivision (e) of this section:

(1) For purposes of counseling an individual about his or her prescription medications or when soliciting information necessary to maintain a patient medication profile, each covered pharmacy *and mail order pharmacy* shall provide free, competent oral interpretation services and translation services in such individual's preferred pharmacy primary language to each LEP individual requesting such services or when filling a prescription that indicates that the individual is limited English proficient at such covered pharmacy *or mail order pharmacy*, unless the LEP individual is offered and refuses such services.

(2) With respect to prescription medication labels, warning labels and other written materials, each covered pharmacy *and mail order pharmacy* shall provide free, competent oral interpretation services and translation services to each LEP individual filling a prescription at such covered pharmacy *or mail order pharmacy* in such individual's preferred pharmacy *primary* language, unless the LEP individual is offered and refuses such services or the medication labels, warning labels and other written materials have already been translated into the language spoken by the LEP individual.

(3) Translation and competent oral interpretation shall be provided in the preferred pharmacy primary language of each LEP individual, provided that no covered pharmacy *or mail order pharmacy* shall be required to provide translation or competent oral interpretation of more than seven languages.

(4) The services required by this subdivision may be provided by a staff member of the *covered* pharmacy *or mail order pharmacy* or a third-party contractor. Such services shall be provided on an immediate basis but need not be provided in-person or face-to-face.

3. Paragraph (1) of subdivision (c) of section 63.11 of the Regulations of the Commissioner of Education is amended, effective June 26, 2014, as follows:

(1) In accordance with Education Law section 6829(3), each covered pharmacy shall conspicuously post a notice to inform LEP individuals of their rights to free, competent oral interpretation services and translation services. Such notice shall include the following statement in English and in each of the pharmacy primary languages: ''Point to your language. Language assistance will be provided at no cost to you.'' *With each initial transaction with patients seeking mail order services, mail order pharmacies shall provide printed materials in English and in each of the pharmacy primary languages, explaining the availability of competent oral interpretation services and translation services. In addition, mail order pharmacies that are nonresident establishments shall provide any required information pursuant to section 63.8(b)(6) of this Part in English and in each of the pharmacy primary languages.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-11-14-00002-P, Issue of March 19, 2014. The emergency rule will expire August 22, 2014.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

Subparagraph (a) of subdivision (2) of section 6507 of the Education

Law authorizes the Commissioner to promulgate regulations in administering the admission to and the practice of the professions.

Subdivision (1) of section 6810 of the Education Law, as amended by section 2 of Part V of Chapter 57 of the Laws of 2012, provides that all prescription drug labels shall conform to rules and regulations as promulgated by the Commissioner pursuant to section 6829 of the Education Law.

Subdivision (4) of section 6829 of the Education Law, as added by section 3 of Part V of Chapter 57 of the Laws of 2012, requires the Commissioner, in consultation with the Commissioner of the Department of Health (DOH), to promulgate regulations, effective March 30, 2014, requiring all mail order pharmacies conducting business in New York State to provide free, competent oral interpretation services and translation services to persons filling a prescription through such mail order pharmacies whom are identified as Limited English Proficient (LEP) individuals. Specifically, Education Law § 6829(4) requires the regulations to address the concerns of affected stakeholders and reflect the findings of a thorough analysis of issues including: (a) how persons shall be identified as LEP individuals, in light of the manner by which prescriptions are currently received by mail order pharmacies; (b) which languages shall be considered; (c) the manner and circumstances in which competent oral interpretation services and translation services shall be provided; (d) the information for which competent oral interpretation services and translation services shall be provided; (e) anticipated utilization, available resources, and cost considerations; and (f) standards for monitoring compliance with the regulations and ensuring the delivery of quality competent oral interpretation services and translation services.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes, particularly section 3 of the Part V of Chapter 57 of the Laws of 2012 that amended Article 137 of the Education Law by adding a new section 6829, which, inter alia, requires mail order pharmacies sending prescriptions to individuals in New York State to provide interpretation and translation services to LEP individuals. The proposed amendment subjects mail order pharmacies to the same interpretation and translation requirements that have been required for covered pharmacies within New York State since 2013. Specifically, the proposed amendment requires that with each initial transaction with patients seeking mail order pharmacy services, in addition to English, mail order pharmacies provide printed materials in Chinese, Italian, Russian and Spanish, explaining the availability of competent oral interpretation services and translation services. Persons will be identified as LEP individuals when they request such oral interpretation services and translation services or when such mail order pharmacy fills a prescription that indicates that the individual is a LEP individual. The manner and circumstances in which competent oral interpretation services and translation services will be provided is by a staff member of the mail order pharmacy or third-party contractor and services will be provided on an immediate basis but need not be provided in-person or face-to-face. The information for which competent oral interpretation and translation services shall be provided will be prescription medication labels, warning labels and other written materials. With respect to anticipated utilization, available resources, and cost considerations, based upon experience with the existing requirements for translation services in the New York City metropolitan area, the proposed requirements should prove to be neither costly nor logistically difficult for mail order pharmacies. Additionally, regarding standards for monitoring compliance with the regulations and ensuring the delivery of quality competent oral interpretation services and translation services, as in all such matters, complaints of non-compliance will be investigated and since out-of-state pharmacies require registration with the Department, they are also subject to the Department's professional discipline processes.

3. NEEDS AND BENEFITS:

The purpose of the proposed rule is to ensure that, similar to covered pharmacies, mail order pharmacies that conduct business in New York State provide LEP individuals with specified translation and interpretation services. The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Section 3 of Part V of Chapter 57 of the Laws of 2012.

As required by statute, the proposed rule is also needed to establish the requirements for the provision of interpretation and translation services by mail order pharmacies that send prescriptions to the LEP individuals within New York State.

4. COSTS:

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

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

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

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

5. LOCAL GOVERNMENT MANDATES:

The proposed rule implements the requirements of section 6829(4) of the Education Law, as added by Section 3 of Part V of Chapter 57 of the Laws of 2012. It does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed rule imposes no new reporting requirements.

7. DUPLICATION:

The proposed amendment is necessary to implement Section 3 of Part V of Chapter 57 of the Laws of 2012. There are no other State or Federal requirements on the subject matter of this amendment. Therefore, the proposed amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

The 2012 New York State budget legislation included certain amendments to the Education Law which are commonly referred to as the SafeRx Law (L. 2012, c. 57, Part V). This law, which generally became effective March 30, 2013, includes provisions to assist LEP individuals who need interpretation and translation services when filling prescriptions at covered pharmacies. Effective May 30, 2013, the Board of Regents approved regulations affecting those covered pharmacies located within New York State. Following a series of open forums and consultations with stakeholders, the Regents accepted the recommendation that the entire State be considered a single "region." In accordance with the statutory requirements and the analysis of census data, this determination resulted in a requirement that interpretation and translation services be provided in four languages, in addition to English. Other regional determinations were rejected since most led to fewer languages being covered in almost all upstate localities. Therefore, covered New York State pharmacies must now provide competent oral interpretation services and translation services in Chinese, Italian, Russian and Spanish.

The 2012 legislation also required the Commissioner of Education, in consultation with the Commissioner of DOH, to promulgate regulations, effective March 30, 2014, to establish translation and interpretation requirements for mail order pharmacies. The proposed amendment is needed to conform the Regulations of the Commissioner of Education to Section 3 of Part V of Chapter 57 of the Laws of 2012.

Consideration was given to information gathered as part of the aforementioned open forums and consultations with stakeholders, as well as experience with the existing interpretation and translation services requirements for covered pharmacies, and ultimately it was decided, consistent with the above rationale for covered pharmacies, that mail order pharmacies shall be subject to the same interpretation and translation requirements that have been required for covered pharmacies within New York State since 2013. Within this context, there were no significant alternatives to the proposed amendment and none where considered.

9. FEDERAL STANDARDS:

Since, there are no applicable federal standards for the provision of interpretation and translation services to LEP individuals by mail order pharmacies, the proposed amendment does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Section 3 of Part V of Chapter 57 of the Laws of 2012. Mail order pharmacies conducting business in New York State must comply with the interpretation and translation services requirements for LEP individuals on the effective date of the authorizing statute, March 30, 2014. It is anticipated that licensees will be able to comply with the proposed rule by the effective date so that no additional period of time will be necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The purpose of the proposed amendment is to implement the provisions of section 6829(4) of the Education Law, as added by Section 3 of Part V of Chapter 57 of the Laws of 2012 that, effective March 30, 2014, require all mail order pharmacies sending prescriptions to individuals in New York State to provide interpretation and translation services for Limited English Proficient ("LEP") individuals. The proposed amendment also subjects mail order pharmacies to the same interpretation and translation services requirements as are now required for covered pharmacies within the State. Specifically, pursuant to the proposed amendment, with each initial transaction with individuals seeking mail order pharmacy services, in addition to English, mail order pharmacies will provide printed materials, in Chinese, Italian, Russian and Spanish, explaining the availability of competent oral interpretation services and translation services. Persons will be identified as LEP individuals when they request such oral interpretation services and translation services or when such mail order pharmacy fills a prescription that indicates that the individual is a LEP individual. The manner and circumstances in which competent oral interpretation ser-

vices and translation services will be provided is by a staff member of the mail order pharmacy or third-party contractor and services will be provided on an immediate basis but need not be provided in-person or face-to-face. The information for which competent oral interpretation services and translation services shall be provided will be prescription medication labels, warning labels and other written materials.

The proposed amendment applies the same translation and interpretation requirements to mail order pharmacies that were established for covered pharmacies in 2013 and does not impose any additional costs on regulated parties beyond those required under the statute. Additionally, based upon experience with the existing requirements for translation services in the New York City metropolitan area, the proposed amendment should prove to be neither costly nor logistically difficult for mail order pharmacies.

The proposed amendment will affect all mail order pharmacies registered by the State Education Department (Department). The Department estimates that there are 5,044 registered pharmacies in New York State and 535 non-resident pharmacies are also registered to ship prescriptions into New York State. The Department estimates that fewer than 50 of these registered pharmacies are considered to be mail order pharmacies under the statutory definition and, of these pharmacies, none are small businesses. The proposed rule establishes translation and interpretation requirements for mail order pharmacies. It will not impose any new reporting, recordkeeping, or other compliance requirements, or have any adverse economic impact on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will not adversely affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required, and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the 5,044 pharmacies registered by the State Education Department ("Department") and the 535 non-resident registered pharmacies, the Department estimates that fewer than 50 of these registered pharmacies are considered to be mail order pharmacies under the statutory definition. Of these mail order pharmacies, one mail order pharmacy reports its permanent address of record is in a rural county.

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

The proposed amendment will apply to all mail order pharmacies conducting business in New York State. The proposed amendment implements the provisions of section 6829(4) of the Education Law, as added by Section 3 of Part V of Chapter 57 of the Laws of 2012 that, effective March 30, 2014, requires all mail order pharmacies sending prescriptions to individuals in New York State to provide interpretation and translation services for Limited English Proficient (LEP) individuals. It also subjects mail order pharmacies to the same interpretation and translation services requirements as are now required for covered pharmacies within the state. Specifically, with each initial transaction with individuals seeking mail order pharmacy services, in addition to English, mail order pharmacies will provide printed materials, in Chinese, Italian, Russian and Spanish, explaining the availability of competent oral interpretation services and translation services. Persons will be identified as LEP individuals when they request such oral interpretation services and translation services or when such mail order pharmacy fills a prescription that indicates that the individual is a LEP individual. The manner and circumstances in which competent oral interpretation services and translation services will be provided is by a staff member of the mail order pharmacy or third-party contractor and services will be provided on an immediate basis but need not be provided in-person or face-to-face. The information for which competent oral interpretation services and translation services shall be provided will be prescription medication labels, warning labels and other written materials.

The proposed amendment will not impose any additional professional services requirements on entities in rural areas.

3. COSTS:

The proposed amendment does not impose any additional costs on regulated parties beyond those required under the statute.

4. MINIMIZING ADVERSE IMPACT:

In developing the proposed amendment, the Department obtained input from representatives of the professions of nursing, medicine, podiatry, midwifery and dentistry. In addition, it held public hearings in Buffalo, Albany, and New York City. More than 20 public advocacy groups and representatives of the retail pharmacy chains have commented on the proposals. Further discussions were then held with representatives of the advocacy groups and of the retail pharmacy chains. The concerns of those commenting on the proposals were taken into account in modifying the original proposal, and the proposal represented in the proposed regulations was acceptable to both the advocacy groups and the chain retail pharmacies. The proposed regulations make no exception for individuals who live in rural areas, as the legislation did not permit such an exception. Therefore, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt entities in rural areas from coverage by the proposed amendment

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department of Health, statewide organizations representing parties having an interest in providing services to LEP individuals and stakeholders in providing more clear direction to patients regarding their medication regimens. Included in this group were representatives of the State Boards of Pharmacy, Medicine, Nursing, Dentistry, Podiatry, and Midwifery, and professional associations representing the pharmacy profession, such as the Pharmacists Society of the State of New York and the New York State Council of Health System Pharmacists and the New York Chain Pharmacy Association. These groups have representation from rural areas.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements in section 6829(4) of the Education Law, as added by Section 3 of Part V of Chapter 57 of the Laws of 2012, and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The State Education Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

Section 6829(4) of the Education Law, as added by Section 3 of Part V of Chapter 57 of the Laws of 2012, establishes interpretation and translation requirements for all mail order pharmacies conducting business in New York State. The proposed amendment implements the provisions of section 6829(4) of the Education Law that, effective March 30, 2014, require all mail order pharmacies sending prescriptions to individuals in New York State to provide interpretation and translation services for Limited English Proficient (LEP) individuals. It also subjects mail order pharmacies to the same interpretation and translation services requirements as are now required for covered pharmacies within the state. Specifically, with each initial transaction with individuals seeking mail order pharmacy services, in addition to English, mail order pharmacies will provide printed materials in Chinese, Italian, Russian and Spanish, explaining the availability of competent oral interpretation services and translation services. Persons will be identified as LEP individuals when they request such oral interpretation services and translation services or when such mail order pharmacy fills a prescription that indicates that the individual is a LEP individual. The manner and circumstances in which competent oral interpretation services and translation services will be provided is by a staff member of the mail order pharmacy or third-party contractor and services will be provided on an immediate basis but need not be provided in-person or face-to-face. The information for which competent oral interpretation and translation services shall be provided will be prescription medication labels, warning labels and other written materials.

Because the proposed amendment implements specific statutory requirements and directives, any impact on jobs and employment opportunities created by establishing translation and interpretation requirements for mail order pharmacies sending prescriptions to individuals in New York State is attributable to the statutory requirement, not the proposed amendment, which simply establishes standards that conform to the requirements of the statute. In any event, the same translation and interpretation requirements were established for covered pharmacies in 2013, and the Department is not aware that those requirements significantly affected jobs or employment opportunities in those pharmacies.

Therefore, 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 was not prepared.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Elementary and Secondary Education Act (ESEA) Flexibility and School and School District Accountability

I.D. No. EDU-27-14-00013-EP
Filing No. 556
Filing Date: 2014-06-24
Effective Date: 2014-06-24

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

Proposed Action: Amendment of section 100.18(i) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 210 (not subdivided), 215 (not subdivided) 305(1), (2) and (20), 308 (not subdivided), 309 (not subdivided), 3204(3) and 3713(1) and (2)

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

Specific reasons underlying the finding of necessity: At its February 2014 meeting, the Board of Regents directed the State Education Department (SED or "the Department") to submit a request to the United States Department of Education (USDE) to amend the provisions of the approved ESEA Flexibility Waiver Request related to making adequate yearly progress (AYP); removal criteria for Priority Schools, Focus Districts and Focus Schools; and the methodology used to determine elementary-middle level English language arts and mathematics annual measurable objectives (AMO).

On April 22, 2014, the USDE approved SED's request to reset the AMOs. At the April 2014 Regents meeting, the Board of Regents adopted a separate emergency amendment of section 100.18(i)(2) and (j) (NYS State Register; May 14, 2014; EDU-19-14-00008-EP) to implement this part of SED's Waiver Renewal Request. It is anticipated that the rule will be presented for permanent adoption at the July 2014 Regents meeting.

Earlier this month, USDE informed SED verbally that the request to amend the removal criteria for Priority Schools, Focus Districts and Focus Schools has been approved. Consistent with the proposed Waiver Renewal Request, the proposed rule amends Commissioner's Regulations section 100.18(i)(1) and (2) to align the Commissioner's Regulations with the submitted ESEA Flexibility Waiver Renewal Request. Adoption of the proposed amendment is necessary to ensure a seamless transition to the revised school and school district accountability plan under the Waiver. The amendment will provide school districts with the ability to demonstrate improvements, using progress measures that closely align with the federal school turnaround principles described in Race To The Top and School Improvement Grant requirements.

Because the Board of Regents meets at scheduled intervals, and does not meet during the month of August, the September 15-16, 2014 Regents meeting is the earliest the proposed rule could be presented for regular (non-emergency) adoption, after publication of a Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period required under the State Administrative Procedure Act. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the September meeting, would be October 1, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency adoption of these regulations is necessary now for the preservation of the general welfare to immediately conform the Commissioner's Regulations to New York State's ESEA Flexibility Waiver Renewal Request with respect to the removal criteria for Priority Schools, Focus Districts and Focus Schools, thereby allowing the Commissioner to consider additional progress measures, including, but not limited to, Student Growth Performance (SGP) and gap reduction, in determining whether to remove Priority Schools, Focus Districts and Focus Schools from accountability status while also requiring that accountability groups for which a school or district has not been identified perform above the threshold for identification at the time of removal. Emergency action will also ensure that school districts meet school/school district accountability requirements for the 2013-2014 school year and beyond in a timely manner.

It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at its September 15-16, 2014 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: Elementary and Secondary Education Act (ESEA) Flexibility and school and school district accountability.

Purpose: Conform regulations to State's ESEA Flexibility Waiver Renewal with respect to school and district removal criteria.

Text of emergency/proposed rule: Paragraphs (1) and (2) of subdivision (i) of section 100.18 of the Regulations of the Commissioner of Education are amended, effective June 24, 2014, as follows:

(1) Removal of priority school designation. Based upon 2011-2012 and 2012-2013 school year results, and each two consecutive school year period thereafter, a school district or charter school may petition for a school to be removed from priority status if the school meets performance targets established by the commissioner, [which will at a minimum require that] *and* the school [have] *has* a combined performance index in ELA and mathematics for the all students group that exceeds the thresholds for identification as a priority school *in the second year of the two year period* [for two consecutive years by at least 10 index points]. For high schools, the four year *or five year* cohort graduation rate must equal at least [70] *60* percent for two consecutive years*, the four year graduation rate cohort must equal or exceed 60 percent in the second year of the two year period and the school must meet the performance targets established by the commissioner,* except for transfer high schools, for which the commissioner will establish a graduation rate goal and progress targets based on the specific conditions and circumstances present at each transfer high school. The school must also meet the participation rate requirement in ELA and mathematics for all groups for which it is accountable in the most current school year results that are being used as the basis for the petition.

(i) A school that begins to fully implement a whole-school reform model must complete implementation of the model even after removal from priority designation.

(ii) Schools that are removed from priority status before they begin implementation of a model will not be required to implement the model.

(2) Removal of focus district and focus school designation.

(i) Commencing with 2011-2012 and 2012-2013 school year results, and each consecutive two year period thereafter, a school district may petition to have its focus designation revised if the school district meets the participation requirement in ELA and math for all accountability groups and the performance targets established by the commissioner, [which will at a minimum require that] *and* the school district [have] *has* a combined performance index in ELA and mathematics for each group for which the school district [was identified] *is accountable* that exceeds the thresholds for identification [for two consecutive years by at least 10 index points and by at least 10 percent for all groups for which the school district was identified for graduation rate] *in the second year of the two year period. For all groups for which the school district is accountable for graduation rate, the district must also exceed the graduation rate threshold for identification in both years of the two year period.* The school district may petition for the removal of focus designation for any focus school in the school district that meets these same performance targets and participation rate requirements for ELA and mathematics.

(ii) . . .
(iii) . . .
(iv) . . .
(v) . . .

(vi) Removal of focus charter school designation.

(a) Commencing with 2011-2012 and 2012-13 school year results and for each consecutive two year period thereafter, a charter school may petition for the charter school to be removed from focus status if the charter school meets the participation requirement in ELA and math for all accountability groups and the performance targets established by the commissioner, which will at a minimum require that the charter school have a combined performance index in ELA and mathematics for each group for which the charter school was identified that exceeds the thresholds for identification *in the second year of the two year period. The charter school must also exceed the graduation rate threshold for identification* for two consecutive years [by at least 10 index points and by at least 10 percent] for all accountability groups for which the [school district was identified] *charter school is accountable* for graduation rate.

(b) . . .

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 September 21, 2014.

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

Data, views or arguments may be submitted to: Ken Slentz, Deputy Commissioner, State Education Department, Office of P-12 Education, State Education Building, 2M West, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDP12@mail.nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

Education Law section 210 authorizes Regents to register domestic and foreign institutions in terms of State standards, and fix the value of degrees, diplomas and certificates issued by institutions of other states or countries and presented for entrance to schools, colleges and professions in the State.

Education Law section 215 authorizes Commissioner to require schools and school districts to submit reports containing such information as Commissioner shall prescribe.

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement Regents policy relating to public school and district accountability.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to partially implement New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal Request relating to criteria for removal of Priority Schools, Focus Districts and Focus Schools from accountability status.

At its February 2014 meeting, the Board of Regents directed the State Education Department (SED) to submit a an ESEA Flexibility Waiver Renewal Request to the United States Department of Education (USDE) to amend the provisions of the State's approved ESEA Flexibility Waiver Request related to making adequate yearly progress (AYP); removal criteria for Priority Schools, Focus Districts and Focus Schools; and the methodology used to determine elementary-middle level English language arts and mathematics annual measurable objectives (AMOs).

At the April 2014 Regents meeting, the Board of Regents adopted a separate emergency amendment of section 100.18(i)(2) and (j) (NYS State Register; May 14, 2014; EDU-19-14-00008-EP) to implement this part of SED's Waiver Renewal Request. It is anticipated that the rule will be presented for permanent adoption at the July 2014 Regents meeting.

In June 2014, USDE informed SED that the request to amend the removal criteria for Priority Schools, Focus Districts and Focus Schools has been approved. Consistent with the proposed Waiver Renewal Request, the proposed rule amends Commissioner's Regulations section 100.18(i)(1) and (2) to align the Commissioner's Regulations with the submitted ESEA Flexibility Waiver Renewal Request. Adoption of the proposed amendment is necessary to ensure a seamless transition to the revised school and school district accountability plan under the Waiver. The amendment will provide school districts with the ability to demonstrate improvements, using progress measures that closely align with the federal school turnaround principles described in Race To The Top and School Improvement Grant requirements.

USDE review of the remainder of the Waiver Renewal application, relating to determinations of Adequate Yearly Progress (AYP), is still pending.

4. COSTS:

Cost to the State: none.

Costs to local government: none.

Cost to private regulated parties: none.

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

The proposed amendment does not impose any direct costs on the State, local governments, private regulated parties or the State Education Department. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing staff and resources.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to State and Federal standards for public school and school district accountability and will not impose any additional program, service, duty or responsibility upon local governments. The proposed rule amends section 100.18(i)(1) and (2) of the Commissioner's Regulations to align it with the State's ESEA Flexibility Waiver Renewal Request. The purpose of the proposed amendment is to allow the Commissioner to consider additional progress measures, including, but not limited to, Student Growth Performance (SGP) and gap reduction, in determining whether to remove Priority Schools, Focus Districts and Focus Schools from accountability status, while also requiring that accountability groups for which a school or district has not been identified perform above the threshold for identification at the time of removal.

6. PAPERWORK:

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

7. DUPLICATION:

The proposed rule amends the Commissioner's Regulations to align them with the State's ESEA Flexibility Waiver Renewal Request, and does not duplicate existing State or federal requirements.

8. ALTERNATIVES:

There were no significant alternatives and none were considered. The proposed amendment is necessary to partially implement New York State's approved ESEA Flexibility Waiver Renewal Request relating to criteria for removal of Priority Schools, Focus Districts and Focus Schools from accountability status. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

9. FEDERAL STANDARDS:

The proposed amendment is necessary to partially implement New York State's approved ESEA Flexibility Waiver Renewal Request relating to criteria for removal of Priority Schools, Focus Districts and Focus Schools from accountability status, and does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the proposed rule by its effective date. Furthermore, the Department intends to take steps to provide sufficient notice of the proposed amendment to ensure that school districts and students are made aware of the rule changes. The Department will also take steps to share a variety of resources to school districts to provide guidance with implementation.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to public school and school district accountability and is necessary to partially implement New York State's approved ESEA Waiver Renewal Request relating to criteria for removal of Priority Schools, Focus Districts and Focus Schools from accountability status. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

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

Local Governments:

1. EFFECT OF RULE:

The proposed amendment applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the Elementary and Secondary Education Act of 1965, as amended.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to partially implement New York State's approved ESEA Flexibility Waiver Renewal Request relating to criteria for removal of Priority Schools, Focus Districts and Focus Schools from accountability status. Consistent with the proposed Waiver Renewal Request, the proposed rule amends the Commissioner's Regulations to align them with the submitted ESEA Flexibility Waiver Renewal Request. The purpose of the proposed amendment is to allow the Commissioner to consider additional progress measures, including, but not limited to, Student Growth Performance (SGP) and gap reduction, in determining whether to remove Priority Schools, Focus Districts and Focus Schools from accountability status, while also requiring that accountability groups for which a school or district has not been identified perform above the threshold for identification at the time of removal.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional services requirements.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any direct costs on school districts or charter schools. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing staff and resources.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule imposes no technological requirements on school districts. Costs are discussed under the Compliance Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment relates to public school and school district accountability and is necessary to partially implement New York State's approved Elementary and Secondary Education Act (ESEA) Waiver Renewal Request relating to criteria for removal of Priority Schools, Focus Districts and Focus Schools from accountability status. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the Elementary and Secondary Education Act of 1965, as amended.

Consistent with the proposed Waiver Renewal Request, the proposed rule amends the Commissioner's Regulations to align them with the submitted ESEA Flexibility Waiver Renewal Request. The purpose of the proposed amendment is to allow the Commissioner to consider additional progress measures, including, but not limited to, Student Growth Performance (SGP) and gap reduction, in determining whether to remove Priority Schools, Focus Districts and Focus Schools from accountability status, while also requiring that accountability groups for which a school or district has not been identified perform above the threshold for identification at the time of removal.

The rule has been carefully drafted to meet specific federal and State requirements. The Department intends to take steps to provide sufficient notice of the proposed amendment to ensure that school districts and students are made aware of the rule changes. The Department will also take steps to share a variety of resources to school districts to provide guidance with implementation.

7. LOCAL GOVERNMENT PARTICIPATION:

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

8. INITIAL REVIEW OF RULE (SAPA § 207)

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to partially implement New York State's approved ESEA Waiver Renewal Request relating to criteria for removal of Priority Schools, Focus Districts and Focus Schools from accountability status. Accordingly, there is no need for a shorter review period.

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the Elementary and Secondary Education Act (ESEA) of 1965, as amended, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment is necessary to partially implement New York State's approved ESEA Flexibility Waiver Renewal Request relating to criteria for removal of Priority Schools, Focus Districts and Focus Schools from accountability status. Consistent with the proposed Waiver Renewal Request, the proposed rule amends the Commissioner's Regulations to align them with the submitted ESEA Flexibility Waiver Renewal Request. The purpose of the proposed amendment is to allow the Commissioner to consider additional progress measures, including, but not limited to, Student Growth Performance (SGP) and gap reduction, in determining whether to remove Priority Schools, Focus Districts and Focus Schools from accountability status, while also requiring that accountability groups for which a school or district has not been identified perform above the threshold for identification at the time of removal.

The proposed amendment imposes no additional professional service requirements.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any direct costs on school districts or charter schools in rural areas. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing staff and resources.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment relates to public school and school district accountability and is necessary to partially implement New York State's approved Elementary and Secondary Education Act (ESEA) Waiver Renewal Request relating to criteria for removal of Priority Schools, Focus Districts and Focus Schools from accountability status. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the Elementary and Secondary Education Act of 1965, as amended.

Consistent with the proposed Waiver Renewal Request, the proposed rule amends the Commissioner's Regulations to align them with the submitted ESEA Flexibility Waiver Renewal Request. The purpose of the proposed amendment is to allow the Commissioner to consider additional progress measures, including, but not limited to, Student Growth Performance (SGP) and gap reduction, in determining whether to remove Priority Schools, Focus Districts and Focus Schools from accountability status, while also requiring that accountability groups for which a school or district has not been identified perform above the threshold for identification at the time of removal.

The rule has been carefully drafted to meet specific federal and State requirements. Since these requirements apply to all local educational agencies in the State that receive ESEA funds, it is not possible to adopt different standards for school districts and charter schools in rural areas. The Department intends to take steps to provide sufficient notice of the proposed amendment to ensure that school districts and students are made aware of the rule changes. The Department will also take steps to share a variety of resources to school districts to provide guidance with implementation.

5. RURAL AREA PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to partially implement New York State's approved Elementary and Secondary Education Act (ESEA) Waiver Renewal Request relating to criteria for removal of Priority Schools, Focus Districts and Focus Schools from accountability status. Accordingly, there is no need for a shorter review period.

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

Job Impact Statement

The proposed amendment relates to public school and school district accountability and is necessary to partially implement New York State's approved Elementary and Secondary Education Act (ESEA) Waiver Renewal Request relating to criteria for removal of Priority Schools, Focus Districts and Focus Schools from accountability status. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

The proposed amendment applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the ESEA, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it

will have no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Termination Decisions for Probationary Teachers Based on Annual Professional Performance Reviews (APPR)

I.D. No. EDU-27-14-00015-EP
Filing No. 548
Filing Date: 2014-06-24
Effective Date: 2014-06-24

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

Proposed Action: Amendment of section 30-2.1(d) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1), (2) and 3012-c

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

Specific reasons underlying the finding of necessity: Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5) for revised rule makings, is the September 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the September 2014 meeting, would be October 1, 2014, the date a Notice of Adoption would be published in the State Register. Therefore, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare in order to ensure that school districts and boards of cooperative educational services are notified of the clarifying definition of performance for termination decisions made based on APPR results for the 2013-2014 school year and thereafter.

Subject: Termination Decisions for Probationary Teachers Based on Annual Professional Performance Reviews (APPR).

Purpose: To define performance for purposes of termination decisions for probationary teachers related to APPRs.

Text of emergency/proposed rule: 1. Subdivision (d) of section 30-2.1 of the Rules of the Board of Regents is amended effective June 24, 2014, to read as follows:

(d) Annual professional performance reviews of classroom teachers and building principals conducted pursuant to this Subpart shall be a significant factor for employment decisions, including but not limited to, promotion, retention, tenure determinations, termination and supplemental compensation, in accordance with Education Law section 3012-c(1). Nothing herein shall be construed to affect the statutory right of a school district or BOCES to terminate a probationary teacher or principal for statutorily and constitutionally permissible reasons other than the performance of the teacher or principal in the classroom or school, including but not limited to misconduct. *For purposes of this subdivision, section 30-2.11(c) of this Subpart, and Education Law section 3012-c(1) and (5)(b), performance shall mean a teacher's or principal's overall composite rating pursuant to an annual professional performance review conducted under this Subpart.*

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 September 21, 2014.

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

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 charges the Department with the general management and supervision of the educational work of the State and establishes the Regents as head of the Department.

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

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

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

Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010 and amended by Chapter 21 of the Laws of 2012, establishes requirements for the conduct of annual professional performance reviews (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES).

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above authority vested in the Regents and Commissioner to carry into effect State educational laws and policies, and is necessary to clarify what constitutes "performance" for purposes of termination decisions related to the APPR.

3. NEEDS AND BENEFITS:

The purpose of the proposed rule is to clarify that the references to "performance" of the teacher or principal in the classroom or school for purposes of Education Law § 3012-c(1) and (5)(b) and section 30-2.1(d) and 30-2.11(c) of the Rules of the Board of Regents are references to the teacher's or principal's performance on the APPR, as measured by the teacher's or principal's overall composite rating. Accordingly, where a board of education has not yet completed an APPR for a probationary teacher or principal, it may terminate the probationary teacher for any statutorily and constitutionally permissible reasons. Those reasons may include the quality of the instruction or services provided by the probationary teacher or principal based on evidence other than the composite APPR rating. Once it has completed an annual professional performance review, the board of education must consider the APPR rating as a significant factor to retain or terminate the employee, unless the employee is being terminated for statutorily and constitutionally permissible reasons other than the teacher's or principal's composite APPR rating, such as misconduct, insubordination, time and attendance issues and the like.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties: none.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

6. PAPERWORK:

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

7. DUPLICATION:

The rule does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

The rule has been carefully drafted to address the concerns raised by the public to clarify what constitutes performance for purposes of termination decisions relating to the APPR. Since Education Law § 3012-c applies equally to all school districts and BOCES throughout the State, it was not possible to establish different compliance and reporting requirements for regulated parties.

9. FEDERAL STANDARDS:

There are no applicable Federal standards concerning the APPR for classroom teachers and building principals as established in Education Law section 3012-c.

10. COMPLIANCE SCHEDULE:

The proposed amendment will become effective on its stated effective date. No further time is needed to comply.

Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of the proposed rule is to clarify that the references to "performance" of the teacher or principal in the classroom or school for purposes of Education Law § 3012-c(1) and (5)(b) and section 30-2.1(d) and 30-2.11(c) of the Rules of the Board of Regents are references to the teacher's or principal's performance on the APPR, as measured by the teacher's or principal's overall composite rating. Accordingly, where a board of education has not yet completed an APPR for a probationary teacher or principal, it may terminate the probationary teacher for any statutorily and constitutionally permissible reasons. Those reasons may include the quality of the instruction or services provided by the probationary teacher or principal based on evidence other than the composite APPR

rating. Once it has completed an annual professional performance review, the board of education must consider the APPR rating as a significant factor to retain or terminate the employee, unless the employee is being terminated for statutorily and constitutionally permissible reasons other than the teacher's or principal's composite APPR rating, such as misconduct, insubordination, time and attendance issues and the like.

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

(b) Local governments:

1. EFFECT OF RULE:

The rule applies to all school districts and boards of cooperative educational services ("BOCES") in the State.

2. COMPLIANCE REQUIREMENTS:

The purpose of the proposed rule is to clarify that the references to "performance" of the teacher or principal in the classroom or school for purposes of Education Law § 3012-c(1) and (5)(b) and section 30-2.1(d) and 30-2.11(c) of the Rules of the Board of Regents are references to the teacher's or principal's performance on the APPR, as measured by the teacher's or principal's overall composite rating. Accordingly, where a board of education has not yet completed an APPR for a probationary teacher or principal, it may terminate the probationary teacher for any statutorily and constitutionally permissible reasons. Those reasons may include the quality of the instruction or services provided by the probationary teacher or principal based on evidence other than the composite APPR rating. Once it has completed an annual professional performance review, the board of education must consider the APPR rating as a significant factor to retain or terminate the employee, unless the employee is being terminated for statutorily and constitutionally permissible reasons other than the teacher's or principal's composite APPR rating, such as misconduct, insubordination, time and attendance issues and the like.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements on school districts or BOCES.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any compliance costs on school districts and BOCES, beyond those imposed by Education Law § 3012-c.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule does not impose any additional technological requirements on school districts or BOCES. Economic feasibility is addressed above under Compliance Costs.

6. MINIMIZING ADVERSE IMPACT:

The rule has been carefully drafted to address the concerns raised by the public to clarify what constitutes performance for purposes of the APPR and termination decisions. Since Education Law § 3012-c applies equally to all school districts and BOCES throughout the State, it was not possible to establish different compliance and reporting requirements.

7. LOCAL GOVERNMENT PARTICIPATION:

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

During the public comment period, the Department will also be seeking comments on the proposed amendment from representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts and boards of cooperative educational services (BOCES) in the State, 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 rule is to clarify that the references to "performance" of the teacher or principal in the classroom or school for purposes of Education Law § 3012-c(1) and (5)(b) and section 30-2.1(d) and section 30-2.11(c) of the Rules of the Board of Regents are references to the teacher's or principal's performance on the APPR, as measured by the teacher's or principal's overall composite rating. Accordingly, where a board of education has not yet completed an APPR for a probationary teacher or principal, it may terminate the probationary teacher for any statutorily and constitutionally permissible reasons. Those reasons may include the quality of the instruction or services provided by the probationary teacher or principal based on evidence other than the composite APPR rating. Once it has completed an annual professional performance review, the board of education must consider the APPR rating as a significant factor to retain or terminate the employee, unless the employee is being terminated for statutorily and constitutionally permissible reasons other than the teacher's or principal's composite APPR rating, such as misconduct, insubordination, time and attendance issues and the like.

3. COSTS:

The proposed amendment does not impose any additional costs on a school district or BOCES.

4. MINIMIZING ADVERSE IMPACT:

The rule has been carefully drafted to address the concerns received by the public relating to what constitutes performance for APPR purposes and termination decisions. Since Education Law § 3012-c applies to all school districts and BOCES throughout the State, it was not possible to establish different compliance and reporting requirements for regulated parties in rural areas.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed rule is to clarify that the references to "performance" of the teacher or principal in the classroom or school for purposes of Education Law § 3012-c(1) and(5)(b) section 30-2.1(d) and 30-2.11(c) of the Rules of the Board of Regents are references to the teacher's or principal's performance on the APPR, as measured by the teacher's or principal's overall composite rating. Accordingly, where a board of education has not yet completed an APPR for a probationary teacher or principal, it may terminate the probationary teacher for any statutorily and constitutionally permissible reasons. Those reasons may include the quality of the instruction or services provided by the probationary teacher or principal based on evidence other than the composite APPR rating. Once it has completed an annual professional performance review, the board of education must consider the APPR rating as a significant factor to retain or terminate the employee, unless the employee is being terminated for statutorily and constitutionally permissible reasons other than the teacher's or principal's composite APPR rating, such as misconduct, insubordination, time and attendance issues and the like.

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

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Outsourcing Facilities Engaged in the Compounding of Sterile Drugs

I.D. No. EDU-27-14-00017-EP

Filing No. 557

Filing Date: 2014-06-24

Effective Date: 2014-06-29

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

Proposed Action: Amendment of sections 29.2, 29.7, 63.6 and 63.8 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 212(3), 215 (not subdivided), 6504 (not subdivided), 6507(2)(a), 6509(1)-(11), 6802(1)-(23), 6808(1), (5), (6), (7), 6808-b(1), (4)(f), 6810(14), 6811(26), 6811-a(1), (2), 6812(1), 6817(1) and 6831(1)-(14); L. 2014, ch. 60, part D

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

Specific reasons underlying the finding of necessity: The purpose of this amendment is to implement Part D of Chapter 60 of the Laws of 2014, which becomes effective June 29, 2014. The amendments to the Education Law provide for the registration and regulation of outsourcing facilities, a new category of establishment recognized by the Federal Food and Drug Administration pursuant to the Drug Quality and Security Act (DQSA) of 2013. DQSA's provisions are designed to ensure the safety of

compounded drugs and our nation's pharmaceutical supply chain in order to prevent a future public health crisis like the 2012 meningitis outbreak tied to the New England Compounding Center. DQSA, inter alia, provides for comprehensive oversight of outsourcing facilities, which seek to compound and distribute sterile drugs and products to hospitals and medical practices without first obtaining patient-specific prescriptions. Part D of Chapter 60 of the Laws of 2014 conforms the Education Law to the requirements of DQSA.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for adoption on a non-emergency basis, after expiration of the required 45-day public comment provided for in the State Administrative Procedure Act (SAPA) section 202(1) and (5), would be the September 15-16 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the September meeting, would be October 1, 2014, the date the Notice of Adoption would be published in the State Register. However, the provisions of Part D of Chapter 60 of the Laws become effective June 29, 2014.

Subject: Outsourcing facilities engaged in the compounding of sterile drugs.

Purpose: To implement L. 2014, ch. 60, part D by establishing criteria for registration of outsourcing facilities.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.regents.state.ny.us): The Commissioner of Education proposes to amend sections 29.2 and29.7 of the Rules of the Board of Regents and sections 63.6 and 63.8 of the Regulations of the Commissioner of Education, relating to the registration and regulation of resident and nonresident establishments seeking registration as outsourcing facilities. The following is a summary of the substance of the proposed amendment:

Subdivision (a) of section 29.2 of the Rules of the Board of Regents is amended to add a new paragraph (14) to include in the definition of unprofessional conduct the failure to adhere to applicable practice guidelines, as determined by the Commissioner, for the compounding of sterile drugs and products.

Paragraph (17) of subdivision (a) of section 29.7 of the Rules of the Board of Regents is amended to clarify that the term "beyond use date" means the expiration date of a drug. This clarification is needed to conform terms used in other federal and State provisions and to provide clarity to regulated parties.

Paragraphs (2) and (4) of subdivision (a) of section 63.6 of the Regulations of the Commissioner of Education are amended to add "outsourcing facilities" to the list of establishments that require a registration and to require such establishments to be equipped with proper sanitary appliances and kept in a clean and orderly manner.

Subdivision (c) of section 63.6 of the Regulations of the Commissioner of Education is amended to update and clarify the educational preparation needed for persons designated to supervise establishments that are registered as manufacturers or wholesalers, and to require that outsourcing facilities be under the supervision of a licensed pharmacist at all times. The amendment to subdivision (c) also defines the requirements for registration and renewal of registrations of outsourcing facilities that are located within New York State, including a requirement that each outsourcing facility must first become registered as such a facility with the federal Food and Drug Administration (FDA) under the provisions of the federal Food, Drug and Cosmetic Act and be subject to annual inspections. The amendment to this subdivision includes a requirement that, if the facility seeks to fill patient specific prescriptions, it must also be registered as a pharmacy; it defines record-keeping and reporting requirements to the Department, establishes the need to maintain registration with the FDA pursuant to the Food, Drug and Cosmetic Act for renewal of it registration. It also requires outsourcing facilities to comply with good manufacturing practices as specified in 21 CFR 210 and 211.

Section 63.8 of the Regulations of the Commissioner of Education is amended to add "outsourcing facilities" to the list of nonresident establishments that must be registered by the Department and sets forth the registration requirements for nonresident outsourcing facilities. The amendment to this section also requires that for a renewal of registration in New York State, such facilities must maintain both registrations with the FDA and with the state in which they are physically located/state of residence. The amendment to this section also subjects nonresident outsourcing facilities to annual inspections. Further, the amendment to this section provides that if the facility seeks to fill patient specific prescriptions, that it must also be registered as a pharmacy; it defines record-keeping and reporting requirements to the Department, and requires nonresident outsourcing facilities to comply with good manufacturing practices as specified in 21 CFR 210 and 211, and as enforced by the FDA for the preparation of compounded sterile drugs and products. In addition, the proposed amendment requires nonresident outsourcing facilities to notify the Department, on forms prescribed by the Department not less than 30 days prior to the expected relocation or discontinuance, and provide any information and/or reports to the Department upon the Commissioner's request.

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 September 21, 2014.

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

Data, views or arguments may be submitted to: Office of the Professions, Office of the Deputy Commissioner, State Education Department, State Education Building 2M, 89 Washington Ave., Albany, NY 12234, (518) 474-1941, email: opdepcom@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Subdivision (3) of section 212 of the Education Law authorizes the State Education Department (Department) to determine and set fees for certifications and permits.

Section 215 of the Education Law grants the Board of Regents, or the Commissioner of Education, or their representatives, the authority to require, any institution in the university and any school or institution under the educational supervision of the state, to submit reports giving such information and in such form as the Board of Regents or the Commissioner of Education shall prescribe.

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

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

Section 6509 of the Education Law authorizes the Board of Regents to promulgate rules regarding professional misconduct in certain professions.

Part D of Chapter 60 of the Laws of 2014 amends various provisions of the Education Law to implement Title I of the federal Drug Quality and Security Act. Part D of Chapter 60 of the Laws of 2014 provides for the Department's registration and regulation of both resident and nonresident outsourcing facilities by the Department and includes several reporting and compliance requirements for outsourcing facilities.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment implements Part D of Chapter 60 of the Laws of 2014 by establishing the registration and regulatory requirements for both resident and nonresident outsourcing facilities.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to ensure the safety of compounded drugs by establishing requirements for the registration and regulation of both resident and nonresident outsourcing facilities that seek to compound and distribute sterile drugs and products without first obtaining patient-specific prescriptions. The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Part D of Chapter 60 of the Laws of 2014, which implements the requirements of Title I of DSQA relating to the registration and regulation of outsourcing facilities.

4. COSTS:

(a) Costs to State government. The proposed amendment implements statutory requirements and establishes standards as directed by statute. The amendment will not impose any additional cost on State government, over and above the cost imposed by the statutory requirements.

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

(c) Cost to private regulated parties. A resident or nonresident establishment seeking registration as an outsourcing facility by the Department would be required to pay the Department a registration fee. Such fee would be paid once as part of the establishment's application for initial registration, which, if granted, would be for a three-year period. After initial registration and once every three years thereafter, a resident or nonresident establishments seeking renewal of its registration would be required to pay the Department a fee of $520 to defray the cost of its review, upon submission of the establishment's application. Therefore, the annualized cost for a facility's initial registration is $275 and the annualized cost for a facility's subsequent registration or registrations is $173.33.

The Department estimates that it would require a staff member to spend about eight hours to complete the initial and renewal of registration applications. Based on an hourly rate of $37 per hour (including fringe benefits), the Department estimates that the cost of completing either one

of these applications to be $296. An application would have to be completed once every three years. Therefore, the annualized cost of completing the application is estimated to be $98.

The proposed amendment does not impose any costs beyond those imposed by Part D of Chapter 60 of the Laws of 2014; except the proposed amendment requires that outsourcing facilities submit, upon initial registration and at least annually thereafter, the results of an inspection by either representatives of the FDA, the Department or a third party acceptable to the Department. Regulated facilities will not be required to pay any additional fees for an inspection by the Department. To date, the Department has not approved any third parties to perform these inspections. Therefore, it does not have any estimate of costs for inspections performed by third parties.

(d) Cost to the regulatory agency. The proposed amendment does not impose additional costs on the Department beyond those imposed by statute and the Department estimates that any costs incurred by the Department to inspect these facilities will be absorbed by existing staff and the registration and renewal fees paid by the outsourcing facilities.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment implements the requirements of Part D of Chapter 60 of the Laws of 2014 relating to the registration and regulation of both resident and nonresident outsourcing facilities. It does not impose any programs, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment requires outsourcing facilities to submit, upon initial registration and at least annually thereafter, the results of an inspection by either representatives of the FDA, the Department or a third party acceptable to the Department. The proposed amendment further requires outsourcing facilities submit a report, on a form prescribed by the Commissioner, to the Executive Secretary to the State Board upon initial registration and every six months thereafter, identifying the drugs compounded by the facility during the 6-month period and providing certain information relating to such drugs. It requires outsourcing facilities to maintain quality control records for determining beyond use dating and stability for five years and to make such records available to the Department for review and copying upon request. The proposed amendment also requires non-resident outsourcing facilities to notify the Department on forms prescribed by the Department at least 30 days prior to the expected date of relocation or discontinuance. However, the Department intends to accept electronic submissions for some or all of the above-referenced reporting requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

The proposed amendment is necessary to implement Part D of Chapter 60 of the Laws of 2014, which in turn, implements the requirements of Title I of DSQA relating to the registration and regulation of outsourcing facilities that seek to compound sterile drugs and products without first obtaining patient-specific prescriptions. There are no viable alternatives to the proposed amendments and none were considered.

9. FEDERAL STANDARDS:

The proposed amendment implements Title I of the federal Drug Safety and Security Act.

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to conform to the requirements of Part D of Chapter 60 of the Laws of 2014, which becomes effective on June 29, 2014. It is anticipated that outsourcing facilities that wish to compound sterile drugs and products in this State will be able to comply with the proposed amendment by the effective date. Therefore, no additional period of time will be necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

(a) Small Businesses:

1. EFFECT OF RULE:

The purpose of the proposed amendment is to implement the requirements of Part D of Chapter 60 of the Laws of 2014 by establishing registration and regulation requirements for both resident and nonresidents establishments seeking to compound and/or distribute sterile drugs and products in New York State, without first obtaining patient-specific prescriptions. Such establishments are referred to as outsourcing facilities.

The Department does not know the exact number of establishments that are small businesses that might potentially apply for registration as outsourcing facilities. However, the Department is aware of five resident establishments that have applied to the Federal Food and Drug Administration to be recognized by that agency as outsourcing facilities, which is a pre-requisite for New York State registration. Of these five establishments, it appears that four of them are small businesses.

2. COMPLIANCE REQUIREMENTS:

There are compliance requirements for resident and nonresident establishments seeking registration as outsourcing facilities. Among other requirements, the proposed amendment requires that outsourcing facilities submit, upon initial registration and at least annually thereafter, the results of an inspection by either representatives of the FDA, the Department or a third party acceptable to the Department. The proposed amendment further requires that a New York registered pharmacist be present at all times when an outsourcing facility is open for business and that outsourcing facilities submit a report, on a form prescribed by the Commissioner, to the Executive Secretary to the State Board upon initial registration and every six months thereafter, identifying the drugs compounded by the facility during the 6-month period and providing certain information relating to such drugs. It requires outsourcing facilities to maintain quality control records for determining beyond use dating and stability for five years and to make such records available to the Department for review and copying upon request. It further requires all outsourcing facilities to comply with the special provisions relating to outsourcing facilities set forth in Education Law § 6831 and to comply with good manufacturing practices as defined by the FDA for such facilities. The proposed amendment also requires nonresident outsourcing facilities to notify the Department on forms prescribed by the Department at least 30 days prior to the expected date of relocation or discontinuance.

The proposed amendment also provides that an outsourcing facility's failure to adhere to applicable practice guidelines for the compounding of sterile drugs and products is unprofessional misconduct and clarifies that holding for sale, offering for sale, or selling any drug later than the beyond use date, which means the expiration date of the drug, constitutes unprofessional misconduct.

The proposed amendment is necessary to implement Part D of Chapter 60 of the Laws of 2014, which implements the requirements of Title I of DQSA.

3. PROFESSIONAL SERVICES:

No professional services are expected to be required by small businesses to comply with the proposed amendment. The regular staff of small businesses will be able to complete the application for registration as an outsourcing facility needed for review by the Department. The regular staff of small businesses will further be able to comply with the reporting and maintenance of quality control record requirements for such facilities.

4. COMPLIANCE COSTS:

A resident or nonresident establishment seeking registration as an outsourcing facility by the Department would be required to pay the Department a registration fee. Such fee would be paid once as part of the establishment's application for initial registration, which, if granted, would be for a three-year period. After initial registration and once every three years thereafter, a resident or nonresident establishments seeking renewal of its registration would be required to pay the Department a fee of $520 to defray the cost of its review, upon submission of the establishment's application. Therefore, the annualized cost for a facility's initial registration is $275 and the annualized cost for a facility's subsequent registration or registrations is $173.33.

The Department estimates that it would require a staff member to spend about eight hours to complete the initial and renewal of registration applications. Based on an hourly rate of $37 per hour (including fringe benefits), the Department estimates that the cost of completing either one of these applications to be $296. An application would have to be completed once every three years. Therefore, the annualized cost of completing the application is estimated to be $98.

The proposed amendment does not impose any costs beyond those imposed by Part D of Chapter 60 of the Laws of 2014; except the proposed amendment requires that outsourcing facilities submit, upon initial registration and at least annually thereafter, the results of an inspection by either representatives of the FDA, the Department or a third party acceptable to the Department. The Department estimates that any costs incurred by the Department to inspect these facilities will be absorbed by existing staff and the registration and renewal fees paid by the outsourcing facilities. Regulated facilities will not be required to pay any additional fees for an inspection by the Department. To date, the Department has not approved any third parties to perform these inspections. Therefore, it does not have any estimate of costs for inspections performed by third parties.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule will not impose technological requirements on regulated parties. See above "Compliance Costs" for the economic impact of the regulation.

6. MINIMIZING ADVERSE IMPACT:

The Department believes that requirements for registration and regulation of resident and nonresident outsourcing facilities are reasonable, and that uniform standards should apply, regardless of the size of such facility, in order to ensure the safety of compounded sterile drugs and products and our state's and nation's pharmaceutical supply chain and to implement Part D of Chapter 60 of the Laws of 2014.

7. SMALL BUSINESS PARTICIPATION:

The Department has shared the proposed amendment with the Pharmacists Society of the State of New York and the New York State Council of Health System Pharmacists; which have members who work in small businesses. The Department has also shared the proposed amendment with the five establishments located in New York that are currently registered by the FDA as an outsourcing facility and who would be affected by this regulation if they seek registration in New York.

(b) Local Governments:

The proposed amendment establishes registration and regulation requirements for both resident and nonresidents establishments seeking to compound and/or distribute sterile drugs and products in New York State, without first obtaining patient-specific prescriptions. It will not impose any reporting, recordkeeping, or other compliance requirements, or have any adverse economic impact on local governments. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared. Because it is evident from the nature of the proposed amendment that it will not adversely affect local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment implements the provisions of Part D of Chapter 60 of the Laws of 2014, which establishes registration requirements for all resident and nonresident establishments seeking to prepare and/or distribute compounded sterile drugs and products in New York State. Such establishments are referred to as outsourcing facilities. Part D of Chapter 60 of the Laws of 2014, implements Title I of the Federal Drug Quality and Security Act of 2013, which provides for comprehensive oversight of such facilities. The proposed amendment applies to all resident and nonresident establishments seeking to prepare and/or distribute compounded sterile drugs and products, without receipt of patient-specific prescriptions, in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. To date, of the five resident establishments that have applied to the Federal Food and Drug Administration to be recognized as outsourcing facilities, which is a pre-requisite for New York State registration, none report their location as being in a rural county.

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

The proposed amendment applies to all resident and nonresident establishments seeking to compound and/or distribute sterile drugs and products in New York State, without first obtaining patient-specific prescriptions. Among other requirements, the proposed amendment requires that outsourcing facilities submit, upon initial registration and at least annually thereafter, the results of an inspection by either representatives of the FDA, the Department or a third party acceptable to the Department. The proposed amendment further requires that a New York registered pharmacist be present at all times when an outsourcing facility is open for business and that outsourcing facilities submit a report, on a form prescribed by the Commissioner, to the Executive Secretary to the State Board upon initial registration and every six months thereafter, identifying the drugs compounded by the facility during the 6-month period and providing certain information relating to such drugs. It requires outsourcing facilities to maintain quality control records for determining beyond use dating and stability for five years and to make such records available to the Department for review and copying upon request. It further requires all outsourcing facilities to comply with the special provisions relating to outsourcing facilities set forth in Education Law § 6831 and to comply with good manufacturing practices as defined by the FDA for such facilities. The proposed amendment also requires nonresident outsourcing facilities to notify the Department on forms prescribed by the Department at least 30 days prior to the expected date of relocation or discontinuance.

The proposed amendment also provides that an outsourcing facility's failure to adhere to applicable practice guidelines for the compounding of sterile drugs and products is unprofessional misconduct and clarifies that holding for sale, offering for sale, or selling any drug later than the beyond use date, which means the expiration date of the drug, constitutes unprofessional misconduct.

No professional services are expected to be required by entities in rural areas to comply with the proposed amendment.

3. COSTS:

A resident or nonresident establishment seeking registration as an outsourcing facility by the Department would be required to pay the Department a registration fee. Such fee would be paid once as part of the establishment's application for initial registration, which, if granted, would be for a three-year period. After initial registration and once every three years thereafter, a resident or nonresident establishments seeking renewal of its registration would be required to pay the Department a fee of $520 to defray the cost of its review, upon submission of the establishment's application. Therefore, the annualized cost for a facility's initial registration is $275 and the annualized cost for a facility's subsequent registration or registrations is $173.33.

The Department estimates that it would require a staff member to spend about eight hours to complete the initial and renewal of registration applications. Based on an hourly rate of $37 per hour (including fringe benefits), the Department estimates that the cost of completing either one of these applications to be $296. An application would have to be completed once every three years. Therefore, the annualized cost of completing the application is estimated to be $98.

The proposed amendment does not impose any costs beyond those imposed by Part D of Chapter 60 of the Laws of 2014; except the proposed amendment requires that outsourcing facilities submit, upon initial registration and at least annually thereafter, the results of an inspection by either representatives of the FDA, the Department or a third party acceptable to the Department. The Department estimates that any costs incurred by the Department to inspect these facilities will be absorbed by existing staff and the registration and renewal fees paid by the outsourcing facilities. Regulated facilities will not be required to pay any additional fees for an inspection by the Department. To date, the Department has not approved any third parties to perform these inspections. Therefore, it does not have any estimate of costs for inspections performed by third parties.

4. MINIMIZING ADVERSE IMPACT:

The Department believes that requirements for registration and regulation of resident and nonresident outsourcing facilities are reasonable, and that uniform standards should apply, regardless of the size of such facility, in order to ensure the safety of compounded sterile drugs and products and our state's and nation's pharmaceutical supply chain and to uniformly implement Part D of Chapter 60 of the Laws of 2014.

5. RURAL AREA PARTICIPATION:

The Department has shared the proposed amendment with the Pharmacists Society of the State of New York and the New York State Council of Health System Pharmacists; whom have members who live and/or work in rural areas of the State. The Department has also shared the proposed amendment with the five establishments located in New York who would be affected by this regulation.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements of Part D of Chapter 60 of the Laws of 2014, and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The State Education Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

Part D of Chapter 60 of the Laws of 2014 implements the requirements of Title I of the Federal Drug Quality and Security Act of 2013, which provides for comprehensive oversight of outsourcing facilities, which are establishments that are engaged in the compounding of sterile drugs. The proposed amendment implements Part D of Chapter 60 of the Laws of 2014 by establishing registration requirements for non-resident and resident outsourcing facilities that seek to compound drugs in this State and provides regulatory oversight over such facilities.

The proposed amendment also modifies certain regulatory provisions relating to supervision requirements for registered resident manufacturers and wholesalers.

Since the proposed amendment implements specific statutory requirements and directives, any impact on jobs and employment opportunities created by establishing requirements for the registration and regulation of outsourcing facilities is attributable to the statutory requirement, not the proposed amendment, which simply establishes standards that conform to the requirements of the statute.

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 have no adverse impact on jobs and employment opportunities, no affirmative steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF EMERGENCY ADOPTION AND REVISED RULE MAKING NO HEARING(S) SCHEDULED

Special Education Services and Programs for Preschool Children with Disabilities

I.D. No. EDU-12-14-00013-ERP
Filing No. 549
Filing Date: 2014-06-24
Effective Date: 2014-06-24

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

Action Taken: Amendment of section 200.16(c)(3); and addition of section 200.20(b)(3) to Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1), (2) and (20), 308 (not subdivided), 4401(1)-(11), 4402(1)-(7), 4403(1)-(5), (9), (11), (13), (15) and (20), 4410(1)-(5), (9), (9-a), (9-b), (9-d), (10), (11) and (13); and L. 2013, ch. 545, sections 1 and 2

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

Specific reasons underlying the finding of necessity: The purpose of the proposed amendment is to implement Education Law section 4410, as amended by Chapter 545 of the Laws of 2013. Chapter 545 became effective on April 17, 2014 and was enacted to address certain findings in relation to audits of preschool providers conducted by the Office of the State Comptroller.

The proposed amendment to section 200.16(c) would require the Committee on Preschool Special Education to submit a written notice to the Commissioner when it places a preschool student with a disability in a program operated by the same provider who evaluated the student.

The proposed amendment to section 200.20(b) would add a requirement that providers ensure that executive directors or individuals assigned with executive director responsibilities, who are hired or assigned on or after the effective date of the regulations, have an education background in a field related to business, administration and/or education and/or hold a New York State certification or license to provide an evaluation of and/or related service to a student with a disability; and that such individuals have the knowledge and ability to oversee a preschool special education program. The proposed amendment also requires that all executive directors of approved preschool programs reside within a reasonable geographic distance from the program to ensure appropriate oversight of the day to day activities of the program; and that individuals who are assigned in a full-time role as the executive director are not engaging in activities that would interfere with or impair the executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

The proposed amendment was adopted as an emergency action at the March 10-11, 2014 Regents meeting, effective April 17, 2014. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on March 26, 2014, and a 45-day public commenting period commenced, expiring on May 12, 2014. The proposed amendment was subsequently re-adopted by emergency action at the May 19, 2014 Regents meeting to keep the rule continuously in effect until it can be adopted as a permanent rule.

As a result of public comment received, the proposed amendment to section 200.20(b) has been revised to expand the qualifications of executive directors to also allow individuals who hold New York State certification or license to provide an evaluation of or related service to a student with a disability and who meet the other qualifications to be hired or assigned as executive directors. The proposed rule was also revised to add that individuals must be knowledgeable about the "program and supervisory" requirements for providing appropriate evaluations and/or special education services to preschool students with disabilities.

Because the Board of Regents meets at monthly intervals, and there is no Regents meeting scheduled for August 2014, the earliest the revised proposed amendment could be adopted by regular action after publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on July 9, 2014 and expiration of the 30-day public comment period prescribed in State Administrative Procedure Act (SAPA) section 202 would be the September 15-16, 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the revised proposed amendment, if adopted at the September meeting, would be October 1, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency action to adopt the proposed rule is necessary for the preservation of the general welfare to immediately adopt revisions to the proposed amendment to ensure that qualified individuals are appointed as executive directors of approved preschool special education programs or assigned to perform the duties of a chief executive officer for such programs, and to otherwise ensure that the emergency rule implementing Chapter 545 of the Laws of 2013, which was adopted by emergency action at the March 2014 Regents meeting and readopted at the May 2014 Regents meeting, remains continuously in effect until the effective date of its permanent adoption.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the September 15-16, 2014 Regents meeting, which is the first scheduled Regents meeting after publication of the proposed rule in the State Register and expiration of the 30-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

Subject: Special Education Services and Programs for Preschool Children with Disabilities.

Purpose: To implement L. 2013, ch. 545, relating to CPSE placement of a child in an approved program that also conducted an evaluation of the child, and qualifications for executive directors of approved preschool programs.

Text of emergency/revised rule:

1. The emergency rule amending paragraph (3) of subdivision (c) of section 200.16 and adding a new paragraph (3) of subdivision (b) of section 200.20 of the Regulations of the Commissioner, which was adopted at the May 19, 2014 meeting of the Board of Regents, is repealed effective June 24, 2014.

2. Paragraph (3) of subdivision (c) of section 200.16 of the Regulations of the Commissioner of Education is amended, effective June 24, 2014, as follows:

(3) Prior to making any recommendation that would place a child in an approved program owned or operated by the same agency which conducted the [initial] evaluation of the child, the committee may exercise its discretion to obtain an evaluation of the child from another approved evaluator. *If the committee recommends placing a child in an approved program that also conducted an evaluation of the child, it shall indicate in writing that the placement is appropriate for the child and shall provide written notice to the commissioner of such recommendation on a form prescribed by the commissioner.*

3. A new paragraph (3) of subdivision (b) of section 200.20 of the Regulations of the Commissioner of Education is added, effective June 24, 2014, as follows:

(3) Each approved preschool program shall ensure that:

(i) the executive director or person assigned to perform the duties of a chief executive officer hired or assigned on or after April 17, 2014, shall have earned a bachelor's degree or higher from an accredited or approved college or university in a field related to business, administration and/or education and/or shall hold a New York State certification or license to provide an evaluation of and/or a related service to a student with a disability as such term is defined in section 200.1(qq) of this Part. In addition, the executive director, or person assigned to perform the duties of a chief executive officer, shall, at a minimum, have the following qualifications:

(a) knowledge of the program and supervisory requirements for providing appropriate evaluations and/or special education services to preschool students with disabilities;

(b) knowledge of and ability to comply with applicable laws and regulations;

(c) ability to maintain or supervise the maintenance of financial and other records;

(d) ability to establish the approved program's policy, program and budget; and

(e) ability to recruit, employ, train, direct and evaluate qualified staff.

(ii) the executive director or person assigned to perform the duties of a chief executive officer shall reside within a reasonable geographic distance from the program's administrative, instructional and/or evaluation sites to ensure appropriate oversight of the program; and

(iii) if paid as a full time executive director, the executive director shall be employed in a full-time, full-year position and shall not engage in activity that would interfere with or impair the executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on March 26, 2014, I.D. No. EDU-12-14-00013-EP. The emergency rule will expire August 22, 2014.

Emergency rule compared with proposed rule: Substantive revisions were made in section 200.20(b)(3).

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

Data, views or arguments may be submitted to: James P. DeLorenzo, Assistant Commissioner P-12, State Education Department, Office of Special Education, State Education Building, Room 309, 89 Washington Ave., Albany, NY 12234, (518) 402-3353, email: spedpubliccomment@mail.nysed.gov

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

Revised Regulatory Impact Statement

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on March 26, 2014, the following substantial revisions were made to the proposed rule:

Section 200.20(b)(3)(i) has been revised to expand the qualifications of individuals who can be hired as a chief executive officer of an approved preschool special education program, or a person assigned to perform the duties of a chief executive officer of such program, to include individuals who hold a New York State certification or license to provide an evaluation and/or a related service to a student with a disability.

Section 200.20(b)(3)(i)(a) has been revised to clarify that one of the minimum qualifications of a chief executive officer is knowledge of the "program and supervisory" requirements for providing appropriate evaluations and/or special education services to preschool students with disabilities.

The above revisions require that the Local Government Mandates section of the previously published Regulatory Impact Statement be revised to read as follows:

5. LOCAL GOVERNMENT MANDATES:

Consistent with sections 1 and 2 of Chapter 545 of the Laws of 2013, the proposed amendment establishes requirements for school districts to report certain information on a preschool child with a disability's selected provider and establishes qualifications for executive directors of approved preschool programs.

Section 200.16(c)(3) is amended to require a committee on preschool special education, when placing a child in the same program that conducted the child's evaluation, to indicate in writing that the placement is appropriate and to notify the Commissioner.

Section 200.20(c) is amended to require each approved preschool program to ensure that an executive director or persons assigned to perform the duties of a chief executive officer hired or assigned on or after April 17, 2014 has earned a bachelor's degree or higher from an accredited or approved college or university in a field related to business, administration and/or education and/or shall hold a New York State certification or license to provide an evaluation of and/or a related service to a student with a disability as such term is defined in section 200.1(qq) of this Part. In addition, the executive director shall, at a minimum, have appropriate qualifications to oversee a special education preschool program including, knowledge of the program and supervisory requirements for providing appropriate evaluations and/or special education services to preschool students with disabilities; knowledge of and ability to comply with applicable laws and regulations; ability to maintain or supervise the maintenance of financial and other records; ability to establish the approved program's policy, program and budget; and ability to recruit, employ, train, direct and evaluate qualified staff. Further, the proposed amendment would require each executive director or persons assigned to perform the duties of a chief executive officer to reside within a reasonable geographic distance from the program's administrative, instructional and/or evaluation sites to ensure appropriate oversight of the program; and to require that, if paid as a full time executive director, the executive director shall be employed in a full-time, full-year position and shall not engage in activity that would interfere with or impair the executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on March 26, 2014, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The above changes require that the Compliance Requirements section of the previously published Regulatory Flexibility Analysis be revised to read as follows:

2. COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to implement sections 1 and 2 of Chapter 545 of the Laws of 2013, which requires the Department to establish regulations regarding the qualifications of executive directors of preschool programs for students with disabilities and reporting to the Department when a school district places a child with the same provider that evaluated the child for special education. The proposed amendment does not impose any additional compliance requirements on small businesses or local governments beyond those inherent in the statute.

Section 200.16(c)(3) is amended to require a committee on preschool special education, when placing a child in the same program that conducted the child's evaluation, to indicate in writing that the placement is appropriate and to notify the Commissioner on a form prescribed by the Commissioner.

Section 200.20(b) is amended to add a new paragraph (3) to require each approved preschool program to ensure that an executive director or person assigned to perform the duties of a chief executive officer, who is hired or assigned on or after April 17, 2014, has earned a bachelor's degree or higher from an accredited or approved college or university in a field related to business, administration and/or education and/or holds a New York State certification or license to provide an evaluation of and/or a related service to a student with a disability and that such individuals have appropriate qualifications to oversee a special education preschool program including, at a minimum, knowledge of the program and supervisory requirements for providing appropriate evaluations and/or special education services to preschool students with disabilities; knowledge of and ability to comply with applicable laws and regulations; ability to maintain or supervise the maintenance of financial and other records; ability to establish the approved program's policy, program and budget; and ability to recruit, employ, train, direct and evaluate qualified staff. Further, the proposed amendment would require each executive director or persons assigned to perform the duties of a chief executive officer to reside within a reasonable geographic distance from the program's administrative, instructional and/or evaluation sites to ensure appropriate oversight of the program; and to require that, if paid as a full time executive director, the executive director shall be employed in a full-time, full-year position and shall not engage in activity that would interfere with or impair the executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on March 26, 2014, the proposed amendment has been revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The above changes require that the Reporting, Record Keeping and Other Compliance Requirements and Professional Services section of the previously published Rural Area Flexibility Analysis be revised to read as follows:

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

The proposed amendment is necessary to implement sections 1 and 2 of Chapter 545 of the New York State (NYS) Laws of 2013, which requires the Department to establish regulations regarding the qualifications of executive directors of preschool programs for students with disabilities and reporting to the Department when a school district places a child with the same provider that evaluated the child for special education. The proposed amendment does not impose any additional reporting, record keeping or other compliance requirements, or professional service requirements, on entities in rural areas beyond those imposed by the statute.

Section 200.16(c)(3) is amended to require a committee on preschool special education, when placing a child in the same program that conducted the child's evaluation, to indicate in writing that the placement is appropriate and to notify the Commissioner on a form prescribed by the Commissioner.

Section 200.20(c) is amended to require each approved preschool program to ensure that an executive director or persons assigned to perform the duties of an executive director assigned or hired on or after April 17, 2014 has earned a bachelor's degree or higher from an accredited or approved college or university in a field related to business, administration and/or education and/or holds a New York State certification or license to provide an evaluation of and/or related service to an student with a disability, and that such individuals have appropriate qualifications to oversee a special education preschool program including, at a minimum, knowledge of the program and supervisory requirements for providing appropriate evaluations and/or special education services to preschool students with disabilities; knowledge of and ability to comply with applicable laws and regulations; ability to maintain or supervise the maintenance of financial and other records; ability to establish the approved program's policy, program and budget; and ability to recruit, employ, train, direct and evaluate qualified staff. Further, the proposed amendment would require each executive director or persons assigned to perform the duties of a chief executive officer to reside within a reasonable geographic distance from the program's administrative, instructional and/or evaluation sites to ensure appropriate oversight of the program; and to require that, if paid as a full time executive director, the executive director shall be employed in a full-time, full-year position and shall not engage in activity that would interfere with or impair the executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

The proposed amendment does not impose any additional professional service requirements on entities in rural areas.

Revised Job Impact Statement

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on March 26, 2014, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The revised proposed rule is necessary to implement sections 1 and 2 of Chapter 545 of the Laws of 2013 relating to the placement of children in preschool special education programs requirements for executive directors of preschool special education programs. The statute requires: (1) Committees on Preschool Special Education (CPSE) that recommend placement of a child in an approved program that also conducted an evaluation of the child to indicate in writing that such placement is appropriate and provide notice of such recommendation to the Commissioner; and (2) a provider of preschool special education services or programs to certify pursuant to regulations promulgated by the Commissioner that it will take measures to ensure its executive director or person performing duties of a chief executive officer meets the criteria established by the Commissioner to be an executive director and, if paid as a full time executive director, that such executive director is employed in a full time, full year position and shall not engage in activity that would interfere or impair such executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

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

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on March 26, 2014, the State Education Department (SED) received the following comments.

Section 200.16(c)(3) – Placement of Preschool Students With The Same Provider That Evaluated The Student

COMMENT:

The proposed rule reduces potential for conflict of interest in placement decisions; will result in a decreased risk of over-identification of preschool children with disabilities; and encourages Committees on Preschool Special Education (CPSE) to consider alternate placements.

DEPARTMENT RESPONSE:

Comments are supportive in nature; no response necessary.

COMMENT:

Proposal adds more paperwork to an already paper-laden process; places undue burden on committees in the form of additional paperwork and procedural delays; further complicates CPSE process. Clarify what documentation districts would be required to submit to Commissioner; provide guidance to CPSE chairpersons.

DEPARTMENT RESPONSE:

The proposed rule does not add a reporting requirement beyond that which is required by State law. To address the paperwork reporting burden, the Department has incorporated this report into the "Preschool STAC-1: Request for Commissioner's Approval of Reimbursement for Services for Students with Disabilities" form, which districts are currently required to submit for each preschool student with a disability.

COMMENT:

Since evaluations are conducted by skilled professionals and eligibility is based on standardized assessments, the need for these additional procedures is questioned.

DEPARTMENT RESPONSE:

Amendment conforms to legislation requiring districts to submit a written notice to the Commissioner when it places a preschool student with a disability in a program operated by same provider who evaluated the student, and does not address special education eligibility or professional skills of evaluators.

COMMENT:

Parent decides which specific program his/her child will attend. School districts do not recommend specific programs.

DEPARTMENT RESPONSE:

The parent(s) of a child suspected of having a disability are responsible for selecting an approved evaluator to conduct their child's individual evaluation. The CPSE is responsible to review the evaluation report, determine eligibility, develop the Individualized Education Program (IEP) and then select a provider to implement the child's IEP. The CPSE must consider the concerns of the parent and the parent, as a member of the CPSE, participates in the placement recommendation. However, the parent does not select the provider.

COMMENT:

In some rural areas, there are a limited number of evaluation sites and special education programs. It may be necessary for a child to attend the same program that provided the evaluation. It is common practice for evaluating agencies to also provide service(s).

DEPARTMENT RESPONSE:

While the regulation requires reporting to the Commissioner whenever CPSE recommends placement in a program operated by same agency that evaluated the student, there is no requirement that such recommendation be a last resort consideration for the student; nor does it require that the parent select an evaluator in consideration of whether the evaluator may potentially be appropriate as provider of preschool services to the child. Nothing precludes the CPSE from placing the student in the same program that evaluated the student, if appropriate.

COMMENT:

Recommendations are made for a service, not a location.

DEPARTMENT RESPONSE:

Section 200.16 of the Regulations of the Commissioner of Education requires the CPSE to recommend appropriate services and/or special programs and the frequency, duration, location and intensity of such services. The school district must select the provider to implement the recommended program.

COMMENT:

Regulation presumes that all evaluation sites are self-promoting, unethical and unprofessional; only districts suspected of inappropriately directing referrals to a certain provider(s), should be asked to justify their actions. The sole act of reporting CPSE decisions in writing to the Commissioner may not resolve placement concerns.

DEPARTMENT RESPONSE:

The change to State law and conforming regulations provide further assurance to the Department that the CPSE has found the recommended placement to be appropriate for the individual child and provides a reporting process by which the Department can review data to determine patterns or trends that may require further review. The statutory provision requires reporting by all districts.

COMMENT:

Recommend that all approved programs that conduct evaluations disclose name of their owner/director to the CPSE in the event that there are separate agencies with same owner/director; full disclosure or an arms-length policy should be implemented for programs providing evaluations.

DEPARTMENT RESPONSE:

While individual CPSEs may request this information, which is a matter of public record, disclosure of preschool program owner/director names was not addressed in the amendment of Education Law section 4410 by Chapter 545 of the Laws of 2013 and, therefore, is not included in the amendment to section 200.16 of the Commissioner's Regulations.

COMMENT:

Recommend distinguishing between initial and subsequent evaluations to avoid including the initial evaluation within the subsequent placement disclosure.

DEPARTMENT RESPONSE:

The reporting form seeks information as to whether the placement recommendation is with the same provider that conducted the most recent evaluation for this student.

COMMENT:

Recommend including special education itinerant services (SEIS) as part of the definition of "program".

DEPARTMENT RESPONSE:

SEIS is included as a type of program. The reporting form asks for the name of the service provider for special class, special class in an integrated setting or SEIS.

Section 200.20(b)(3) – Qualifications of Executive Directors of Approved 4410 Programs

COMMENT:

The proposed rule raises standards for future directors and ensures quality leadership. Amendment is long overdue. Program directors should minimally have a bachelor's degree.

DEPARTMENT RESPONSE:

Comments are supportive in nature; no response necessary.

COMMENT:

Network of 4410 providers also consists of multi-service, multi-state, agency funded not-for-profit entities that offer services for individuals ranging from birth through adulthood, and are licensed and funded by several different State agencies. The proposed rule was crafted for single purpose 4410 entities. Revise the proposed rule to include broader educational background and experience as necessary to accommodate these entities. Expand qualifications to include certified or licensed professionals (e.g., school psychologists, social workers, speech language pathologists, occupational and physical therapists).

DEPARTMENT RESPONSE:

The proposed rule has been revised to expand executive director qualifications to also include individuals who hold New York State certification or license to provide evaluation and/or special education related services and to clarify that the executive director must have knowledge of the "program and supervisory" requirements for providing appropriate

evaluations and/or special education services to preschool students with disabilities.

COMMENT:

Provision for executive director to have "appropriate qualifications to oversee a special education program…" is not necessary because 4410 providers are already required to have access to staff with an SED granted School Administrator Supervisor (SAS) certificate. In multi-funded, multi-licensed entities, education department directors would be expected to have those qualifications, rather than executive directors. Question if these are the only qualifications required of an executive director or are they in addition to School Administrator and Supervisory certification. Must the executive director hold an administrative certification if held by another supervisory staff person?

DEPARTMENT RESPONSE:

While all executive directors of preschool programs must have the qualifications identified in section 200.20(b)(3), every executive director is not required to hold certification as a School Building Leader (formerly ''School Administrator/Supervisor') - or School District Leader (formerly ''School District Administrator''). Because of the broad nature of agencies that may also be operating a preschool special education program, only those individuals who provide supervision to special education teachers and related service providers are required to have administrative certification as required pursuant to Part 80 of the Regulations.

COMMENT:

If each supervisor performs less than 25 percent of their time supervising, is it possible for the program to not have anyone on site with SAS certification? If a supervisor performs more than 25 percent of time supervising and meets all other requirements, but does not have SAS certification, is this adequate?

DEPARTMENT RESPONSE:

These questions are beyond the scope of this amendment.

COMMENT:

Executive directors often hire individuals to perform duties in areas that they themselves have limited knowledge or experience. Requiring executive directors to be responsible for so many diverse areas could put them in positions that they are incapable of handling. The rule will limit new programs because the pool of individuals with all of these qualifications may not exist.

DEPARTMENT RESPONSE:

Agencies must ensure that individuals appointed or assigned executive director responsibilities must be able to oversee a program that provides preschool evaluations and/or services. The regulations are written broadly enough to ensure that executive directors have an education and experience background to properly oversee such a program, while not placing unduly restrictive constraints on the hiring/assignment process. While others may be hired with more expertise in each area, the executive director must have sufficient knowledge in the statutory and regulatory requirements for the operation of the program to ensure oversight of the efficient and effective operation of the programs for preschool students.

COMMENT:

Develop guidance documents clarifying credentials and experience required of executive directors.

DEPARTMENT RESPONSE:

A special education field advisory addressing amendment to section 200.20 of the regulations was released in April 2014. Additional guidance will be issued with the adoption of revised rules.

COMMENT:

Concerned about residency requirement for executive director, which was rejected in initial legislative bill.

DEPARTMENT RESPONSE:

The expressed intent of the legislative amendment was to ensure that executive directors have the qualifications to properly oversee such programs and specifically to address findings that some executive directors resided in other states or long distances from the program they are charged to oversee.

COMMENT:

Clarify whether current executive directors are exempt from this amendment. Revise the proposed rule to require current executive directors be given a period of time to complete qualification requirements.

DEPARTMENT RESPONSE:

The amendment only pertains to executive directors hired or assigned after April 17, 2014. To ensure job and program oversight stability, the Department does not support a provision to phase in the requirement for individuals currently appointed as executive directors or assigned executive director functions.

COMMENT:

Revise by adding, "or the equivalent" to educational requirements and "demonstrated experience" as an alternative to educational requirement. Seasoned executive directors would not be eligible under current language.

DEPARTMENT RESPONSE:

Amendment does not pertain to executive directors that are hired or assigned prior to April 18, 2014. However, experienced executive directors that change their employment on or after this date would have to meet the new qualifications in section 200.20.

COMMENT:

Recommend that preschool program administrators be held to the same standards as school-age administrators.

DEPARTMENT RESPONSE:

The amendment is proposed to comply with the statutory changes, which specifically require the Commissioner to develop regulations to address special education services and programs for preschool children with disabilities.

COMMENT:

Many agencies do not supervise their contracted staff in the field.

DEPARTMENT RESPONSE:

An approved preschool program must have direct control of the work and provide direct and appropriate supervision of all of the special education and related services provided to students. Programs should not be relying on "contracted staff in the field." Staff must have an employer-employee relationship with the approved preschool program and all programs must include a plan for staff supervision, identifying the name and title of the individual who will have direct supervisory responsibilities for the staff and providing the supervisor's resume to document an appropriate level of experience.

NOTICE OF ADOPTION

Reciprocity Requirements for Classroom Teachers

I.D. No. EDU-07-14-00003-A

Filing No. 555

Filing Date: 2014-06-24

Effective Date: 2014-07-09

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

Action taken: Amendment of Part 80 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1) and (2), 3001(2), 3004(1), 3006(1)(b), 3007(1) and (2) and 3009(1)

Subject: Reciprocity requirements for classroom teachers.

Purpose: To establish a standardized reciprocity process for the review of teaching candidates from other jurisdictions.

Text or summary was published in the February 19, 2014 issue of the Register, I.D. No. EDU-07-14-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.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 2017, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

1. COMMENT: On behalf of Teach For America's New York region, I write in full support of the proposed rulemaking referenced above and the policy improvement that it would represent.

Teach For America is the national corps of outstanding recent college graduates and professionals who commit to teach at least two years in urban and rural public schools and become lifelong leaders in expanding educational opportunity. Approximately two-thirds of our alumni remain involved in education after their corps commitment, including nearly 1,200 teachers in New York State and thousands more across the country.

We have found that the current requirements for interstate reciprocity deter our alumni teachers with less than five years of teaching experience who seek to move to New York from other states, even when they have attended traditional institutions of higher education, and their certification coursework has led to a master's degree.

Because of their "alternative certification" status, Teach For America alumni cannot move to New York to continue teaching in schools and districts that want to hire them, unless they duplicate their graduate program coursework. Understandably, this is a significant deterrent to our alumni and they choose to teach elsewhere, or move to New York and work in another field.

The proposed rule changes will positively affect teachers coming from the roughly 60% of Teach For America regions that have partnerships

with institutions of higher education (IHE). For the other 40%, those with at least two years of experience who did not obtain a master's degree or complete previous IHE-based coursework in another state, we recommend that New York establish a unique alternate certification pathway that recognizes their initial experience and training. These teachers could be required to take coursework through an accredited, IHE-based program, but would not have to start over through existing alternative certification programs in New York alongside inexperienced, first-year teachers.

We appreciate the Board of Regents focus on ensuring all teachers in New York State are prepared and trained at a consistently high level. We look forward to working in partnership with the state to inspire our interested alumni with previous teaching experience to start a new chapter of their career.

RESPONSE: The State Education Department appreciates the positive comment. Therefore, no response is necessary.

2. COMMENT: On behalf of the New York City Charter School Center, I write in full support of the proposed rulemaking referenced above and the policy improvement that it would represent. The Board of Regents is right to be concerned about how to supply our state's public schools with the trained and talented teachers they need. Unfortunately, the state's rules for teacher certification have not been supportive of out-of-state teachers who have the experience and training necessary to succeed in the classroom, adding layers of complexity and uncertainty that are frustrating for new teachers and the schools who hope to hire them. This is especially true in the case of teachers who gain certification through alternative-preparation programs in other states, and then seek recognition of that certification through New York's reciprocity policies. If such teachers have less than three years' classroom experience, as is common for alumni of Teach For America (TFA) and similar programs, their certification may not be recognized in New York.

According to district and charter school leaders, the current policy deters many talented and qualified teachers from moving to New York. Those who choose to come to New York anyway frequently enroll in a redundant second alternative preparation program that is essentially identical to their first (including in its two-year length, which is acceptable for New York programs). The new policy would not open the floodgates to all graduates of out-of-state alternative preparation programs; such teachers would still need to complete a preparation program from an accredited institution of higher education, hold a valid certificate equivalent to what they would need to teach in New York State, and pass required tests. (For example, roughly 40% of Teacher For America teachers coming from other states would not qualify for reciprocity because the training they receive is not part of a degree program.)The proposed rulemaking is also advisable, and best evaluated, in tandem with the concurrent proposal to eliminate the Individual Review pathway, which charter schools utilize regularly, in certain certification areas. Approval of both proposals would represent a shift toward a more rational, coherent, and predictable system. Only reducing Individual Review, however, would represent a significant setback for charter schools by reducing their total pool of eligible teachers.

In summary, the proposed rulemaking would correct this costly misalignment in state regulations. The Charter Center urges action to make sure that accomplished, trained, experienced, and certified teachers from other states are not turned away from teaching in the New York communities that need them most.

RESPONSE: The State Education Department appreciates the positive comment. Therefore, no response is necessary.

NOTICE OF ADOPTION

Interpretation and Translation Services for Limited English Proficient (LEP) Individuals by Mail Order Pharmacies

I.D. No. EDU-11-14-00002-A

Filing No. 552

Filing Date: 2014-06-24

Effective Date: 2014-07-09

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

Action taken: Amendment of section 63.11 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a), 6810(1) and 6829(4); L. of 2012, ch. 57, part V

Subject: Interpretation and translation services for Limited English Proficient (LEP) individuals by mail order pharmacies.

Purpose: To implement section 6829(4) of the Education Law, as added by part V of chapter 57 of the Laws of 2012.

Text or summary was published in the March 19, 2014 issue of the Register, I.D. No. EDU-11-14-00002-P.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rulemaking in the March 19, 2014 State Register, the State Education received the following comment:

COMMENT:

Certain Assembly members have requested that the number of languages in which mail order pharmacies are required to provide interpretation and translation services to Limited English Proficient (LEP) Individuals be increased Statewide to include the three additional languages required under New York City's local law for large retail chains (Korean, French Creole and Begali).

DEPARTMENT RESPONSE:

The Department discussed these requests with the Assembly members. The Department considered all of the factors required under Education Law § 6829(4) when adopting the proposed amendment, including anticipated utilization, available resources and cost considerations. Based on data reviewed from the U.S. Census Bureau, it appears that there are many different primary languages throughout the State and that the four consistent primary languages are Chinese, Italian, Russian and Spanish. In an effort to be consistent with the languages required for translation services in large retail chains under Education Law § 6829(2), the Department is proposing to require the same four languages for mail order pharmacies Statewide.

It is the Department's understanding that New York City has required three additional languages under local law for large retail chains (Korean, French Creole and Begali). New York City also has the authority to impose additional languages under its own local laws for mail order pharmacies. Therefore, the Department recommends that New York City adopt its own local law to add these three languages as opposed to a Statewide requirement where services for these languages may not be utilized and it may impose additional costs on these mail order pharmacies, when such services may not be needed. After a discussion with the Assembly explaining the Department's rationale on the proposed amendment, it was determined by the Department that no change to the proposed amendment was needed at this time.

NOTICE OF ADOPTION

Science Intermediate Assessments

I.D. No. EDU-12-14-00012-A

Filing No. 550

Filing Date: 2014-06-24

Effective Date: 2014-07-09

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

Action taken: Amendment of sections 100.4(d) and (e) and 100.18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 210 (not subdivided), 215 (not subdivided), 305(1), (2) and (20), 308 (not subdivided), 309 (not subdivided) and 3204(3)

Subject: Science intermediate assessments

Purpose: To provide flexibility to schools in the administration of Regents science assessments to students in grades 7-8.

Text or summary was published in the March 26, 2014 issue of the Register, I.D. No. EDU-12-14-00012-EP.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is the 4th or 5th year after the

year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Pupils with Limited English Proficiency

I.D. No. EDU-27-14-00011-P

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

Proposed Action: Addition of Subparts 154-1 and 154-2 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 208 (not subdivided), 215 (not subdivided), 305(1), (2), 2117(1), 2854(1)(b), 3204(2), (2-a), (3) and (6)

Subject: Pupils with Limited English Proficiency.

Purpose: To prescribe requirements for bilingual education and English as a New Language programs for English Language Learners.

Substance of proposed rule (Full text is posted at the following State website: http://www.regents.nysed.gov/meetings/2014/June2014/614monthmat.html): The Commissioner of Education proposes to amend Part 154 by adding new Subparts 154-1 and 154-2 of the Commissioner's Regulations, effective October 1, 2014. The following is a summary of the substantive provisions of the proposed rule.

The existing Part 154 regulations are amended to refer to "English Language Learners (ELL)" instead of "pupils with limited English proficiency" and reorganized under a new Subpart 154-1, which is generally made applicable to programs operated beginning with the 2007-2008 school year and prior to the 2015-2016 school year; provided that a school district may choose to implement one or more provisions of the new Subpart 154-2 in the 2014-2015 school year upon submission of a plan and approval by the Commissioner.

A New Subpart 154-2 is added and generally made applicable to programs operated beginning with the 2015-2016 school year, and includes the following provisions:

INITIAL AND REENTRY PROCESS AND DETERMINATION OF ENGLISH PROFICIENCY [§ 154-2.3(a)]

Implement a four step English Language Learner (ELL) identification process upon a student's initial enrollment or reentry in a New York State public school to ensure holistic and individualized decisions can be made by qualified staff, including:

(1) administration of the Home Language Questionnaire;

(2) an individual interview with the student;

(3) a determination for students with a disability of whether the disability is the determinant factor affecting the student's ability to demonstrate proficiency in English; and

(4) administration of a statewide English language proficiency identification assessment.

SIFE status [§ 154-2.3(a) and (n)]

Districts shall identify ELLs as Students with Interrupted/Inconsistent Formal Education (SIFE) as part of the identification process. SIFE students shall continue to be identified as such until the performance criteria for removal are met, even if the student continues to be identified as an ELL. Upon a student's exiting SIFE status, the school district must maintain records of student's SIFE status.

REVIEW OF IDENTIFICATION DETERMINATION [§ 154-2.3(b)]

Implement a review process to determine if a student was misidentified upon enrollment or reentry to be completed within the first 45 days of school. A review would commence upon request by a parent; or teacher with the consent of the parent; or a student, if the student is 18 years old or older. Parental, or student if the student is 18 years or older, consent; principal and superintendent approval are required before a change in determination.

PARENT NOTIFICATION AND INFORMATION [§ 154-2.3(f)]

School staff shall meet with parents or persons in parental relation at least once a year, in addition to other generally required meetings with parents, to discuss their child's academic content and language development progress and needs.

RETENTION OF IDENTIFICATION AND REVIEW RECORDS [§ 154-2.3(c)]

Districts shall collect and maintain in ELL student's cumulative record:

- records indicating parent's preferred language or mode of communication; and
- records of notices and forms generated during the identification and placement process, and review process.

PLACEMENT [§ 154-2.3(g)]

Continue to require placement in a Bilingual Education / ESL program within 10 school days after initiating the identification process. Districts shall complete the identification process before an ELL student receives a final school placement.

PROGRAM REQUIREMENTS & PROVISION OF PROGRAMS [§ 154-2.3(d) and (h)]

Districts shall create annual estimates of ELL enrollment before the end of each school year and create a sufficient number of Bilingual Education programs in the district, if there are 20 or more ELLs of the same grade level who speak the same home language district wide.

Districts will be allowed to apply for a one-year exemption for languages that represent less than 2% of the statewide population, if they can demonstrate they meet established criteria for a one-year exemption.

New programs triggered by this provision shall be placed in a school that has not been identified as a Schools Under Registration Review or as a Focus or Priority School, if such school exists in the district.

Continue to require that each school with 20 or more ELL students of the same grade who speak the same home language provide a Bilingual Education program.

English as a Second Language instruction shall be offered through two settings:

(1) Integrated ESL (ESL methodologies in content area instruction co-taught or taught by a dually certified teacher); and

(2) Stand-alone (ESL instruction with an ESL teacher to develop the English language needed for academic success).

PROGRAM CONTINUITY [§ 154-2.3(e)]

Districts shall provide program continuity so that ELLs can continue to receive the program type (Bilingual Education or ESL) in which they were initially enrolled.

EXIT CRITERIA [§ 154-2.3(m)]

Implement three different criteria to allow students to exit ELL status, including:

(1) scoring proficient on the statewide English language proficiency assessment;

(2) a combination of NYSESLAT scores and 3-8 ELA assessment or ELA Regents scores; or

(3) a determination that an ELL with a disability cannot meet criteria (1) or (2) because of their disability and are not in need of ELL services.

SUPPORT AND TRANSITIONAL SERVICES [§ 154-2.3(i)]

Districts shall annually identify ELLs not demonstrating adequate performance and provide additional supports aligned to district wide intervention plans.Districts shall provide at least two years of transitional supports to ELLs who exit out of ELL status (former ELLs).

PROFESSIONAL DEVELOPMENT AND CERTIFICATION [§ 154-2.3(k)]

Create certification areas for bilingual teaching assistants and tenure and seniority protection areas for bilingual teaching assistants, bilingual teachers and ESL teachers.

Require that all prospective teachers complete coursework on ELL instructional needs, language acquisition and cultural competency.

Require that 15 percent of professional development hours for all teachers and administrators be specific to the needs of ELLs, language acquisition and cultural competency.

Require that 50 percent of professional development hours for all Bilingual Education and ESL teachers to be specific to the needs of ELLs, language acquisition and cultural competency.

DISTRICT PLANNING AND REPORTING [§ 154-2.4]

Districts shall provide additional information in plans regarding programs for subpopulations of ELLs, information provided to parents, methods to annually measure and track ELL progress, and systems to identify, assess, and exit students from ELL status.

Require districts to provide additional information in reports regarding programs for subpopulations of ELLs including program information, if offered, by subpopulations and languages spoken in the district.

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

Data, views or arguments may be submitted to: Ken Slentz, Deputy Commissioner, State Education Department, Office of P-12 Education, State Education Building 2M West, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDP12@mail.nysed.gov

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

Summary of Regulatory Impact Statement

STATUTORY AUTHORITY:

Education Law sections 207 (not subdivided), 208 (not subdivided), 215 (not subdivided), 305(1) and (2), 2117(1), 2854(1)(b) and 3204(2), (2-a), (3) and (6).

LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above statutory authority, and is necessary to implement Regents policy on instruction standards for English Language Learners (ELL), to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA).

NEEDS AND BENEFITS:

Federal civil rights and education laws and court jurisprudence requires that ELL students be provided with equal access to all school programs and services offered to non-ELL students, including access to programs required for graduation. Education Law section 3204 and Part 154 of the Regulations of the Commissioner (CR Part 154) contain standards for educational services provided to ELLs in New York State in order to meet these federal obligations.

In light of developments in research and best practices for ELL instruction, federal jurisprudence on civil rights obligations towards ELLs, and concerns about the achievement gap between ELLs and non-ELLs, SED engaged stakeholders to determine how Part 154 programs and services could be enhanced to better meet the needs of the State's multilingual population.

Over the past 10 years, New York State (NYS) ELL student enrollment has increased by 20%; ahead of the 18% national increase reported by the U.S. Department of Education. Currently in NYS, over 230,000 ELLs speaking over 140 languages make up approximately 9% of the total student population. Spanish is the home language for approximately 62% of ELLs, and just over 41% were born in another country. In 2013, 74% of all eligible NYS students graduated high school compared to 34% of ELLs who graduated. Of total State graduates, just over 35% were calculated to be college and career ready compared to just over 7% of ELL graduates calculated to be college and career ready. In 2012, 58% of non-ELLs met or exceeded the ELA proficiency standard in grades 3-8. For the same year, 11.7 % of ELLs met or exceeded the standard. In 2013, with the implementation of the more rigorous Common Core Learning Standards, 33% of non-ELLs met or exceeded the ELA proficiency standard in grades 3-8 with 3.2% of their ELL peers achieving the same standard. In 2012, 67.2% of non-ELLs met or exceeded the Math proficiency standard in grades 3-8. For the same year, 34.4 % of ELLs met or exceeded the standard. In 2013, with the implementation of the more rigorous NYS Common Core Learning Standards, 32.7% of non-ELLs met or exceeded the Math proficiency standard in grades 3-8 with 9.8% of their ELL peers achieving the same standard.

The proposed rule will improve the learning environment and academic outcomes for ELLs to close the achievement gap between ELLs and non-ELLs, and ensure that ELLs can graduate college and career ready.

COSTS:

(a) Costs to State government: The rule is necessary to ensure compliance with State and federal law, and does not impose any costs on State government, including SED, beyond those imposed by the applicable statutes.

(b) Cost to local governments: For most areas, the rule does not impose any new costs not currently required by existing State and federal requirements. In a few areas there may be additional costs and cost savings.

Increased costs may be associated with:

- new identification process and use of qualified personnel
- review of initial determination process
- retention of identification documents
- parent notification and meeting requirements
- professional development requirement
- expanded reporting requirements
- districts newly required to provide bilingual instruction or expand their bilingual programs will incur additional costs for curriculum and instruction materials for new bilingual classes.

When fully implemented, the rule's provisions may result in savings to districts through elimination or reduction of costs associated with:

- providing services to students incorrectly identified as ELL
- providing ELL services to students with disabilities who do not need such services
- ability of high school ELL to earn content area credit while acquiring English proficiency
- ability of ELL students to demonstrate English proficiency through multiple measures
- the rule's provision allowing for integrated co-teaching rather than stand-alone classes, may result in increased costs, less costs, or the same costs, depending on how districts structure their programs.

SED cannot estimate actual costs or costs savings for each school district because they will vary widely from district to district, depending on the size of the school district, the number of ELL students, the languages spoken, the grades in which the students are enrolled, the number and types of programs provided, teaching staff levels, collective bargaining provisions, and how districts decide to reallocate existing resources to meet the above provisions. Most districts are or should be serving their ELLs currently, but SED does not have data on the amount of funds currently dedicated to these activities in each district. Moreover, additional funds are made available to school districts every year for their ELLs through a foundation aid formula that weights funding for ELLs at an additional.5 weight per ELL student. Additionally, many districts receive Title III funds for their ELL students to supplement services for ELL students. SED will inform districts that portions of those monies should be used to offset some of these costs.

(c) Cost to private regulated parties: None.

(d) Costs to regulating agency for implementation and continued administration of this rule: See above costs to State government.

LOCAL GOVERNMENT MANDATES:

The proposed rule is necessary to implement Regents policy on standards for instruction of English Language Learners (ELL), to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA). The majority of the requirements in the proposed rule do not impose any program, service, duty or responsibility on school districts and BOCES beyond those imposed by the applicable State and federal statutes.

Each school district shall implement a four-step identification process to determine if a student is ELL upon initial enrollment/reentry in school, including:

(1) administration of a Home Language Questionnaire;

(2) an individual interview with the student to determine if the student shall be administered the statewide English language proficiency identification assessment and to determine the student's grade level of literacy in their home language and grade level in math;

(3) where applicable, a process to determine whether students with disabilities shall take the statewide English language proficiency identification assessment and whether the student should be identified as ELL; and

(4) administration of a statewide English language proficiency identification assessment.

The district shall provide for review of its determination in accordance with the proposed rule.

Each district shall provide, as set forth in the proposed rule, either a Bilingual Education or English as a New Language program to ELL students.

Each district in which the sum of each school's Annual Estimate of Enrollment equals 20 or more ELLs of the same grade level, all of whom have the same home language that is other than English, shall provide a sufficient number of Bilingual Education programs in the district in the following school year, such that there are Bilingual Education programs available in the district for at least seventy percent (70%) of the estimated ELL students who share the same home language other than English and grade level districtwide.

Each district shall place any new required Bilingual Education programs in a school that has not been identified as a School Under Registration Review or as a Focus or Priority School, if such school exists in the district. The district must submit a justification and receive approval from the Commissioner to place new Bilingual Education program(s) in a Focus School or in a Priority School if no Focus School exists in the district.

Each district that has an Annual Estimate of Enrollment of ELLs in which 20 or more ELLs of the same grade level assigned to a school, all of whom have the same home language that is other than English, shall provide such students with a Bilingual Education program at that school in the following school year.

If such Bilingual Education program does not exist in the school in which the student is enrolled, each ELL student shall be provided the opportunity to transfer to another school in the district that operates a Bilingual Education program that serves the same grade. level and language, An English as a New Language program must be provided to all ELLs who are not served by a Bilingual Education program.

Each district shall provide program continuity such that all ELL students can continue to receive the program type in which they were initially enrolled and, in the case of a Bilingual Education program, there were at least 15 students enrolled in a grade in such program in the district the prior school year.

The parent of an ELL student who is a new entrant shall be provided a high quality orientation session on the state standards, assessments, and school expectations for ELLs, as well as the program goals and requirements for Bilingual Education and English as a New Language programs. Districts shall individually meet with the parents of ELLs at least once a

year to discuss program goals, their child's progress, English proficiency assessment results, and language development needs in all content areas.

For each ELL student who makes below specified levels of performance on the annual English language proficiency assessment, the school district shall determine the additional support services to provide the student in accordance with the proposed rule.

Districts shall provide professional development to all teachers and administrators that specifically addresses the needs of ELL students, in accordance with the proposed rule.

Districts shall annually assess the English language proficiency of each ELL student using such assessment as prescribed by the Commissioner for this purpose.

Districts shall annually determine, in accordance with the proposed rule, if a student identified as ELL or SIFE will continue to be so identified.

PAPERWORK:

School districts must:

• maintain records in a student's cumulative record of all forms and notices generated, completed and signed during the initial identification and review process;

• annually prepare and submit to the Commissioner an estimate of ELL enrollment by school, home language and grade;

• maintain records of signed parental notices that indicate program selection, as well as orientation session agendas and sign in sheets; and

• submit assurances, an annual comprehensive plan and an annual report that demonstrate compliance with procedures and the provision of programs and services in accordance with the proposed rule.

DUPLICATION:

The rule does not duplicate existing State or Federal requirements, and is necessary to implement Regents policy on instruction standards for English Language Learners (ELL) to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA).

ALTERNATIVES:

There were no significant alternatives and none were considered.

FEDERAL STANDARDS:

The rule is necessary to ensure compliance with Title I and III of the ESEA, Title IV of the Civil Rights Act of 1964, and the EEOA.

COMPLIANCE SCHEDULE:

The rule takes effect on its stated effective date. Districts will be given one school year to plan such that full implementation will come into effect by the beginning of the 2015-2016 school year, e.g., July 1, 2015.

Summary of Regulatory Flexibility Analysis

Small Businesses:

The proposed rule relates to criteria for bilingual education and English as a New Language programs for students who are English Language Learners and does not impose any adverse economic impact, reporting, record keeping or other compliance requirements on small businesses. No further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The rule applies to each of the 689 public school districts and 37 boards of cooperative educational services (BOCES) in the State.

2. COMPLIANCE REQUIREMENTS:

Each district shall implement a four-step identification process to determine if a student is ELL upon initial enrollment/reentry in school, including:

(1) administration of a Home Language Questionnaire;

(2) an individual interview with the student to determine if the student shall be administered the statewide English language proficiency identification assessment and to determine the student's grade level of literacy in their home language and grade level in math;

(3) where applicable, a process to determine whether students with disabilities shall take the statewide English language proficiency identification assessment and whether the student should be identified as ELL; and

(4) administration of a statewide English language proficiency identification assessment.

The district shall provide for review of its determination in accordance with the proposed rule.

Each district shall provide, as set forth in the proposed rule, either a Bilingual Education or English as a New Language program to ELL students.

Each district in which the sum of each school's Annual Estimate of Enrollment equals 20 or more ELLs of the same grade level, all of whom have the same home language that is other than English, shall provide a sufficient number of Bilingual Education programs in the district in the following school year, such that there are Bilingual Education programs available in the district for at least seventy percent (70%) of the estimated ELL students who share the same home language other than English and grade level districtwide.

Each district shall place any new required Bilingual Education programs in a school that has not been identified as a School Under Registration Review or as a Focus or Priority School, if such school exists in the district. The district must submit a justification and receive approval from the Commissioner to place new Bilingual Education program(s) in a Focus School or in a Priority School if no Focus School exists in the district.

Each district that has an Annual Estimate of Enrollment of ELLs in which 20 or more ELLs of the same grade level assigned to a school, all of whom have the same home language that is other than English, shall provide such students with a Bilingual Education program at that school in the following school year.

If such Bilingual Education program does not exist in the school in which the student is enrolled, each ELL student shall be provided the opportunity to transfer to another school in the district that operates a Bilingual Education program that serves the same grade level and language. An English as a New Language program must be provided to all ELLs who are not served by a Bilingual Education program.

Each district shall provide program continuity such that all ELL students can continue to receive the program type in which they were initially enrolled and, in the case of a Bilingual Education program, there were at least 15 students enrolled in a grade in such program in the district the prior school year.

The parent of an ELL student who is a new entrant shall be provided a high quality orientation session on the state standards, assessments, and school expectations for ELLs, as well as the program goals and requirements for Bilingual Education and English as a New Language programs. Districts shall individually meet with the parents of ELLs at least once a year to discuss program goals, their child's progress, English proficiency assessment results, and language development needs in all content areas.

For each ELL student who makes below specified levels of performance on the annual English language proficiency assessment, the school district shall determine the additional support services to provide the student in accordance with the proposed rule.

Districts shall provide professional development to all teachers and administrators that specifically addresses the needs of ELL students, in accordance with the proposed rule.

Districts shall annually assess the English language proficiency of each ELL student using such assessment as prescribed by the Commissioner for this purpose.

Districts shall annually determine, in accordance with the proposed rule, if a student identified as ELL or SIFE will continue to be so identified.

Districts must:

• maintain records in a student's cumulative record of all forms and notices generated, completed and signed during the initial identification and review process;

• annually prepare and submit to the Commissioner an estimate of ELL enrollment by school, home language and grade;

• maintain records of signed parental notices that indicate program selection, as well as orientation session agendas and sign in sheets; and

• submit assurances, an annual comprehensive plan and an annual report that demonstrate compliance with procedures and the provision of programs and services in accordance with the proposed rule.

3. PROFESSIONAL SERVICES:

The rule does not impose any additional professional service requirements.

4. COMPLIANCE COSTS:

For most areas, the rule does not impose any new costs not currently required by existing State and federal requirements. In a few areas there may be additional costs and cost savings.

Increased costs may be associated with:

• new identification process and use of qualified personnel

• review of initial determination process

• retention of identification documents

• parent notification and meeting requirements

• professional development requirement

• expanded reporting requirements

• districts newly required to provide bilingual instruction or expand their bilingual programs will incur additional costs for curriculum and instruction materials for new bilingual classes.

When fully implemented, the rule's provisions may result in savings to districts through elimination or reduction of costs associated with:

• providing services to students incorrectly identified as ELL

• providing ELL services to students with disabilities who do not need such services

• ability of high school ELL to earn content area credit while acquiring English proficiency

• ability of ELL students to demonstrate English proficiency through multiple measures

• the rule's provision allowing for integrated co-teaching rather than stand-alone classes, may result in increased costs, less costs, or the same costs, depending on how districts structure their programs.

SED cannot estimate actual costs or costs savings for each school district because they will vary widely from district to district, depending on the size of the school district, the number of ELL students, the languages spoken, the grades in which the students are enrolled, the number and types of programs provided, teaching staff levels, collective bargaining provisions, and how districts decide to reallocate existing resources to meet the above provisions. Most districts are or should be serving their ELLs currently, but SED does not have data on the amount of funds currently dedicated to these activities in each district. Moreover, additional funds are made available to school districts every year for their ELLs through a foundation aid formula that weights funding for ELLs at an additional.5 weight per ELL student. Additionally, many districts receive Title III funds for their ELL students to supplement services for ELL students. SED will inform districts that portions of those monies should be used to offset some of these costs.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Regents policy on standards for instruction of English Language Learners (ELL), to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA). The majority of the requirements in the rule do not impose any compliance requirements beyond those imposed by the applicable State and federal statutes.

The proposed rule will improve the learning environment and academic outcomes for ELLs to close the achievement gap between ELLs and non-ELLs, and ensure that ELLs in New York State can graduate college and career ready. The rule has been carefully drafted to carry-over existing requirements in the proposed rule where feasible, while ensuring that State and federal requirements are met.

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement long-range Regents policy relating to bilingual education and English as a New Language programs for students who are English Language Learners. Accordingly, there is no need for a shorter review period.

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

Summary of Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to all school districts and boards of cooperative educational services (BOCES) in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

Each district shall implement a four-step identification process to determine if a student is ELL upon initial enrollment/reentry in school, including:

(1) administration of a Home Language Questionnaire;

(2) an individual interview with the student to determine if the student shall be administered the statewide English language proficiency identification assessment and to determine the student's grade level of literacy in their home language and grade level in math;

(3) where applicable, a process to determine whether students with disabilities shall take the statewide English language proficiency identification assessment and whether the student should be identified as ELL; and

(4) administration of a statewide English language proficiency identification assessment.

The district shall provide for review of its determination in accordance with the proposed rule.

Each district shall provide, as set forth in the proposed rule, either a Bilingual Education or English as a New Language program to ELL students.

Each district in which the sum of each school's Annual Estimate of Enrollment equals 20 or more ELLs of the same grade level, all of whom have the same home language that is other than English, shall provide a sufficient number of Bilingual Education programs in the district in the following school year, such that there are Bilingual Education programs available in the district for at least seventy percent (70%) of the estimated ELL students who share the same home language other than English and grade level districtwide.

Each district shall place any new required Bilingual Education programs in a school that has not been identified as a School Under Registration Review or as a Focus or Priority School, if such school exists in the district. The district must submit a justification and receive approval from the Commissioner to place new Bilingual Education program(s) in a Focus School or in a Priority School if no Focus School exists in the district.

Each district that has an Annual Estimate of Enrollment of ELLs in which 20 or more ELLs of the same grade level assigned to a school, all of whom have the same home language that is other than English, shall provide such students with a Bilingual Education program at that school in the following school year.

If such Bilingual Education program does not exist in the school in which the student is enrolled, each ELL student shall be provided the opportunity to transfer to another school in the district that operates a Bilingual Education program that serves the same grade. level and language, An English as a New Language program must be provided to all ELLs who are not served by a Bilingual Education program.

Each district shall provide program continuity such that all ELL students can continue to receive the program type in which they were initially enrolled and, in the case of a Bilingual Education program, there were at least 15 students enrolled in a grade in such program in the district the prior school year.

The parent of an ELL student who is a new entrant shall be provided a high quality orientation session on the state standards, assessments, and school expectations for ELLs, as well as the program goals and requirements for Bilingual Education and English as a New Language programs. Districts shall individually meet with the parents of ELLs at least once a year to discuss program goals, their child's progress, English proficiency assessment results, and language development needs in all content areas.

For each ELL student who makes below specified levels of performance on the annual English language proficiency assessment, the school district shall determine the additional support services to provide the student in accordance with the proposed rule.

Districts shall provide professional development to all teachers and administrators that specifically addresses the needs of ELL students, in accordance with the proposed rule.

Districts shall annually assess the English language proficiency of each ELL student using such assessment as prescribed by the Commissioner for this purpose.

Districts shall annually determine, in accordance with the proposed rule, if a student identified as ELL or SIFE will continue to be so identified.

Districts must:

- maintain records in a student's cumulative record of all forms and notices generated, completed and signed during the initial identification and review process;
- annually prepare and submit to the Commissioner an estimate of ELL enrollment by school, home language and grade;
- maintain records of signed parental notices that indicate program selection, as well as orientation session agendas and sign in sheets; and
- submit assurances, an annual comprehensive plan and an annual report that demonstrate compliance with procedures and the provision of programs and services in accordance with the proposed rule.

The rule does not impose any additional professional service requirements on rural areas.

3. COMPLIANCE COSTS:

For most areas, the rule does not impose any new costs not currently required by existing State and federal requirements. In a few areas there may be additional costs and cost savings.

Increased costs may be associated with:

- new identification process and use of qualified personnel
- review of initial determination process
- retention of identification documents
- parent notification and meeting requirements
- professional development requirement
- expanded reporting requirements
- districts newly required to provide bilingual instruction or expand their bilingual programs will incur additional costs for curriculum and instruction materials for new bilingual classes.

When fully implemented, the rule's provisions may result in savings to districts through elimination or reduction of costs associated with:

- providing services to students incorrectly identified as ELL
- providing ELL services to students with disabilities who do not need such services
- ability of high school ELL to earn content area credit while acquiring English proficiency

• ability of ELL students to demonstrate English proficiency through multiple measures

• the rule's provision allowing for integrated co-teaching rather than stand-alone classes, may result in increased costs, less costs, or the same costs, depending on how districts structure their programs.

SED cannot estimate actual costs or costs savings for each school district because they will vary widely from district to district, depending on the size of the school district, the number of ELL students, the languages spoken, the grades in which the students are enrolled, the number and types of programs provided, teaching staff levels, collective bargaining provisions, and how districts decide to reallocate existing resources to meet the above provisions. Most districts are or should be serving their ELLs currently, but SED does not have data on the amount of funds currently dedicated to these activities in each district. Moreover, additional funds are made available to school districts every year for their ELLs through a foundation aid formula that weights funding for ELLs at an additional.5 weight per ELL student. Additionally, many districts receive Title III funds for their ELL students to supplement services for ELL students. SED will inform districts that portions of those monies should be used to offset some of these costs.

4. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Regents policy on standards for instruction of English Language Learners (ELL), to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA). The majority of the requirements in the proposed rule do not impose any program, service, duty or responsibility on school districts and BOCES beyond those imposed by the applicable State and federal statutes.

The proposed rule will improve the learning environment and academic outcomes for ELLs to close the achievement gap between ELLs and non-ELLs, and ensure that ELLs in New York State can graduate college and career ready. The proposed rule has been carefully drafted to carry-over existing requirements in the new rule where feasible, while ensuring that State and federal requirements are met. Since these requirements apply to all school districts and BOCES in the State, it is not possible to adopt different standards for those located in rural areas.

5. RURAL AREA PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement long-range Regents policy relating to bilingual education and English as a New Language programs for students who are English Language Learners. Accordingly, there is no need for a shorter review period.

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

Job Impact Statement

The proposed rule is necessary to implement Regents policy on standards for instruction of English Language Learners (ELL), to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA).

Federal civil rights and education laws, as well as federal court jurisprudence, require that ELL students must be provided with equal access to all school programs and services offered to non-ELL students, including access to programs required for graduation. Education Law section 3204 and Part 154 of the Regulations of the Commissioner (8 NYCRR Part 154) contain standards for educational services provided to ELLs in New York State in order to meet these federal obligations.

In light of developments in research and best practices for ELL instruction, federal jurisprudence on civil rights obligations towards ELLs, and concerns about the achievement gap between ELLs and non-ELLs in New York State, SED engaged stakeholders to determine how Part 154 programs and services could be enhanced to better meet the needs of the State's multilingual population.

Over the past 10 years, New York State ELL student enrollment has increased by 20%; ahead of the 18% national increase the U.S. Department of Education has reported. Currently, in New York State, over 230,000 ELLs speaking over 140 languages make up approximately 9% of the total student population. Spanish is the home language for approximately 62% of ELLs, and just over 41% were born in another country.

Our challenge in addressing the language and academic needs of ELLs is easily transparent in graduation rates. In 2013, 74% of all eligible New York State students graduated high school compared to 34% of ELLs who graduated. Out of the total State graduates, just over 35% were calculated to be college and career ready compared to just over 7% of ELL graduates calculated to be college and career ready.

In addition to graduation rates, challenges in ELA and Math outcomes between ELLs are non-English Language Learners (non-ELLs) are evident. In 2012, 58% of non-ELLs met or exceeded the ELA proficiency standard in grades 3-8. For the same year, 11.7 % of ELLs met or exceeded the standard. In 2013, with the implementation of the more rigorous NYS Common Core Learning Standards, 33% of non-ELLs met or exceeded the ELA proficiency standard in grades 3-8 with 3.2% of their ELL peers achieving the same standard.

Challenges in Math outcomes between ELLs and non-ELLs are also evident in New York State. In 2012, 67.2% of non-ELLs met or exceeded the Math proficiency standard in grades 3-8. For the same year, 34.4 % of ELLs met or exceeded the standard. In 2013, with the implementation of the more rigorous NYS Common Core Learning Standards, 32.7% of non-ELLs met or exceeded the Math proficiency standard in grades 3-8 with 9.8% of their ELL peers achieving the same standard.

The proposed rule will improve the learning environment and academic outcomes for ELLs to close the achievement gap between ELLs and non-ELLs, and ensure that ELLs can graduate college and career ready. The proposed rule will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the 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.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Pupils with Limited English Proficiency (English Language Learner [ELL] Programs)

I.D. No. EDU-27-14-00012-P

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

Proposed Action: Addition of Subpart 154-3 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 208 (not subdivided), 215 (not subdivided), 305(1), (2), 2117(1), 2854(1)(b), 3204(2), (2-a), (3) and (6)

Subject: Pupils with Limited English Proficiency (English Language Learner [ELL] programs).

Purpose: To prescribe identification/exit procedures for students with disabilities in ELL programs.

Text of proposed rule: Subpart 154-3 of the Regulations of the Commissioner of Education is added, effective October 1, 2014, as follows:

SUBPART 154-3

IDENTIFICATION AND EXIT PROCEDURES FOR STUDENTS WITH DISABILITIES FOR ENGLISH LANGUAGE LEARNER PROGRAMS OPERATED IN THE 2015-2016 SCHOOL YEAR AND THEREAFTER

154-3.1 Scope of Subpart and applicability.

The provisions of this Subpart shall apply to students with disabilities who are subject to the initial and reentry process and determination of English proficiency pursuant to section 154-2.3(a) of this Part and the exit procedures pursuant to section 154-2.3(m) of this Part in programs operated beginning with the 2015-2016 school year and thereafter. Except as otherwise provided in this Subpart, all other provisions of Subpart 154-2 of this Part shall apply to students with disabilities who are English Language Learners in programs operated beginning with the 2015-2016 school year.

154-3.2 Definition.

Language Proficiency Team (LPT) shall mean a committee that makes a determination regarding the initial identification of English Language Learner status for a student with a disability and exiting a student with a disability from English Language Learner status. The LPT shall be minimally comprised of a school/district administrator; a teacher or related service provider with a bilingual extension and/or a teacher of English to Speakers of Other Languages, certified pursuant to Part 80 of this Title; the director of special education or individual in a comparable title (or his or her designee); and the student's parent or person in parental relation. A qualified interpreter or translator of the language or mode of

communication the parent or person in parental relation best understands, as defined in section 154-2.2(t) of this Part, shall be present at each meeting of the LPT.

154-3.3 Determination of whether a student with a disability shall take the statewide English language proficiency identification assessment.

(a) Initial and Reentry Process for Determination of English Proficiency. For students with disabilities who are subject to the initial and reentry process and determination of English proficiency pursuant to section 154-2.3(a) of this Part, following the administration of Steps 1 and 2 and prior to the administration of Step 3 pursuant to section 154-2.3(a) of this Part, the following provisions shall apply:

(1) During the 2015-16 school year, for a student identified as having a disability, a Language Proficiency Team (LPT), as defined in section 154-3.2 of this subpart, shall individually determine whether the student shall take the statewide English language proficiency identification assessment and whether the student should be identified as an English Language Learner.

(i) In making this determination, the LPT shall, in accordance with guidance prescribed by the Commissioner, consider evidence of the student's English language development, including, but not limited to:

(a) the results of Steps 1 and 2 in section 154-2.3(a)(1) and (2) of this Part;

(b) the student's history of language use in school and home or community;

(c) the individual evaluation of the student conducted in accordance with the procedures in section 200.4(b)(6) of this Title, which shall include assessments administered in the student's home language; and

(d) information provided by the Committee on Special Education (CSE) as to whether the student's disability is the determinant factor affecting whether the student can demonstrate proficiency in English.

(ii) Based on the evidence reviewed in subparagraph (i) of this paragraph, the LPT must determine whether the disability is the determinant factor affecting whether the student can demonstrate proficiency in English and whether the student should take the English language proficiency identification assessment. If the LPT determines that the student should not take the English language proficiency identification assessment, the LPT shall also recommend, based on the evidence reviewed in subparagraph (i) of this subdivision, whether the student should be identified as an English Language Learner, and if so, their level of English language proficiency.

(iii) If, upon review, the school principal determines, based on the recommendation of the LPT, that the student is or is not an English Language Learner, the school principal shall inform the parent or person in parental relation of this recommendation, in the language or mode of communication the parent or person in parental relation best understands.

(iv) Upon receipt of a recommendation by the school principal as to whether the student is or is not an English Language Learner, the Superintendent or his or her designee shall review the school principal's recommendation and make a final determination to accept or reject the school principal's recommendation within ten (10) days of receiving the school principal's recommendation. If the Superintendent determines that the student is not an English Language Learner, notice of such determination shall be provided to the parent or person in parental relation in the language or mode of communication the parent or person in parental relation best understands within five (5) days of such final determination.

(2) Beginning in the 2016-2017 school year and thereafter, the CSE shall individually determine whether the student shall take the statewide English language proficiency identification assessment. In making this determination, the CSE shall, in accordance with guidance prescribed by the Commissioner, consider evidence of the student's English language development, including, but not limited to:

(i) the results of Steps 1 and 2 in section 154-2.3(a)(1) and (2) of this Part;

(ii) the student's history of language use in school and home or community;

(iii) the individual evaluation of the student conducted in accordance with the procedures in section 200.4(b)(6) of this Title, which shall include assessments administered in the student's home language; and

(iv) information provided by the parent or person in parental relation, teacher and related services providers as to whether the student's disability is the determinant factor affecting whether the student's ability to demonstrate English proficiency. In such cases, the CSE must include at least one individual who is knowledgeable about the student's English language development and is certified, pursuant to Part 80 of this Title, to provide bilingual services or instruction or as a teacher of English to Speakers of Other Languages. The CSE may determine that additional evaluations or assessments of the student are necessary in order to appropriately make this determination.

(b) Exit Criteria for Students with Disabilities. For students with disabilities who have been identified as English Language Learners pursuant to section 154-3.2 of this subpart, determination of whether the student will exit English Language Learner status, pursuant to section 154-2.3(m) of this Part, the following provisions shall apply:

(1) During the 2015-2016 school year, if a parent or person in parental relation, teacher or related services provider indicates to school personnel that the student's disability is likely the determinant factor affecting the student's ability to meet any of the criteria in section 154-2.3(m)(1) of this Part, the Language Proficiency Team (LPT), as defined in section 154-3.2(a) of this subpart, shall meet to make an individual determination as to whether the student should continue to be identified as an English Language Learner.

(i) In making this determination, the LPT shall, in accordance with guidance prescribed by the Commissioner, consider evidence of the student's English language development, including, but not limited to:

(a) the results of existing individual evaluations of the student which were administered in the student's home language and in English;

(b) the student's history of language use in school and home/community;

(c) classroom progress monitoring data and the results of the student's State assessments in English language arts;

(d) whether the student's individualized education program has identified services needed by the student in consideration of the student's English language development needs; and

(e) other data and information provided by the student's teacher(s), related services providers, parent or person in parental relation and Committee on Special Education (CSE) as to whether the student's disability was the determinant factor as to why the student did not meet the criteria in section 154-2.3(m)(1) of this Part. The LPT may also determine that additional evaluations or assessments of the student are necessary in order to appropriately make its determination.

(ii) Based on the consideration of evidence reviewed in subparagraph (i) of this paragraph, the LPT may determine that the student with a disability is no longer an English Language Learner and should be exited from English Language Learner status, subject to review by the school principal and superintendent; provided, however, that such determination shall not be based on reasons such as limited availability of qualified personnel or services pursuant to this Subpart, scheduling difficulties to meet the student's special education needs, or costs.

(iii) If, upon review, the school principal determines, based on the recommendation of the LPT, that the student is or is not an English Language Learner, the school principal shall inform the parent or person in parental relation of this recommendation, in the language or mode of communication the parent or person in parental relation best understands.

(iv) Upon receipt from the parent or person in parental relation of a signed consent letter, in the language or mode of communication the parent or person in parental relation best understands, the principal shall submit for review and approval a recommendation regarding the student's English Language Learner status to the Superintendent or his or her designee. A recommendation to the Superintendent shall not be made by the principal if the parent or person in parental relation does not submit a signed letter of consent, in the language or mode of communication the parent or person in parental relation best understands.

(v) Upon receipt of a recommendation by the school principal of the English Language Learner status to the Superintendent, the Superintendent or his or her designee shall review the school principal's recommendation and make a final determination to accept or reject the principal's recommendation within ten (10) days of receiving the school principal's recommendation.

(2) Beginning with the 2016-2017 school year and thereafter, if a parent or person in parental relation, teacher or related service provider indicates to school personnel that the student's disability is likely the determinant factor as to why the student did not meet the criteria in section 154-2.3(m)(1) of this Part, the Committee on Special Education (CSE), shall individually determine whether the disability is the determinant factor affecting whether the student can demonstrate proficiency in English.

(i) In making this determination, the CSE shall, in accordance with guidance prescribed by the Commissioner, consider evidence of the student's English language development including, but not limited to:

(a) the results of existing individual evaluations of the student which were administered in the student's home language and in English;

(b) the student's history of language use in school and home or community;

(c) classroom progress monitoring data and the results of the student's State assessments in English language arts;

(d) whether the student's individualized education program has identified services needed by the student in consideration of the student's English language development needs; and

(e) other data and information provided by the student's teacher(s), related service providers, and/or parent or person in parental rela-

tion, as to whether the student's disability was the determinant factor as to why the student did not meet the criteria in section 154-2.3(m)(1) of this Part. The CSE may also determine that additional evaluations or assessments of the student are necessary in order to appropriately make its determination.

(ii) Based on the evidence reviewed in subparagraph (i) of this paragraph, the CSE may determine that the student with a disability is no longer an English Language Learner and should be exited from English Language Learner status; provided, however, that such determination shall not be based on reasons such as limited availability of qualified personnel or services pursuant to this Part, scheduling difficulties to meet the student's special education needs, or costs.

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

Data, views or arguments may be submitted to: Ken Slentz, Deputy Commissioner, State Education Department, Office of P-12 Education, State Education Building 2M West, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDP12@mail.nysed.gov

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

Education Law section 215 authorizes the Regents and the Commissioner to require school districts to prepare and submit reports containing such information as they may prescribe.

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

Education Law section 2117(1) empowers the Regents and the Commissioner to require school districts to submit any information they deem appropriate.

Education Law section 4403 outlines the Department's and a school district's responsibilities regarding special education programs and services to students with disabilities. Section 4403(3) authorizes the Department to adopt regulations as the Commissioner deems in their best interests.

Education Law section 3204(2) and (2-a) provide for instructional programs for pupils with limited English proficiency (LEP) to be conducted in accordance with regulations of the Commissioner. Education Law section 3204(3) authorizes the Commissioner to establish standards for the instruction of LEP children, and section 3204(6) requires the Commissioner to establish standards by regulation.

LEGISLATIVE OBJECTIVES:

The rule is consistent with the above statutory authority and is necessary to implement policy adopted by the Regents relating to criteria for bilingual education and English as a New Language programs for students who are English Language Learners, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA).

NEEDS AND BENEFITS:

Federal civil rights and education laws, as well as federal court jurisprudence, require that English Language Learner (ELL) students must be provided with equal access to all school programs and services offered to non-ELL students, including access to programs required for graduation. Education Law section 3204 and Part 154 of the Commissioner's Regulations (8 NYCRR) contain standards for educational services provided to ELLs in New York State to meet these federal obligations.

In light of developments in research and best practices for ELL instruction, federal jurisprudence on civil rights obligations towards ELLs, concerns about the achievement gap between ELLs with disabilities, ELLs and non-ELLs in New York, and concerns about over identification of ELLs with disabilities, the Department engaged stakeholders to determine how the Part 154 programs and services could be enhanced to better meet the needs of ELL students with disabilities.

According to the National Institute of Child Health, it is estimated that 9% of all ELL students in U.S. public schools are identified as ELLs with disabilities. In New York State, 19.6% of ELLs are classified with disabilities, and of which 80.4% have a home language of Spanish. Regarding disability classifications in New York, 40% of ELLs with disabilities are classified with Speech Language Impairment, and 38% are classified with a Learning Disability. According to the National Center for Education Statistics (NCES), the percentage distribution nationally of all children with a disability classification shows 36% are classified with a Learning Disability, and 21% with Speech Language Impairments. This data demonstrates the need to improve identification and exit procedures for ELL students with disabilities, as New York significantly over identifies these students as compared to national statistics.

COSTS:

(a) Costs to State government: The rule is necessary to ensure compliance with Education Law sections 3204 and 4403, Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, and the Equal Educational Opportunities Act of 1974 (EEOA), and does not impose any costs on State government, including the State Education Department, beyond those costs imposed by the statutes.

(b) Costs to local government: The rule imposes costs on school districts and boards of cooperative educational services (BOCES) for the 2015-16 school year only, associated with the formation of a Language Proficiency Team (LPT) during that school year. The costs are based on the following: (1) an estimated hourly rate for teachers of $46.46 (based on an average annual teacher salary of $66,902 divided by 1,440 hours per school year); (2) an estimated hourly rate for principals of $71.90 (based on an average annual principal salary of $126,544 divided by 1,760 hours per school year); and (3) an estimated hourly rate for superintendents of $85.71 (based on a median annual superintendent of schools salary of $150,850 divided by 1,760 hours per school year). The estimated costs below assume that school districts/BOCES will need to pay for extra time for personnel at current rates.

The Department estimates that a teacher, administrator and special education director will spend approximately 3 hours preparing for and conducting the meeting. In addition the Department estimates that the principal will spend 1 hour reviewing the recommendation and the superintendent will spend 1 hour reviewing the recommendation. Based on the estimated hourly rates described above, the Department estimates that the LPT process for each ELL student with a disability will cost a school district/BOCES $418.14 for the LPT meeting and $71.90 for the principal review and $85.71 superintendent review each for both the identification and exit process.

It is anticipated that the Committee on Special Education (CSE) process, which begins in 2016-17, any additional costs to the CSE will be minimal, and capable of being absorbed by existing staff, fiscal and other resources.

It is also anticipated that school districts will experience costs savings as a result of less students with disabilities being over identified as ELL and requiring significant additional services and programming.

(c) Costs to private regulated parties: None. The rule applies to school districts and BOCES.

(d) Costs to regulating agency for implementation and continued administration of this rule: See above Costs to State government.

LOCAL GOVERNMENT MANDATES:

Initial and Reentry Process for Determination of English Proficiency.

School districts must form a Language Proficiency Team (LPT) to make recommendations regarding the initial identification of ELL status for a student with a disability and exiting a student with a disability from ELL status. The LPT shall include a school/district administrator; a certified teacher or related service provider with a bilingual extension and/or a certified teacher of English to Speakers of Other Languages; the director of special education or individual in a comparable title (or his or her designee); and the student's parent/person in parental relation. A qualified interpreter/translator of the language or mode of communication the parent/person in parental relation best understands shall be present at each LPT meeting.

During the 2015-16 school year, for a student identified as having a disability, the LPT shall individually determine whether a the student shall take the statewide English language proficiency identification assessment and whether the student should be identified as ELL. If upon review, the school principal determines that the student is or is not ELL, he/she shall inform the parent/person in parental relation of this recommendation in the language or mode of communication the parent/person in parental relation best understands. Upon receipt of the principal's recommendation, the superintendent or designee shall review the principal's recommendation and make a final determination to accept or reject the recommendation within 10 days of receipt. If the superintendent determines the student is not ELL, notice of such determination shall be provided to the parent/person in parental relation in the language or mode of communication the parent/person in parental relation best understands within 5 days of the final determination.

Beginning in the 2016-2017 school year, the CSE shall individually determine whether the student shall take the statewide English language proficiency identification assessment.

Exit Criteria for Students with Disabilities.

During the 2015-2016 school year, if a parent/person in parental relation, teacher or related services provider indicates to school personnel that the student's disability is likely the determinant factor affecting the student's ability to meet any of the criteria for exiting ELL status, the LPT shall meet to make an individual determination as to whether the student should continue to be identified as ELL. If upon review of the LPT's recommendation, the principal determines that the student is or is not an ELL, he/she shall inform the parent/person in parental relation of this recommendation in the language or mode of communication the parent/person in parental relation best understands. Upon receipt from the parent/person in parental relation of a signed consent letter, in the language or mode of communication the parent/person in parental relation best understands, the principal shall submit for review and approval a recommendation regarding the student's ELL status to the superintendent or superintendent's designee. Upon receipt of a recommendation by the school principal of the ELL status to the superintendent, the superintendent or superintendent's designee shall review the principal's recommendation and make a final determination to accept or reject such recommendation within ten (10) days of receiving such recommendation.

Beginning with the 2016-2017 school year, if a parent/person in parental relation, teacher or related service provider indicates to school personnel that the student's disability is likely the determinant factor as to why the student did not meet the criteria for exiting ELL status, the CSE shall individually determine whether the disability is the determinant factor affecting whether the student can demonstrate proficiency in English.

PAPERWORK:

The LPT and principal shall issue written recommendations, and the superintendent of schools shall issue a written determination, regarding the initial identification of ELL status for a student with a disability and exiting a student with a disability from ELL status.

Parents/persons in parental relation must submit a signed consent letter, in the language or mode of communication the parent/person in parental relation best understands, in order for a principal to submit a recommendation regarding the student's ELL status to the superintendent or superintendent's designee for review and approval.

DUPLICATION:

The rule is necessary to ensure compliance with Education Law sections 3204 and 4403, Title I and III of the ESEA, Title IV of the Civil Rights Act of 1964, and the EEOA and does not duplicate existing State or Federal requirements.

ALTERNATIVES:

There were no significant alternatives and none were considered.

FEDERAL STANDARDS:

The rule is necessary to ensure compliance with Education Law sections 3204 and 4403, Title I and III of the ESEA, Title IV of the Civil Rights Act of 1964, and the EEOA. These laws require states and school districts to provide ELL students with appropriate services to overcome language barriers. In addition, federal jurisprudence in landmark cases such as Castañeda v. Pickard established standards to ensure compliance with EEOA. For example, the Castañeda standard mandates that programs for language-minority students must be (1) based on a sound educational theory, (2) implemented effectively with sufficient resources and personnel, and (3) evaluated to determine whether they are effective in helping students overcome language barriers.

In addition, recent U.S. Department of Justice findings establish high standards to ensure compliance with EEOA, particularly with regard to the identification and exit of ELL students with disabilities such as: Settlement Agreement 2013 between the United States and the Prince William County School District; and Settlement Agreement 2003 between the United States and The Bound Brook, N.J. Board of Education.

COMPLIANCE SCHEDULE:

The rule will become effective on its stated effective date. Districts and BOCES will be given one school year to plan such that full implementation will come into effect by the beginning of the 2015-2016 school year, e.g., July 1, 2015.

Regulatory Flexibility Analysis

Small Businesses:

The proposed rule relates to criteria to identify and exit students as English Language Learners (ELL) with disabilities and does not impose any adverse economic impact, reporting, record keeping or other compliance requirements on small businesses. No further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The proposed rule applies to each of the 689 public school districts and 37 boards of cooperative educational services (BOCES) in the State.

2. COMPLIANCE REQUIREMENTS:

Initial and Reentry Process for Determination of English Proficiency.

School districts must form a Language Proficiency Team (LPT) to make recommendations regarding the initial identification of ELL status for a student with a disability and exiting a student with a disability from ELL status. The LPT shall include a school/district administrator; a certified teacher or related service provider with a bilingual extension and/or a certified teacher of English to Speakers of Other Languages; the director of special education or individual in a comparable title (or his or her designee); and the student's parent/person in parental relation. A qualified interpreter/translator of the language or mode of communication the parent/person in parental relation best understands shall be present at each LPT meeting.

During the 2015-16 school year, for a student identified as having a disability, the LPT shall individually determine whether a the student shall take the statewide English language proficiency identification assessment and whether the student should be identified as ELL. If upon review, the school principal determines that the student is or is not ELL, he/she shall inform the parent/person in parental relation of this recommendation in the language or mode of communication the parent/person in parental relation best understands. Upon receipt of the principal's recommendation, the superintendent or designee shall review the principal's recommendation and make a final determination to accept or reject the recommendation within 10 days of receipt. If the superintendent determines the student is not ELL, notice of such determination shall be provided to the parent/person in parental relation in the language or mode of communication the parent/person in parental relation best understands within 5 days of the final determination.

Beginning in the 2016-2017 school year, the CSE shall individually determine whether the student shall take the statewide English language proficiency identification assessment.

Exit Criteria for Students with Disabilities.

During the 2015-2016 school year, if a parent/person in parental relation, teacher or related services provider indicates to school personnel that the student's disability is likely the determinant factor affecting the student's ability to meet any of the criteria for exiting ELL status, the LPT shall meet to make an individual determination as to whether the student should continue to be identified as ELL. If upon review of the LPT's recommendation, the principal determines that the student is or is not an ELL, he/she shall inform the parent/person in parental relation of this recommendation in the language or mode of communication the parent/person in parental relation best understands. Upon receipt from the parent/person in parental relation of a signed consent letter, in the language or mode of communication the parent/person in parental relation best understands, the principal shall submit for review and approval a recommendation regarding the student's ELL status to the superintendent or superintendent's designee. Upon receipt of a recommendation by the school principal of the ELL status to the superintendent, the superintendent or superintendent's designee shall review the principal's recommendation and make a final determination to accept or reject such recommendation within ten (10) days of receiving such recommendation.

Beginning with the 2016-2017 school year, if a parent/person in parental relation, teacher or related service provider indicates to school personnel that the student's disability is likely the determinant factor as to why the student did not meet the criteria for exiting ELL status, the CSE shall individually determine whether the disability is the determinant factor affecting whether the student can demonstrate proficiency in English.

The LPT and principal shall issue written recommendations, and the superintendent of schools shall issue a written determination, regarding the initial identification of ELL status for a student with a disability and exiting a student with a disability from ELL status.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The rule imposes costs on school districts and BOCES for the 2015-16 school year only, associated with the formation of a Language Proficiency Team (LPT) during that school year. The costs are based on the following: (1) an estimated hourly rate for teachers of $46.46 (based on an average annual teacher salary of $66,902 divided by 1,440 hours per school year); (2) an estimated hourly rate for principals of $71.90 (based on an average annual principal salary of $126,544 divided by 1,760 hours per school year); and (3) an estimated hourly rate for superintendents of $85.71 (based on a median annual superintendent of schools salary of $150,850 divided by 1,760 hours per school year). The estimated costs below assume that school districts/BOCES will need to pay for extra time for personnel at current rates.

The Department estimates that a teacher, administrator and special

education director will spend approximately 3 hours preparing for and conducting the meeting. In addition the Department estimates that the principal will spend 1 hour reviewing the recommendation and the superintendent will spend 1 hour reviewing the recommendation. Based on the estimated hourly rates described above, the Department estimates that the LPT process for each ELL student with a disability will cost a school district/BOCES $418.14 for the LPT meeting and $71.90 for the principal review and $85.71 superintendent review each for both the identification and exit process.

It is anticipated that the Committee on Special Education (CSE) process, which begins in 2016-17, any additional costs to the CSE will be minimal, and capable of being absorbed by existing staff, fiscal and other resources.

It is also anticipated that school districts will experience costs savings as a result of less students with disabilities being over identified as ELL and requiring significant additional services and programming.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement policy adopted by the Board of Regents relating to criteria for bilingual education and English as a New Language programs for students who are English Language Learners, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act, Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA).

Federal civil rights and education laws, as well as federal court jurisprudence, require that ELL students must be provided with equal access to all school programs and services offered to non-ELL students, including access to programs required for graduation. Education Law section 3204 and Part 154 of the Regulations of the Commissioner (CR Part 154) contain standards for educational services provided to ELLs in New York State in order to meet these federal obligations.

In light of developments in research and best practices for ELL instruction, federal jurisprudence on civil rights obligations towards ELLs, concerns about the achievement gap between ELLs with disabilities, ELLs and non-ELLs in New York State, and concerns about over identification of ELLs with disabilities, the Department began to engage stakeholders to determine how the programs and services required in Part 154 could be enhanced to better meet the needs of students who are English Language Learners and also students with disabilities.

According to the National Institute of Child health it is estimated that there 9% of all ELL students in U.S. public schools are identified as ELLs with disabilities. In New York State 19.6% of ELLs are classified with disabilities, and of which 80.4% have a home language of Spanish. In terms of disability classifications in New York State, 40% of ELLs with disabilities are classified with Speech Language Impairment, and 38% are classified with a Learning disability. According to the National Center for Education Statistics (NCES), the percentage distribution nationally of all children with a disability classification shows 36% are classified with a Learning Disability, and 21% with Speech Language Impairments. This data demonstrates the need to improve identification and exit procedures for ELLs with disabilities, as New York State significantly over identifies these students as compared to national statistics.

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy relating to bilingual education and English as a New Language programs for students who are English Language Learners. Accordingly, there is no need for a shorter review period.

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to all school districts and boards of cooperative educational services (BOCES) in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

Initial and Reentry Process for Determination of English Proficiency.

School districts must form a Language Proficiency Team (LPT) to make recommendations regarding the initial identification of ELL status for a student with a disability and exiting a student with a disability from ELL status. The LPT shall include a school/district administrator; a certified teacher or related service provider with a bilingual extension and/or a certified teacher of English to Speakers of Other Languages; the director of special education or individual in a comparable title (or his or her designee); and the student's parent/person in parental relation. A qualified interpreter/translator of the language or mode of communication the parent/person in parental relation best understands shall be present at each LPT meeting.

During the 2015-16 school year, for a student identified as having a disability, the LPT shall individually determine whether a the student shall take the statewide English language proficiency identification assessment and whether the student should be identified as ELL. If upon review, the school principal determines that the student is or is not ELL, he/she shall inform the parent/person in parental relation of this recommendation in the language or mode of communication the parent/person in parental relation best understands. Upon receipt of the principal's recommendation, the superintendent or designee shall review the principal's recommendation and make a final determination to accept or reject the recommendation within 10 days of receipt. If the superintendent determines the student is not ELL, notice of such determination shall be provided to the parent/person in parental relation in the language or mode of communication the parent/person in parental relation best understands within 5 days of the final determination.

Beginning in the 2016-2017 school year, the CSE shall individually determine whether the student shall take the statewide English language proficiency identification assessment.

Exit Criteria for Students with Disabilities.

During the 2015-2016 school year, if a parent/person in parental relation, teacher or related services provider indicates to school personnel that the student's disability is likely the determinant factor affecting the student's ability to meet any of the criteria for exiting ELL status, the LPT shall meet to make an individual determination as to whether the student should continue to be identified as ELL. If upon review of the LPT's recommendation, the principal determines that the student is or is not an ELL, he/she shall inform the parent/person in parental relation of this recommendation in the language or mode of communication the parent/person in parental relation best understands. Upon receipt from the parent/person in parental relation of a signed consent letter, in the language or mode of communication the parent/person in parental relation best understands, the principal shall submit for review and approval a recommendation regarding the student's ELL status to the superintendent or superintendent's designee. Upon receipt of a recommendation by the school principal of the ELL status to the superintendent, the superintendent or superintendent's designee shall review the principal's recommendation and make a final determination to accept or reject such recommendation within ten (10) days of receiving such recommendation.

Beginning with the 2016-2017 school year, if a parent/person in parental relation, teacher or related service provider indicates to school personnel that the student's disability is likely the determinant factor as to why the student did not meet the criteria for exiting ELL status, the CSE shall individually determine whether the disability is the determinant factor affecting whether the student can demonstrate proficiency in English.

The LPT and principal shall issue written recommendations, and the superintendent of schools shall issue a written determination, regarding the initial identification of ELL status for a student with a disability and exiting a student with a disability from ELL status.

Parents/persons in parental relation must submit a signed consent letter, in the language or mode of communication the parent/person in parental relation best understands, in order for a principal to submit a recommendation regarding the student's ELL status to the superintendent or superintendent's designee for review and approval.

The proposed rule does not impose any additional professional service requirements on rural areas.

3. COMPLIANCE COSTS:

The rule imposes costs on school districts and BOCES for the 2015-16 school year only, associated with the formation of a Language Proficiency Team (LPT) during that school year. The costs are based on the following: (1) an estimated hourly rate for teachers of $46.46 (based on an average annual teacher salary of $66,902 divided by 1,440 hours per school year); (2) an estimated hourly rate for principals of $71.90 (based on an average annual principal salary of $126,544 divided by 1,760 hours per school year); and (3) an estimated hourly rate for superintendents of $85.71

(based on a median annual superintendent of schools salary of $150,850 divided by 1,760 hours per school year). The estimated costs below assume that school districts/BOCES will need to pay for extra time for personnel at current rates.

The Department estimates that a teacher, administrator and special education director will spend approximately 3 hours preparing for and conducting the meeting. In addition the Department estimates that the principal will spend 1 hour reviewing the recommendation and the superintendent will spend 1 hour reviewing the recommendation. Based on the estimated hourly rates described above, the Department estimates that the LPT process for each ELL student with a disability will cost a school district/BOCES $418.14 for the LPT meeting and $71.90 for the principal review and $85.71 superintendent review each for both the identification and exit process.

It is anticipated that the Committee on Special Education (CSE) process, which begins in 2016-17, any additional costs to the CSE will be minimal, and capable of being absorbed by existing staff, fiscal and other resources.

It is also anticipated that school districts will experience costs savings as a result of less students with disabilities being over identified as ELL and requiring significant additional services and programming.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement policy adopted by the Board of Regents relating to criteria for bilingual education and English as a New Language programs for students who are English Language Learners, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act, Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA). Because the rule implements Regents policy that is applicable throughout the State, it was not possible to provide for a lesser standard or an exemption for school districts and BOCES in rural areas.

Federal civil rights and education laws, as well as federal court jurisprudence, require that ELL students must be provided with equal access to all school programs and services offered to non-ELL students, including access to programs required for graduation. Education Law section 3204 and Part 154 of the Regulations of the Commissioner (8 NYCRR) contain standards for educational services provided to ELLs in New York State in order to meet these federal obligations.

In light of developments in research and best practices for ELL instruction, federal jurisprudence on civil rights obligations towards ELLs, concerns about the achievement gap between ELLs with disabilities, ELLs and non-ELLs in New York State, and concerns about over identification of ELLs with disabilities, the Department began to engage stakeholders to determine how the programs and services required in Part 154 could be enhanced to better meet the needs of students who are English Language Learners and also students with disabilities.

According to the National Institute of Child health it is estimated that there 9% of all ELL students in U.S. public schools are identified as ELLs with disabilities. In New York State 19.6% of ELLs are classified with disabilities, and of which 80.4% have a home language of Spanish. In terms of disability classifications in New York State, 40% of ELLs with disabilities are classified with Speech Language Impairment, and 38% are classified with a Learning disability. According to the National Center for Education Statistics (NCES), the percentage distribution nationally of all children with a disability classification shows 36% are classified with a Learning Disability, and 21% with Speech Language Impairments. This data demonstrates the need to improve identification and exit procedures for ELLs with disabilities, as New York State significantly over identifies these students as compared to national statistics.

5. RURAL AREA PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy relating to bilingual education and English as a New Language programs for students who are English Language Learners. Accordingly, there is no need for a shorter review period.

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

Job Impact Statement

The proposed rule amends the procedures for identifying and exiting students with disabilities as English Language Learners (ELL). Federal civil rights and education laws, as well as federal court jurisprudence, require that ELL students must be provided with equal access to all school programs and services offered to non-ELL students, including access to programs required for graduation. Education Law section 3204 and Part 154 of the Regulations of the Commissioner (8 NYCRR Part 154) contain standards for educational services provided to ELLs in New York State in order to meet these federal obligations. In addition, Education Law section 4403 outlines the Department's and a school district's responsibilities regarding special education programs/ and services to students with disabilities. Section 4403(3) authorizes the Department to adopt regulations as Commissioner deems in their best interests.

In light of developments in research and best practices for ELL instruction, federal jurisprudence on civil rights obligations towards ELLs, concerns about the achievement gap between ELLs with disabilities, ELLs and non-ELLs in New York State, and concerns about over identification of ELLs with disabilities, the proposed rule improves identification and exit procedures for students with disabilities who are also English Language Learners.

According to the National Institute of Child Health it is estimated that 9% of all ELL students in U.S. public schools are identified as ELLs with disabilities. In New York State 19.6% of ELLs are classified with disabilities, and of which 80.4% have a home language of Spanish. In terms of disability classifications in New York State, 40% of ELLs with disabilities are classified with Speech Language Impairment, and 38% are classified with a Learning disability. According to the National Center for Education Statistics (NCES), the percentage distribution nationally of all children with a disability classification shows 36% are classified with a Learning Disability, and 21% with Speech Language Impairments. This data demonstrates the need to improve identification and exit procedures for ELLs with disabilities, as New York State significantly over identifies these students as compared to national statistics.

The proposed rule will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the 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.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Career and Technical Education (CTE)

I.D. No. EDU-27-14-00014-P

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

Proposed Action: Amendment of section 100.5(d)(6) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 215 (not subdivided), 305(1) and (2), 308 (not subdivided), 309 (not subdivided) and 3204(3)

Subject: Career and Technical Education (CTE).

Purpose: To expand from four to eight the number of required credits in English, science, mathematics and social studies that may be fulfilled through specialized courses, integrated CTE courses, or a combination of specialized and integrated CTE courses.

Text of proposed rule: Paragraph (6) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective October 1, 2014, as follows:

(6) Career and technical education program option.

(i) . . .

(ii) Students who first enter grade nine in the 2001-2002 school year or thereafter may meet the commencement level New York State learning standards and earn either a Regents diploma or a Regents diploma with advanced designation, or such diploma with a technical endorsement, by completing an approved career and technical education program pursuant to the requirements of this subparagraph.

(a) In order to be eligible to receive a Regents diploma or Regents diploma with advanced designation, students shall successfully complete:

(1) five Regents assessments as described in paragraph (a)(5) of this section, or approved alternatives pursuant to section 100.2(f) of this Title; and

(2) 22 units of credit pursuant to paragraph (a)(3) of this section, provided that [one] *two units* each of required credit in English, science, and mathematics, and the combined unit of economics and government *and up to one additional credit in social studies*, may be fulfilled through:

(i) specialized courses as defined in subparagraph (b)(7)(iv) of this section;

(ii) integrated career and technical education courses; or

(iii) a combination of specialized and integrated career and technical education courses.

(b) In order to be eligible to receive such diploma with a technical endorsement, students participating in an approved program shall successfully complete:

(1) the requirements set forth in clause (a) of this subparagraph; and

(2) a technical assessment.

(iii) Beginning with the 2001-2002 school year and thereafter, students who first entered grade nine in the 2000-2001 school year or before and who have not yet received a Regents diploma, Regents diploma with advanced designation, or local diploma may earn such diploma, or such diploma with a technical endorsement, pursuant to the requirements of this subparagraph.

(a) In order to be eligible to receive a Regents diploma, Regents diploma with advanced designation or local diploma, students participating in an approved career and technical education program shall successfully complete the required units of credit pursuant to paragraph (a)(1) or (2) of this section, as applicable, provided that [one] *two units* each of required credit in English, science, and mathematics, and the combined unit of economics and government *and up to one additional credit in social studies*, may be fulfilled through:

(1) specialized courses as defined in subparagraph (b)(7)(iv) of this section;

(2) integrated career and technical education courses; or

(3) a combination of specialized and integrated career and technical education courses.

(b) In order to be eligible to receive such diploma with a technical endorsement, students participating in an approved program must successfully complete:

(1) the requirements set forth in clause (a) of this subparagraph; and

(2) a technical assessment.

(iv) . . .

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

Data, views or arguments may be submitted to: Ken Slentz, Deputy Commissioner, State Education Department, Office of P-12 Education, State Education Building, 2M West, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDP12@mail.nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

Education Law section 215 provides the Commissioner with the authority to require schools and school districts to submit reports containing such information as the Commissioner shall prescribe.

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

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

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

Education Law section 3204(3) provides for the courses of study in the public schools.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents related to high school diploma requirements and career and technical education programs.

3. NEEDS AND BENEFITS:

Current regulations permit approved Career and Technical Education (CTE) programs to offer students, based on the technical content of the program, up to four academic credits (one in each area) in English, mathematics, science and economics/participation in government, to be earned through integrated CTE courses.

In addition to allowing credit for integrated academic content in existing approved CTE programs, the regulations allow, with approval by the local board of education, the use of specialized course for academic credit. This option is employed in approved CTE programs to strengthen the academic content where it may be lacking in the technical program.

Graduation requirements require multiple academic credits in English, mathematics, science and social studies for graduation. It is conceivable that CTE approved programs could justify additional integrated credits in their programs. An informal survey conducted by the State Education Department in April 2014 of school districts and BOCES representing approved programs indicated that approximately 22% of the existing approved programs could justify additional integrated credits if permitted. Approximately 11% of survey respondents indicated they could not or would not entertain adding additional integrated credits.

At their May 2014 meeting, the Board of Regents approved the allowing of additional integrated academic credits in approved CTE programs, which resulted in the proposed amendment to expand the number of allowable integrated credits from four to eight (two each in English, mathematics and science, and one combined credit in economics/participation in government and up to one additional credit in social studies).

The proposed amendment will provide new options to school districts and BOCES in instructional practices to achieve State learning standards, State assessments, and graduation and diploma requirements consistent with the career and technical education policy adopted by the New York State Board of Regents. The new options will help to ensure that all students in New York State public schools have the skills, knowledge, and understandings they will need to succeed in the next century.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties: none.

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

The proposed amendment does not impose any costs, but merely expands from four to eight the number of required credits in English, science, mathematics and social studies that may be fulfilled through specialized courses, integrated CTE courses, or a combination of specialized and integrated CTE courses.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment will not impose any additional program, service, duty or responsibility upon local governments. School districts and BOCES may, but are not required to, offer career and technical education programs. The proposed amendment merely expands from four to eight, the number of required credits in English, science, mathematics and social studies that may be fulfilled through specialized courses, integrated CTE courses, or a combination of specialized and integrated CTE courses.

6. PAPERWORK:

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

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

The proposed amendment does not exceed any minimum standards of the Federal government for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

It is anticipated that school districts and BOCES offering approved CTE programs will be able to comply with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to educational standards for career and technical education (CTE) programs operated by school districts and boards of cooperative educational services (BOCES), and does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The proposed amendment applies to each public school district and board of cooperative educational services (BOCES) in the State that chooses to offer approved CTE programs. There are approximately 1,017 approved CTE programs statewide.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment will not impose any additional compliance requirements upon local governments. School districts and BOCES may, but are not required to, offer career and technical education programs. The proposed amendment merely expands from four to eight, the number of required credits in English, science, mathematics and social studies that may be fulfilled through specialized courses, integrated CTE courses, or a combination of specialized and integrated CTE courses.

3. PROFESSIONAL SERVICES REQUIREMENTS:

The proposed amendment will require no additional professional services.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any costs on school districts or BOCES, but merely expands from four to eight the number of required credits in English, science, mathematics and social studies that may be fulfilled through specialized courses, integrated CTE courses, or a combination of specialized and integrated CTE courses.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy adopted by the Board of Regents. The proposed amendment does not impose any compliance requirements or costs on school districts or BOCES, but merely expands from four to eight the number of required credits in English, science, mathematics and social studies that may be fulfilled through specialized courses, integrated CTE courses, or a combination of specialized and integrated CTE courses.

The proposed amendment will provide new options to school districts and BOCES in instructional practices to achieve State learning standards, State assessments, and graduation and diploma requirements consistent with the career and technical education policy adopted by the New York State Board of Regents. The new options will help to ensure that all students in New York State public schools have the skills, knowledge, and understandings they will need to succeed in the next century.

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy relating to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, by expanding from four to eight the number of required credits in English, science, mathematics and social studies that may be fulfilled through specialized courses, integrated CTE courses, or a combination of specialized and integrated CTE courses. The proposed amendment does not impose any compliance requirements or costs on school districts or BOCES but instead will provide new options to school districts and BOCES in instructional practices to achieve State learning standards, State assessments, and graduation and diploma requirements consistent with the career and technical education policy adopted by the New York State Board of Regents. The new options will help to ensure that all students in New York State public schools have the skills, knowledge, and understandings they will need to succeed in the next century.

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to each public school district and board of cooperative educational services (BOCES) in the State that choose to offer approved programs in career and technical education (CTE) leading to a high school diploma with a technical endorsement, including those in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The number of approved CTE programs in the 44 rural counties is 370. The number of approved CTE programs in the 9 counties that have certain townships with population densities of 150 persons or less per square mile is 317.

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

The proposed amendment will not impose any additional reporting, recordkeeping or other compliance requirements upon local governments. School districts and BOCES may, but are not required to, offer career and technical education programs. The proposed amendment merely expands from four to eight, the number of required credits in English, science, mathematics and social studies that may be fulfilled through specialized courses, integrated CTE courses, or a combination of specialized and integrated CTE courses.

The proposed amendment will require no additional professional services.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any costs on school districts or BOCES, but merely expands from four to eight the number of required credits in English, science, mathematics and social studies that may be fulfilled through specialized courses, integrated CTE courses, or a combination of specialized and integrated CTE courses.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy adopted by the Board of Regents. The proposed amendment does not impose any compliance requirements or costs on school districts or BOCES, but merely expands from four to eight the number of required credits in English, science, mathematics and social studies that may be fulfilled through specialized courses, integrated CTE courses, or a combination of specialized and integrated CTE courses. The Regents policy upon which the amended regulation is based applies to all public schools and BOCES. Therefore, it was not possible to establish different compliance and reporting requirements for school districts or BOCES in rural areas, or exempt them from the provisions.

The proposed amendment will provide new options available to school districts and BOCES in instructional practices to achieve State learning standards, State assessments, and graduation and diploma requirements consistent with the career and technical education policy adopted by the New York State Board of Regents. The new options will help to ensure that all students in New York State public schools have the skills, knowledge, and understandings they will need to succeed in the next century.

5. RURAL AREA PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy relating to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, by expanding from four to eight the number of required credits in English, science, mathematics and social studies that may be fulfilled through specialized courses, integrated CTE courses, or a combination of specialized and integrated CTE courses. The proposed amendment does not impose any compliance requirements or costs on school districts or BOCES but instead will provide new options to school districts and BOCES in instructional practices to achieve State learning standards, State assessments, and graduation and diploma requirements consistent with the career and technical education policy adopted by the New York State Board of Regents. The new options will help to ensure that all students in New York State public schools have the skills, knowledge, and understandings they will need to succeed in the next century.

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

Job Impact Statement

The proposed amendment establishes criteria by which school districts and boards of cooperative educational services (BOCES) may operate career and technical education programs approved by the Commissioner and award high school diplomas to students who successfully complete such programs.

The proposed amendment will provide new options available to school districts and BOCES in instructional practices to achieve State learning standards, State assessments, and graduation and diploma requirements consistent with the career and technical education policy adopted by the New York State Board of Regents. The new options will help to ensure that all students in New York State public schools have the skills, knowledge, and understandings they will need to succeed in the next century.

The proposed amendment will not have an adverse impact on jobs or employment opportunities. In order to comply with the new requirements, it may be necessary for some school districts and BOCES to employ new personnel, which may result in an increase in jobs and employment opportunities. Because it is evident from the nature of the proposed amendments that they will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Financial Services

EMERGENCY RULE MAKING

Excess Line Placements Governing Standards

I.D. No. DFS-29-13-00002-E

Filing No. 502

Filing Date: 2014-06-19

Effective Date: 2014-06-19

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

Action taken: Amendment of Part 27 (Regulation 41) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 316, 1213, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 3103, 5907, 5909, 5911, 9102, and arts. 21 and 59; L. 1997, ch. 225; L. 2002, ch. 587; and L. 2011, ch. 61

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

Specific reasons underlying the finding of necessity: This regulation governs the placement of excess line insurance. Article 21 of the Insurance Law and Regulation 41 enable consumers who are unable to obtain insurance from authorized insurers to obtain coverage from unauthorized insurers (known as "excess line insurers") if the unauthorized insurers are "eligible," and an excess line broker places the insurance.

On July 21, 2010, President Obama signed into law the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA"), which prohibits any state, other than the insured's home state, from requiring a premium tax payment for nonadmitted insurance. The NRRA also subjects the placement of nonadmitted insurance solely to the statutory and regulatory requirements of the insured's home state, and provides that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate nonadmitted insurance with respect to such insured. On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amended the Insurance Law to implement the provisions of the NRRA.

The sections of Part I of Chapter 61 that amend the Insurance Law to bring New York into conformance with the NRRA took effect on July 21, 2011, which is when the NRRA took effect. The regulation was previously promulgated on an emergency basis on July 22, 2011, October 19, 2011, January 16, 2012, April 16, 2012, July 13, 2012, October 10, 2012, January 7, 2013, April 5, 2013, July 3, 2013, August 30, 2013, October 28, 2013, December 26, 2013, February 21, 2014, and April 21, 2014. The regulation was also proposed in June 2013, and was published in the State Register on July 17, 2013.

For the reasons stated above, emergency action is necessary for the general welfare.

Subject: Excess Line Placements Governing Standards.

Purpose: To implement chapter 61 of the Laws of 2011, conforming to the Federal Nonadmitted and Reinsurance Reform Act of 2010.

Substance of emergency rule: On July 21, 2010, President Obama signed into law the federal Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), which contains the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA"). The NRRA prohibits any state, other than the home state of an insured, from requiring a premium tax payment for excess (or "surplus") line insurance. The NRRA also subjects the placement of excess line insurance solely to the statutory and regulatory requirements of the insured's home state, and declares that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate excess line insurance with respect to such insured.

In addition, the NRRA provides that an excess line broker seeking to procure or place excess line insurance for an exempt commercial purchaser ("ECP") need not satisfy any state requirement to make a due diligence search to determine whether the full amount or type of insurance sought by the ECP may be obtained from admitted insurers if: (1) the broker procuring or placing the excess line insurance has disclosed to the ECP that the insurance may be available from the admitted market, which may provide greater protection with more regulatory oversight; and (2) the ECP has subsequently requested in writing that the broker procure the insurance from or place the insurance with an excess line insurer.

On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amends the Insurance Law to conform to the NRRA.

Insurance Regulation 41 (11 NYCRR Part 27) consists of 24 sections and one appendix addressing the regulation of excess line insurance placements.

The Department of Financial Services ("Department") amended Section 27.0 to discuss the NRRA and Chapter 61 of the Laws of 2011.

The Department amended Section 27.1 to delete language in the definition of "eligible" and to add three new defined terms: "exempt commercial purchaser," "insured's home state," and "United States."

Section 27.2 is not amended.

The Department amended Section 27.3 to provide an exception for an ECP consistent with Insurance Law Section 2118(b)(3)(F) and to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.4 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.5 to: (1) clarify that the requirements set forth in this section apply when the insured's home state is New York; (2) with regard to an ECP, require an excess line broker or the producing broker to affirm in part A or part C of the affidavit that the ECP was specifically advised in writing, prior to placement, that the insurance may or may not be available from the authorized market that may provide greater protection with more regulatory oversight; (3) require an excess line broker to identify the insured's home state in part A of the affidavit; and (4) clarify that the premium tax is to be allocated in accordance with Section 27.9 of Insurance Regulation 41 for insurance contracts that have an effective date prior to July 21, 2011.

The Department amended Section 27.6 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.7(b) to revise the address to which reports required by Section 27.7 should be submitted.

The Department amended Section 27.8 to: (1) require a licensed excess line broker to electronically file an annual premium tax statement, unless the Superintendent of Financial Services (the "Superintendent") grants the broker an exemption pursuant to Section 27.23 of Insurance Regulation 41; (2) acknowledge that payment of the premium tax may be made electronically; and (3) change a reference to "Superintendent of Insurance" to "Superintendent of Financial Services."

The Department amended Section 27.9 to clarify how an excess line broker must calculate the taxable portion of the premium for: (1) insurance contracts that have an effective date prior to July 21, 2011; and (2) insurance contracts that have an effective date on or after July 21, 2011 and that cover property or risks located both inside and outside the United States.

The Department amended Sections 27.10, 27.11, and 27.12 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.13 to clarify that the requirements set forth in this section apply when the insured's home state is New York and to require an excess line broker to obtain, review, and retain certain trust fund information if the excess line insurer seeks an exemption from Insurance Law Section 1213. The Department also amended Section 27.13 to require an excess line insurer to file electronically with the Superintendent a current listing that sets forth certain individual policy details.

The Department amended Section 27.14 to state that in order to be exempt from Insurance Law Section 1213 pursuant to Section 27.16 of Insurance Regulation 41, an excess line insurer must establish and maintain a trust fund, and to permit an actuary who is a fellow of the Casualty

Actuarial Society (FCAS) or a fellow in the Society of Actuaries (FSA) to make certain audits and certifications (in addition to a certified public accountant), with regard to the trust fund.

Section 27.15 is not amended.

The Department amended Section 27.16 to state that an excess line insurer will be subject to Insurance Law Section 1213 unless the contract of insurance is effectuated in accordance with Insurance Law Section 2105 and Insurance Regulation 41 and the insurer maintains a trust fund in accordance with Sections 27.14 and 27.15 of Insurance Regulation 41, in addition to other current requirements.

The Department amended Sections 27.17, 27.18, 27.19, 27.20, and 27.21 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

Section 27.22 is not amended.

The Department repealed current Section 27.23 and added a new Section 27.23 titled, "Exemptions from electronic filing and submission requirements."

Section 27.24 is not amended.

The Department amended the excess line premium tax allocation schedule set forth in appendix four to apply to insurance contracts that have an effective date prior to July 21, 2011.

The Department added a new appendix five, which sets forth an excess line premium tax allocation schedule to apply to insurance contracts that have an effective date on or after July 21, 2011 and that cover property and risks located both inside and outside the United States.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-29-13-00002-P, Issue of July 17, 2013. The emergency rule will expire August 17, 2014.

Text of rule and any required statements and analyses may be obtained from: Joana Lucashuk, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-2125, email: joana.lucashuk@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the promulgation of the Fourteenth Amendment to Insurance Regulation 41 (11 NYCRR Part 27) derives from Sections 202 and 302 of the Financial Services Law, Sections 301, 316, 1213, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 9102, and Article 21 of the Insurance Law, Chapter 225 of the Laws of 1997, Chapter 587 of the Laws of 2002, and Chapter 61 of the Laws of 2011.

The federal Nonadmitted and Reinsurance Reform Act of 2010 (the "NRRA") significantly changes the paradigm for excess line insurance placements in the United States. Chapter 61 of the Laws of 2011 amends the Insurance Law and the Tax Law to conform to the NRRA. The NRRA and Chapter 61 have been impacting excess line placements since their effective date of July 21, 2011.

Section 301 of the Insurance Law and Sections 202 and 302 of the Financial Services Law authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law, and effectuate any power granted to the Superintendent under the Insurance Law. Section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

Section 1213 provides the manner by which substituted service on an unauthorized insurer may be made in any proceeding against it on an insurance contract issued in New York. Substituted service may be made on the Superintendent in the manner prescribed in Section 1213.

Article 21 sets forth the duties and obligations of insurance brokers and excess line brokers. Section 2101 sets forth relevant definitions. Section 2104 governs the licensing of insurance brokers. Section 2105 sets forth licensing requirements for excess line brokers. Section 2110 provides grounds for the Superintendent to discipline licensees by revoking or suspending licenses or, pursuant to Section 2127, imposing a monetary penalty in lieu of revocation or suspension. Section 2116 permits payment of commissions to brokers and prohibits compensation to unlicensed persons. Section 2117 prohibits the aiding of an unauthorized insurer, with exceptions. Section 2118 sets forth the duties of excess line brokers, with regard to the placement of insurance with eligible foreign and alien excess line insurers, including the responsibility to ascertain and verify the financial condition of an unauthorized insurer before placing business with that insurer. Section 2121 provides that brokers have an agency relationship with insurers for the collection of premiums. Section 2122 imposes limitations on advertising by producers. Section 2130 establishes the Excess Line Association of New York ("ELANY").

Section 9102 establishes rules regarding the allocation of direct premiums taxable in New York, where insurance covers risks located both in and out of New York.

2. Legislative objectives: Generally, unauthorized insurers may not do an insurance business in New York. In permitting a limited exception for licensed excess line brokers to procure insurance policies in New York from excess line insurers, the Legislature established statutory requirements to protect persons seeking insurance in New York. The NRRA significantly changes the paradigm for excess (or "surplus") line insurance placements in the United States. The NRRA prohibits any state, other than the home state of an insured, from requiring a premium tax payment for excess line insurance. Further, the NRRA subjects the placement of excess line insurance solely to the statutory and regulatory requirements of the insured's home state and declares that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate excess line insurance with respect to such insured. In addition, the NRRA establishes uniform eligibility standards for excess line insurers. A state may not impose additional eligibility conditions.

Under the new NRRA paradigm, an excess line broker now must ascertain an insured's home state before placing any property/casualty excess line business. Thus, if the insured's home state is not New York, even though the insured goes to the broker's office in New York, the excess line broker must be licensed in the insured's home state in order for the broker to procure the excess line coverage for that insured. Conversely, a person who is approached by an insured outside of New York must be licensed as an excess line broker in New York in order to procure excess line coverage for an insured whose home state is New York.

On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amends the Insurance Law to conform to the NRRA. The NRRA and Chapter 61 took effect on July 21, 2011 and have been impacting excess line placements since that date.

3. Needs and benefits: Insurance Regulation 41 governs the placement of excess line insurance. The purpose of the excess line law is to enable consumers who are unable to obtain insurance from authorized insurers to obtain coverage from eligible excess line insurers. This regulation implements the provisions and purposes of Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the NRRA. The NRRA and Chapter 61 took effect on July 21, 2011 and have been impacting excess line placements since that date.

Section 27.14 of Insurance Regulation 41 currently prohibits an excess line broker from placing coverage with an excess line insurer unless the insurer has established and maintained a trust fund. However, the new NRRA eligibility requirements do not include a trust fund with respect to foreign insurers (alien insurers, however, do have to maintain a trust fund that satisfies the International Insurers Department ("IID") of the National Association of Insurance Commissioners ("NAIC")). As such, New York is no longer requiring a trust fund of foreign insurers for eligibility.

Currently, Insurance Law Section 1213(e) exempts excess line insurers writing excess line insurance in New York from the requirements of Section 1213, such as the requirement that an insurer deposit with the clerk of the court cash or securities or a bond with good and sufficient sureties, in an amount to be fixed by the court sufficient to secure payments of any final judgment that may be rendered by the court, with the clerk of the court before filing any pleading in any proceeding against it, so long as the excess line insurance contract designates the Superintendent for service of process and, in material part, the policy is effectuated in accordance with Section 2105, the section that applies to excess line brokers. In a memorandum to the governor, dated March 30, 1949, recommending favorable executive action on the bill, the Superintendent of Insurance wrote that it was "our understanding that this subsection was inserted as the result of representations made by the representatives of Lloyds of London because the contracts of insurance customarily [written] by the underwriters and placed through licensees of this Department, contain a provision whereby the underwriters consent to be sued in the courts of this state and they maintain a trust fund in New York of a very sizable amount, which is available for the payment of any judgment which may be secured in an action involving one of their contracts of insurance."

When the Superintendent of Insurance first promulgated Insurance Regulation 41, effective October 1, 1962, pursuant to his broad power to make regulations, he codified in the regulation the longstanding practice regarding the trust fund, and established minimum provisions and requirements, thus providing a reasonable alternative for unauthorized insurers that regularly engage in the sale of insurance through the excess line market. While the specific provisions have been amended a number of times over the years, every iteration of Insurance Regulation 41 has called for a trust fund as a means of providing alternative security that the insurer would have resources to pay judgments against the insurer.

Although the NRRA apparently precludes New York from requiring a foreign insurer to maintain a trust fund to be eligible in New York, or a trust fund for an alien insurer that deviates from the IID requirements, New York policyholders need to be protected when claims arise. As a result, the Department is amending Section 27.16 of Insurance Regulation 41 to provide that an excess line insurer will be subject to Insurance Law Section 1213's requirements unless the contract of insurance is effectuated in accordance with Insurance Law Section 2105, the Superintendent is designated as agent for service of process, and the insurer maintains a trust fund in accordance with Sections 27.14 and 27.15 of Insurance Regulation 41 (in addition to other requirements currently set forth in Section 27.16). Further, the Department is amending Section 27.14 of Insurance Regulation 41 to state that in order to be exempt from Insurance Law Section 1213 pursuant to Section 27.16 of Insurance Regulation 41, an excess line insurer must establish and maintain a trust fund. Insurance Law Section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

The Department amended Section 27.8(a) of Insurance Regulation 41 to require excess line brokers to file annual premium tax statements electronically, and amended Section 27.13 to require excess line brokers to file electronically a listing that sets forth certain individual policy details. In addition, the Department added a new Section 27.13 to Insurance Regulation 41 to allow excess line brokers to apply for a "hardship" exception to the electronic filing or submission requirement.

4. Costs: The rule is not expected to impose costs on excess line brokers, and it merely conforms the requirements regarding placement of coverage with excess line insurers to the requirements in Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the NRRA. Although the amended regulation will require excess line brokers to file annual premium tax statements and a listing that sets forth certain individual policy details electronically, most brokers already do business electronically. In fact ELANY already requires documents to be filed electronically. Moreover, the regulation also provides a method whereby excess line brokers may apply for an exemption from the electronic filing or submission requirement.

With regard to the trust fund amendment, on the one hand, excess line insurers may incur costs if they choose to establish and maintain a trust fund in order to be exempt from Insurance Law Section 1213. On the other hand, it should be significantly less expensive to establish and maintain a trust fund rather than comply with Insurance Law Section 1213. This is a business decision that each insurer will need to make. The trust fund, if established and maintained, will be for the purpose of protecting all United States policyholders.

Costs to the Department of Financial Services also should be minimal, as existing personnel are available to review any modified filings necessitated by the regulations. In fact, filing forms electronically may produce a cost savings for the Department of Financial Services. These rules impose no compliance costs on any state or local governments.

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: The regulation imposes no new reporting requirements on regulated parties.

7. Duplication: The regulation will not duplicate any existing state or federal rule, but rather implement and conform to the federal requirements.

8. Alternatives: The Department discussed the changes related to trust funds and Insurance Law Section 1213 with counsel at the NAIC and with ELANY.

9. Federal standards: This regulation will implement the provisions and purposes of Chapter 61 of the Laws of 2011, which amends the Insurance Law to conform to the NRRA.

10. Compliance schedule: Pursuant to Chapter 61 of the Laws of 2011, this regulation will impact excess line insurance placements effective on and after July 21, 2011.

Regulatory Flexibility Analysis

This rule is directed at excess line brokers and excess line insurers.

Excess line brokers are considered to be small businesses as defined in section 102(8) of the State Administrative Procedure Act. The rule is not expected to have an adverse impact on these small businesses because it merely conforms the requirements regarding placement of coverage with excess line insurers to Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010.

The rule will require excess line brokers to file annual premium tax statements electronically, and to file electronically a listing that sets forth certain individual policy details. However, the excess line broker may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

Further, the Department of Financial Services has monitored Annual Statements of excess line insurers subject to this rule, and believes that none of them fall within the definition of "small business," because there are none that are both independently owned and have fewer than one hundred employees.

The Department of Financial Services 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 rule does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

The Department of Financial Services ("Department") finds that this rule does not impose any additional burden on persons located in rural areas, and the Department finds 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

The Department of Financial Services finds that this rule should have no impact on jobs and employment opportunities. The rule conforms the requirements regarding placement of coverage with excess line insurers to Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010. The rule also makes an excess line insurer subject to Insurance Law section 1213, unless it chooses to establish and maintain a trust fund in New York for the benefit of New York policyholders.

Assessment of Public Comment

The agency received no public comment

EMERGENCY RULE MAKING

Credit Exposure Arising from Derivative Transactions

I.D. No. DFS-27-14-00006-E

Filing No. 514

Filing Date: 2014-06-20

Effective Date: 2014-06-23

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

Action taken: Addition of Part 117 to Title 3 NYCRR.

Statutory authority: Banking Law, sections 103 and 235; Financial Services Law, section 302

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

Specific reasons underlying the finding of necessity: Derivative transactions, including swaps and options, are a basic tool used by many banking organizations in New York and elsewhere to hedge their exposure to various types of risk, including interest rate, currency and credit risk.

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act [cite] ("DFA") became effective [date]. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an insured state bank (including an insured state savings bank) may only engage in derivative transactions if the law of its chartering state regarding lending limits "takes into consideration credit exposure to derivative transactions."

In light of federal enactment of the DFA, the Legislature amended the Banking Law provision regarding loan limits in July 2011 to authorize the Superintendent to determine the manner and extent to which credit exposure resulting from derivative transactions should be taken into account. Laws of 2011, c. 182, § 2.

This regulation sets forth the manner in which derivative transactions will be taken into account for purposes of the lending limit provisions of the Banking Law. Emergency adoption of the regulation is necessary in order to ensure that New York banking organizations continue to be able to engage in derivative transactions on and after January 21, 2013.

Subject: Credit exposure arising from derivative transactions.

Purpose: To provide for the consideration of credit exposure relating to derivative transactions in calculating bank loan limits.

Text of emergency rule: *PART 117*

LENDING LIMITS: INCLUSION OF CREDIT EXPOSURES ARISING FROM DERIVATIVE TRANSACTIONS

§ 117.1 Definitions.

For the purposes of this Part:

a) The appropriate Federal banking agency of a bank shall be the agency specified by Section 3(q) of the Federal Deposit Insurance Act (FDIA), 12 USC § 1813(q), or the successor to such provision.

b) Bank includes a bank or trust company or a savings bank formed under the Banking Law whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC).

c) Credit derivative means a financial contract that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure) to another party (the protection provider).

d) The current credit exposure of a bank to a counterparty on a particular date with respect to a derivative transaction other than a credit derivative shall be the amount that the bank reasonably determines would be its loss under the terms of the derivative contract covering such transaction if the counterparty defaulted on such date.

e) The credit exposure of a bank to a counterparty arising from derivative transactions other than credit derivatives is the higher of zero or the sum of the then positive current credit exposures with respect to such derivative transactions, provided, however, that in calculating such credit exposure, the bank may take into account netting to the extent specified in section 117.4(a).

f) Derivative transaction includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

g) Effective margining arrangement means a master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank's net credit exposure to the counterparty that exceeds $25 million created by the derivative transactions covered by the agreement.

h) Eligible credit derivative means a single-name credit derivative or a standard, non-tranched index credit derivative, provided that:

(1) The derivative contract is executed under standard industry credit derivative documentation and meets the requirements of an eligible guarantee and has been confirmed by both the protection purchaser and the protection provider;

(2) Any assignment of the derivative contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap, the derivative contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Bankruptcy, insolvency, restructuring (for obligors not subject to bankruptcy or insolvency) or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due and similar events;

(4) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract; and

(5) If the derivative contract allows for cash settlement, the contract incorporates a robust valuation process.

i) Eligible protection provider means:

(1) A sovereign entity (a central government, including the United States government; an agency; department; ministry; or central bank);

(2) This state or any city, county, town, village or school district of this state, the New York State Thruway Authority, the Metropolitan Transportation Authority, the Triborough Bridge and Tunnel Authority or The Port Authority of New York and New Jersey;

(3) Any state other than the State of New York,

(4) The Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;

(5) A Federal Home Loan Bank;

(6) The Federal Agricultural Mortgage Corporation;

(7) A depository institution, as defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c);

(8) A bank holding company, as defined in Section 2 of the Bank Holding Company Act, 12 U.S.C. § 1841;

(9) A savings and loan holding company, as defined in Section 10 of the Home Owners' Loan Act, 12 U.S.C. § 1467a;

(10) A securities broker or dealer registered with the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq.;

(11) An insurance company that is subject to the supervision of a state insurance regulator;

(12) A foreign banking organization;

(13) A non-United States-based securities firm or a non-United States-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies;

(14) A qualifying central counterparty; and

(15) Such other entity or entities as may be designated from time to time by the superintendent.

j) Readily marketable collateral means financial instruments and bullion that are salable under ordinary market conditions with reasonable promptness at a fair market value.

k) Financial market utility shall have the same meaning as used in Section 803(6) of the Dodd–Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5462(6).

l) The following terms shall have the same meaning as used in the Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches (Capital Adequacy Guidelines) of the bank's appropriate Federal banking agency.[1]

(1) Eligible guarantee;

(2) Qualifying netting agreement;

(3) Qualifying central counterparty.

§ 117.2 General Rule.

a) In computing the amount of loans of a bank outstanding to a person under Section 103.1 of the Banking Law or to a borrower under Section 235.8-c of the Banking Law at any specific time, the credit exposures of the bank arising from derivative transactions with respect to such person or borrower shall be included.

b) Such credit exposures shall be calculated as the sum of the bank's credit exposure to such person or borrower as a counterparty arising from derivative transactions other than credit derivatives plus the bank's credit exposure to such person or borrower as a counterparty arising from credit derivatives plus, where such person or borrower is the obligor on a reference exposure, the bank's credit exposure with respect to such person or borrower as obligor on such reference exposure arising from credit derivatives.

§ 117.3 Credit Derivatives.

a) Credit exposure to a counterparty. A bank shall calculate its credit exposure to a counterparty arising from credit derivatives by adding the net notional value of all protection purchased from the counterparty with respect to each reference exposure.

b) Credit exposure with respect to a reference exposure. A bank shall calculate the credit exposure with respect to a reference exposure arising from credit derivatives entered by the bank by adding the notional value of all protection sold on such reference exposure.

c) Exposure mitigants. In computing the exposures in paragraphs a and b hereof, the bank may take into account exposure mitigants to the extent specified in section 117.4.

§ 117.4 Exposure Mitigants.

a) Netting. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty with whom such bank has in force a qualifying master netting agreement, such bank may net the credit exposures covered by such qualifying master netting agreement.

b) Collateral. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty, such credit exposures may be reduced to the extent that such credit exposures have been secured with readily marketable collateral under an effective margining arrangement. The amount of such reduction shall be equal to the value of such collateral multiplied by the percentage applicable to such type of collateral as may be prescribed by the superintendent from time to time.

c) Hedging. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty or with respect to a particular reference exposure, such credit exposures may be reduced to the extent hedged by an eligible credit derivative from an eligible protection provider.

§ 117.5 Exception.

In computing its credit exposures arising from derivative transactions, a bank need not include credit exposures to a qualifying central counterparty that has been designated by the Financial Stability Oversight Council as a financial market utility that is, or is likely to become, systemically important.

§ 117.6 Alternate Valuation Method.

With the permission of the superintendent, a bank may utilize an alternate method to evaluate its credit exposures arising from derivative transactions.

§ 117.8 Residual Authority of the Superintendent.

Where the method or methods used by a bank fails to appropriately reflect the credit exposures of the bank arising from derivative transac-

tions, the superintendent may direct such bank to use an alternate method or methods.

[1] In the case of a bank that is a member of the Federal Reserve System (member bank), the applicable definitions appear at Section 2 of Appendix F to 12 C.F.R. Part 208, and the case an Federally-insured bank that is not a member of the Federal Reserve System (nonmember insured bank), the applicable definitions appear at Section 2 of Appendix D to 12 C.F.R. Part 325.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires September 17, 2014.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1658, email: sam.abram@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority

Section 14 of the Banking Law provides that the Superintendent of Financial Services (the "Superintendent") shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the New York Banking Law (the "Banking Law") authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law (the "FSL") authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

2. Legislative Objectives

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y).

In response to federal enactment of Section 611 of DFA, the New York Legislature amended the Banking Law regarding loan limits in July 2011 to authorize the Superintendent to determine the manner and extent to which credit exposure resulting from certain types of transactions, including derivative transactions, shall be taken into account for purposes of the statutory loan limits. (L. 2011, c. 182).

This emergency regulation implements the Superintendent's authority by setting forth the manner in which derivative transactions will be taken into account for purposes of the lending limit provisions of the Banking Law. Note that state chartered or licensed entities subject to DFA Section 610, including savings associations, and branches and agencies of foreign banking organizations, are not covered by the regulation.

3. Needs and Benefits

Derivative transactions, including swaps and options, are a basic tool used by many banking organizations to manage exposure to various types of risk, including interest rate, currency and credit risk. If the state's lending limit rules do not take account of credit exposure from derivatives transactions, DFA Section 611 will prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on state banks' ability to manage the exposures embedded in their existing balance sheets (including exposures from any derivatives contracts entered into prior to the cutoff date), as well as the risks arising out of their ongoing business. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave state banks at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

While noting that there already exists some flexibility in the lending limit statute to interpret what constitutes credit exposure, the objective of the amendment was to provide certainty that New York law will comply with the requirements of DFA so as to ensure that insured banks in New York could continue to engage in derivative transactions after the cutoff date in Section 611 of DFA.

4. Costs

Banks that use derivatives already have systems in place to measure and manage the exposures incurred and their effect on the banks' overall risk position. The Department currently reviews such systems as part of its regular safety and soundness examination of regulated organizations.

It is believed that most state banks which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be comparatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for these banks are expected to be minimal.

Banks that engage in a larger volume of more complex derivatives transactions already have more sophisticated systems and processes in place for managing their risks, including those associated with derivatives transactions. The regulation provides that these institutions may, with the permission of the Superintendent, use an "alternative valuation method" to measure their credit exposure resulting from derivatives. Such institutions are expected to seek permission to use measurement methods which reflect their existing risk management procedures, thus minimizing the additional compliance costs resulting from the regulation.

5. Local Government Mandates

None.

6. Paperwork

The regulation does not require that state banks produce any additional reports. Banks that use derivatives have internal systems to measure their exposures, including exposures resulting from derivatives. In the course of its regular safety and soundness examination, the Department expects to be able to review the bank's records and computations regarding compliance with applicable lending limits.

While a bank seeking permission from the Department to utilize an alternative valuation model will be expected to provide information supporting the reasonableness of the proposed model, it is anticipated that such models will normally already have been reviewed by the Department during the examination process.

7. Duplication

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

8. Alternatives

The Department could choose not to adopt a regulation with respect to loan limits that takes into consideration credit exposure to derivative transactions. However, under DFA Section 611 if such a regulation is not adopted insured state banks will not be able to engage in derivative transactions, a basic tool used by many banking organizations to manage their exposure to various types of risk, including interest rate, currency and credit risk. In addition, not adopting such a regulation would put state banks at a competitive disadvantage, since federally chartered banks will be able to continue to engage in derivative transactions to manage their exposure to risk.

The Department also considered adoption of a regulation similar to the interim rule adopted by the federal Office of the Comptroller of the Currency (the "OCC") regarding credit exposure arising from derivatives and securities financing transactions (the "OCC Interim Rule"). 77 FR 37265, 37275 (June 21, 201212), C.F.R. § 32 (2012). However, that rule is quite complex and requires institutions to devote significant resources to compliance. Given the non-complex nature of the derivatives activity of most state banks, the Department did not consider it necessary to impose such extensive requirements.

9. Federal Standards

Although DFA Section 611 prohibits state banks from engaging in derivative transactions after January 20, 2013 if state's law does not take into account credit exposure to derivative transactions, there are no federal standards for how state law is to do so.

The OCC Interim Rule applies to national banks and federal and state savings associations. Under Section 4 of the International Banking Act of 1978, federally licensed branches and agencies of foreign banks are generally subject to the same limitations on their activities as national banks. Thus, the OCC Interim Rule effectively applies to them as well and through the Foreign Bank Supervision Enhancements Act applies to state-licensed branches and agencies. See 12 USC § 3105(h). However, the OCC Interim Rule does not apply to state-chartered banks and savings banks.

10. Compliance Schedule

The regulation is effective immediately. However, it is recognized that banks will require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology.

Regulatory Flexibility Analysis

1. Effect of the Rule

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance

Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y). This emergency regulation implements the authority of the Superintendent of Financial Services (the "Superintendent") under Sections 14, 103 and 235(8-c) of the New York Banking Law (the "Banking Law") and under Section 302 of the Financial Services Law (the "FSL").

Section 14 of the Banking Law provides that the Superintendent shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the Banking Law authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

Those banks that are small businesses are predominantly in the business of making commercial loans. To the extent these banks utilize derivatives, they generally use non-complex derivative transactions to manage their exposure to interest rate risk. If this regulation is adopted, such banks will continue to be able to manage their risk exposure using derivatives. However, under DFA Section 611, failure to adopt a regulation applicable to these banks would have the effect of prohibiting them from engaging in derivative transactions, which would have a severe adverse effect on their ability to manage the risks embedded in their existing balance sheets as well as the risks arising out of their ongoing business. Such banks would also be left at a substantial competitive disadvantage relative to federally-chartered banking organizations, which will be able to continue to enter into derivative transactions so long as they do so in compliance with applicable federal regulations.

This regulation does not have any impact on local governments.

2. Compliance Requirements

It is believed that most banks which are small businesses and which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward. The regulation does not require that banks, including banks that are small businesses, produce any additional reports.

3. Professional Services

Banks that are small businesses and engage in derivative transactions will already have the information necessary to make the computation regarding the regulation from their existing risk management systems.

4. Compliance Costs

Those banks that are small businesses and use derivatives generally engage in a relatively limited number of non-complex derivative transactions. For such banks it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for such banks are expected to be minimal.

While new Part 117 is effective immediately, it is recognized that some banks may require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology. This provision should further serve to minimize compliance costs for those banks that are small businesses.

5. Economic and Technological Feasibility

The regulation will provide an economic benefit to banks, including banks that are small businesses, since they will be able to continue using derivatives to manage the risk exposures resulting from their normal business activities.

Compliance with the regulation should not present a technological challenge, since banks that use derivatives, including banks that are small businesses, already have in place systems to measure and manage their exposures from derivative transactions. Moreover, the provision of the rule effectively giving banks until to July 1, 2013, to start using the credit exposure calculation methodology set forth in the regulation, or to get the Superintendent's approval to use an alternative calculation methodology, will facilitate the resolution of any remaining economic or technological issues facing individual banks, including banks that are small businesses.

6. Minimizing Adverse Impacts

If the state's lending limit does not take account of credit exposure from derivatives transactions, DFA Section 611 will prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on the ability of banks, including banks that are small businesses, to manage the exposures embedded in their balance sheets. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave banks, including banks which are small businesses, at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

7. Small Business and Local Government Participation

The Department has had informal discussions regarding preliminary versions of the regulation with industry associations representing banks which engage in derivatives activities, including banks that engage in significant derivatives activities as well as banks that are small businesses. The regulation takes account of the comments received in the course of this process.

Rural Area Flexibility Analysis

1. Effect of the Rule

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y). This emergency regulation implements the authority of the Superintendent of Financial Services (the "Superintendent") under Sections 14, 103 and 235(8-c) of the New York Banking Law (the "Banking Law") and under Section 302 of the Financial Services Law (the "FSL").

Section 14 of the Banking Law provides that the Superintendent shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the Banking Law authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

Those banks that are located in rural areas are predominantly in the business of making commercial loans. To the extent these banks utilize derivatives, they generally use non-complex derivative transactions to manage their exposure to interest rate risk. If this regulation is adopted, such banks will continue to be able to manage their risk exposure using derivatives. However, under DFA Section 611, failure to adopt a regulation applicable to these banks would have the effect of prohibiting them from engaging in derivative transactions, which would have a severe adverse effect on their ability to manage the risks embedded in their existing balance sheets, as well as the risks arising out of their ongoing business. Such banks would also be left at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivative transactions so long as they do so in compliance with applicable federal regulations.

2. Compliance Requirements

It is believed that most banks which are located in rural areas and which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward. The regulation does not require that banks, including banks that are located in rural areas, produce any additional reports.

3. Professional Services

Banks which are located in rural areas and engage in derivative transactions will already have the information necessary to make the computation regarding the regulation from their existing risk management systems.

4. Compliance Costs

To the extent banks located in rural areas use derivatives, they generally engage in a relatively limited number of non-complex derivative transactions. For such banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for such banks are expected to be minimal.

While new Part 117 is effective[immediately, it is recognized that some banks may require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative

transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology. This provision should further serve to minimize compliance costs for banks that are located in rural areas.

5. Economic and Technological Feasibility

The regulation will provide an economic benefit to banks, including banks that are located in rural areas, since they will be able to continue using derivatives to manage the risk exposures resulting from their normal business activities.

Compliance with the regulation should not present a technological challenge, since banks that use derivatives, including banks that are located in rural areas, already have in place systems to measure and manage their exposures from derivative transactions. Moreover, the provision of the rule effectively giving banks until to July 1, 2013 to start using the credit exposure calculation methodology set forth in the regulation, or to get the Superintendent's approval to use an alternative calculation methodology, will facilitate the resolution of any remaining economic or technological issues facing individual banks, including banks that are located in rural areas.

6. Minimizing Adverse Impacts

If the state's lending limit did not take account of credit exposure from derivatives transactions, DFA Section 611 would prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on the ability of banks, including banks that are located in rural areas, to manage the exposures embedded in their balance sheets. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave banks, including banks which are located in rural areas, at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

7. Rural Area Participation

The Department has had informal discussions regarding preliminary versions of the regulation with industry associations representing banks which engage in derivatives activities, including banks that engage in significant derivatives activities as well as banks that are located in rural areas. The regulation takes account of the comments received in the course of this process.

Job Impact Statement

The regulation will not have an adverse impact on employment in the state. Banking organizations that engage in derivative transactions already have systems and staff in place to manage the credit and other risks associated with those transactions.

Conversely, failing to adopt the regulation could have an adverse impact on employment. Under DFA Section 611, state banks would be prohibited from engaging in derivative transactions and therefore would need to find other uses for staff currently involved in derivatives activity. Moreover, if state banks were no longer able to use derivatives to manage the risks resulting from their current types and levels of business, they might be forced to reduce or restructure the banking services they provide, which could have a further adverse impact on employment levels for both the banks and their customers.

EMERGENCY RULE MAKING

Adjustment of the Subprime Threshold As Established in Banking Law Section 6-m

I.D. No. DFS-27-14-00008-E

Filing No. 518

Filing Date: 2014-06-20

Effective Date: 2014-06-22

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

Action taken: Addition of Part 42 to Title 3 NYCRR.

Statutory authority: Financial Services Law, section 302; Banking Law, sections 6-m and 14

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

Specific reasons underlying the finding of necessity: Section 6-m of the Banking Law provides for the regulation of subprime home loans. Section 6-m defines a subprime home loan as a loan in which the initial interest rate or the fully-indexed rate, whichever is higher, exceeds by more than a specified number of percentage points the average commitment rate for loans with a comparable duration of such home loan as set forth in an index provided by the Federal Home Loan Mortgage (the "subprime threshold").

In Mortgagee Letter 2013-04, the Federal Housing Administration (the "FHA") revised the period for assessing the annual Mortgage Insurance Premium ("MIP") for FHA-insured loans such that, in certain cases, MIP is required to be paid over the life of the loan, effective June 3, 2013. The FHA's revised policy has caused significantly more FHA-insured loans to exceed the subprime threshold. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State.

Based on a financial analysis and an assessment of market conditions, the Superintendent has determined that FHA Mortgagee Letter 2013-04 has effectively decreased the threshold on certain FHA-insured loans; as a result, the existing subprime threshold in Section 6-m is having an unduly negative effect on the availability of mortgage financing in New York State. Accordingly, emergency adoption of this regulation is necessary to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of FHA Mortgagee Letter 2013-04.

Subject: Adjustment of the subprime threshold as established in Banking Law Section 6-m.

Purpose: Part 42 of the General Regulations of the Superintendent sets forth the adjustment of the subprime threshold as established in Banking Law Section 6-m. As a result of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium ("MIP"), significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State.

The purpose of Part 42 of the General Regulations of the Superintendent is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of the FHA's rule change concerning the calculation of MIP.

Text of emergency rule: *PART 42. SUBPRIME HOME LOANS – THRESHOLDS*

§ 42.1 Background.

Section 6-m of the Banking Law provides for the regulation of subprime home loans as defined in the statute. In doing so, the statute incorporates the federal concept of Annual Percentage Rate ("APR"), as defined in the Federal Truth-in-Lending Act, for determining whether a home loan is deemed subprime. Loans with a fully-indexed rate (a calculation correlated with APR) above a specified threshold are defined as subprime loans.

The term "fully-indexed rate" is defined in Section 6-m(1)(b) to mean "(i) for an adjustable rate loan based on an index, the annual percentage rate calculated using the index rate on the loan on the date the lender provides the 'good faith estimate' required under 12 USC § 2601 et seq. plus the margin to be added to it after the expiration of any introductory period or periods; or (ii) for a fixed rate loan, the annual percentage rate on the loan disregarding any introductory rate or rates and any interest rate caps that limit how quickly the contractual interest rate may be reached calculated at the time the lender issues its commitment."

Section 6-m defines a subprime home loan as a loan in which the initial interest rate or the fully-indexed rate, whichever is higher, exceeds by more than one and three-quarters percentage points for a first-lien loan, or by more than three and three-quarters percentage points for a subordinate-lien loan, the average commitment rate for loans with a comparable duration of such home loan as set forth in an index provided by the Federal Home Loan Mortgage Corporation for the date as specified in the statute (the first-lien threshold and subordinate-lien threshold, collectively, the "subprime threshold").

In Mortgagee Letter 2013-04, the Federal Housing Administration (the "FHA") revised the period for assessing the annual Mortgage Insurance Premium ("MIP") for FHA-insured loans such that, in certain cases, MIP is required to be paid over the life of the loan, effective June 3, 2013. Because MIP is part of the APR calculation, the FHA's revised policy has caused the APR on many FHA-insured loans to increase, resulting in significantly more FHA-insured loans exceeding the subprime threshold. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State.

Section 6-m anticipated the need to adjust the statute's established subprime threshold under certain circumstances. Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the threshold, stating, "(n)otwithstanding the comparable rates set forth in this paragraph, and notwith-

standing any other law, if. . . the provisions of this section have had an unduly negative effect upon the availability or price of mortgage financing in this state, the superintendent may from time to time designate such other threshold rates as may be necessary. . . to alleviate such unduly negative effects."

Based on a financial analysis and an assessment of market conditions, the Superintendent has determined that FHA Mortgagee Letter 2013-04 has effectively decreased the threshold on certain loans; as a result, the existing subprime threshold in Section 6-m is having an unduly negative effect on the availability of mortgage financing in New York State. The Superintendent has further determined to use the authority provided by Section 6-m to promulgate this regulation to restore the availability of mortgage financing to New York State residents.

Accordingly, as set forth in Part 42.2 below, the Superintendent is adjusting the subprime threshold by 75 basis points, or 0.75%, to restore the availability of mortgage financing to approximately the levels predating the effective date of FHA Mortgagee Letter 2013-04, subject to the specifications set forth in § 42.2.

§ 42.2 Adjustment of Subprime Threshold.

(a) Threshold Adjustment. Notwithstanding the subprime threshold currently set forth in Banking Law Section 6-m, and subject to the exclusions set forth in subdivision (b), a subprime home loan, if insured by the FHA, means a home loan in which the initial interest rate or the fully-indexed rate, whichever is higher, on the loan exceeds by more than two-and-a-half percentage points for a first-lien loan, or by more than four-and-a-half percentage points for a subordinate-lien loan, the average commitment rate for such loans in the northeast region with a comparable duration to the duration of such home loan, as published by the Federal Home Loan Mortgage Corporation (herein "Freddie Mac") in its weekly Primary Mortgage Market Survey (PMMS) posted in the week prior to the week in which the lender provides the "good faith estimate" required under 12 USC § 2601 et seq."

(b) Exclusions:

(1) The following types of FHA-insured loans are excluded from the threshold adjustment in subdivision (a), and instead are examined in accordance with the threshold currently set forth in Banking Law Section 6-m:

i. Title I Home Improvement Loans;

ii. Home Equity Conversion Mortgages; and

iii. Any loan in which the fully-indexed rate, calculated using the FHA MIP policies that were in effect immediately prior to the effectiveness of Mortgagee Letter 2013-04, exceeds the unadjusted subprime threshold.

(2) All home loans other than FHA-insured loans are excluded from the threshold adjustment in subdivision (a), and instead are examined in accordance with the threshold currently set forth in Banking Law Section 6-m.

§ 42.3 Effective Date.

This Part shall be effective immediately.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires September 17, 2014.

Text of rule and any required statements and analyses may be obtained from: Ted Anastasiou, New York State Department of Financial Services, One State Street, New York, NY 10004-1417, (212) 709-3539, email: Ted.Anastasiou@DFS.ny.gov

Regulatory Impact Statement

1. Statutory authority.

Section 6-m of the Banking Law provides for the regulation of subprime home loans as defined in the statute. Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the subprime threshold established in Section 6-m, stating, "(n)otwithstanding the comparable rates set forth in this paragraph, and notwithstanding any other law, if. . . the provisions of this section have had an unduly negative effect upon the availability or price of mortgage financing in this state, the superintendent may from time to time designate such other threshold rates as may be necessary... to alleviate such unduly negative effects."

2. Legislative objectives.

Part 42 of the General Regulations of the Superintendent sets forth the adjustment of the subprime threshold as established in Banking Law Section 6-m. As a result of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium ("MIP"), significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State.

The purpose of Part 42 of the General Regulations of the Superintendent is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of the FHA's rule change concerning the calculation of MIP.

3. Needs and benefits.

Based on a financial analysis and an assessment of market conditions, the Superintendent has determined that a rule change by the FHA concerning the calculation of the annual MIP has effectively decreased the threshold for certain loans; as a result, the existing subprime threshold in Section 6-m is having an unduly negative effect on the availability of mortgage financing in New York State. Accordingly, emergency adoption of this regulation is necessary to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of the FHA rule change concerning the calculation of annual MIP.

4. Costs.

This proposed regulation will not result in any fiscal implications to the State. It simply restores the availability of mortgage financing to approximately the levels predating the effective date of the FHA rule change concerning the calculation of annual MIP.

5. Local government mandates.

This regulation does not impose any new programs, services, duties, or responsibilities upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork.

This proposed regulation does not impose any paperwork burden on lenders or borrowers. It simply restores the availability of mortgage financing to approximately the levels predating the effective date of the FHA rule change concerning the calculation of annual MIP.

7. Duplication.

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

8. Alternatives.

The Department could choose not to adopt a regulation with respect to adjusting the subprime threshold as established in Banking Law Section 6-m. The emergency adoption of this regulation, however, will restore the availability of mortgage financing to the levels predating the effective date of the FHA rule change concerning the calculation of annual MIP, which will benefit borrowers throughout New York State.

9. Federal standards.

There are no applicable federal standards.

10. Compliance schedule.

It is proposed that the regulation be effective upon filing.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Business and Local Governments is not being submitted with the regulation because the regulation will not impose any adverse economic impact or any reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

The purpose of Part 42 of the General Regulations of the Superintendent is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium. As a result of the rule change, significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State. Banking Law Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the subprime threshold established in Section 6-m. Part 42 is issued pursuant to this authority. Since nothing in this regulation will create any adverse impacts on any small businesses or local governments in the state, a full Regulatory Flexibility Analysis is not required and therefore one has not been prepared.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this proposed regulation because it will not impose any adverse impact on rural areas or any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The proposed regulation does not distinguish between regulated parties located in rural, suburban, or metropolitan areas of New York State, but applies universally throughout the state.

The purpose of Part 42 of the General Regulations of the Superintendent is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium. As a result of the rule change, significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York

State. Banking Law Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the subprime threshold established in Section 6-m. Part 42 is issued pursuant to this authority. Since nothing in this proposed regulation will create any adverse impacts on rural areas in the state, a full Rural Area Flexibility Analysis is not required and therefore one has not been prepared.

Job Impact Statement

A Job Impact Statement is not being submitted with this proposed regulation because it is evident from the subject matter of the regulation that it will not have an adverse impact on jobs and employment opportunities in New York State. The purpose of Part 42 of the Superintendent's Regulations is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium. As a result of the rule change, significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State. Banking Law Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the subprime threshold established in Section 6-m. Part 42 is issued pursuant to this authority. The terms as interpreted will not have any adverse impact on jobs or employment opportunities in New York State.

NOTICE OF ADOPTION

Regulation of Shared Appreciation Mortgages

I.D. No. DFS-51-13-00002-A
Filing No. 517
Filing Date: 2014-06-20
Effective Date: 2014-07-09

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

Action taken: Addition of Part 83 to Title 3 NYCRR.

Statutory authority: Banking Law, section 6-f

Subject: Regulation of shared appreciation mortgages.

Purpose: Permits shared appreciation mortgages in certain limited circumstances.

Substance of final rule:

§ 83.1 describes the scope and application of Part 83. It notes that Section 6-f of the Banking Law authorizes the Superintendent to adopt rules and regulations relating to shared appreciation mortgages that would permit banks and other financial institutions to make residential mortgage loans that provide for the lender or its assignee (the "Holder") to receive a share in the appreciation of the market value of the residential property securing the loan.

§ 83.2 defines certain terms used in Part 83.

§ 83.3 sets forth the eligibility requirements for a shared appreciation mortgage modification.

§ 83.4 sets forth the calculation of the mortgagor's unpaid principal balance.

§ 83.5 sets forth the circumstances that can lead to a sharing of the appreciation under a shared appreciation mortgage agreement.

§ 83.6 sets forth the calculation used to determine the Holder's share of the appreciation.

§ 83.7 sets forth the disclosures that must be provided to borrowers in connection with shared appreciation mortgage modifications.

§ 83.8 sets forth language that must be conspicuously placed on every shared appreciation mortgage agreement.

§ 83.9 requires Holders that offer shared appreciation mortgage modifications to adopt policies and procedures for notifying eligible borrowers of the existence of that option.

§ 83.10 sets forth fees, charges, and interest rates that may be imposed or used in connection with shared appreciation mortgage modifications.

§ 83.11 sets forth prohibitions on certain conduct by the Holder in connection with shared appreciation mortgage modifications.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 83.2, 83.4, 83.7 and 83.11.

Revised rule making(s) were previously published in the State Register on March 19, 2014.

Text of rule and any required statements and analyses may be obtained from: Ted Anastasiou, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-3539, email: Ted.Anastasiou@DFS.ny.gov

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

The changes made to the revised proposed rule do not necessitate a revision to the RIS, RFA, RAFA or JIS because they are non-substantive revisions or minor clarifications of the text which do not affect the accuracy or completeness of the impact statements.

The Department clarified the definition of a mortgagor's "gross monthly income" to reflect HUD's HOME income verification requirements.

Additionally, the Department clarified the definition of "capital improvements" to be consistent with New York State Department of Taxation and Finance, Tax Bulletin ST-104.

The Department also revised the requirement for mortgagors to consult with "certified housing counselors" to refer to "government-approved housing counseling agencies," and deleted language in section 83.7(b)(1).

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2017, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Proposed new Part 83 was originally published in the December 18, 2013 State Register. Following the receipt of public comments, a revised proposal was published in the March 19, 2014 State Register.

The Department received three written comments on the revised proposal.

Organizations Commenting:

Comments were received from: (i) an attorney who represents homeowners seeking mortgage modifications; (ii) two public interest law firms (commenting jointly); and (iii) a not-for-profit organization engaged in promoting affordable homeownership in New York City.

Summary of Comments:

Overall, the comments strongly supported the Department's objective of adopting regulations permitting the use of shared appreciation mortgage modifications for borrowers at risk of foreclosure and commended the Department's efforts towards that goal. Additionally, the comments included specific recommendations for certain clarifications in the revised proposed rule and for broadening access so that a larger population of homeowners could take advantage of the program.

The lawyer commented that the proposed regulations will do a good job protecting the interests and rights of borrowers and will also provide borrowers with a clear understanding of the transactions they are entering into. He suggested that in order to avoid potential conflicts, the regulations should include clarifications of the distinction between "capital improvements" and "general maintenance." In response, the Department amended the definition of "capital improvement "in the regulation to specify that it shall be determined in accordance with New York State Department of Taxation and Finance, Tax Bulletin ST-104.

The not-for-profit law firms also supported adoption of the proposed regulations, and suggested various clarifications and corrections to the revised proposal. A number of their recommendations have been incorporated in the adopted regulation, some of which are noted in the summary below. However, the Department determined not to adopt the commenters' recommendation that the regulation permit shared appreciation mortgage modifications to be offered to borrowers who are not significantly delinquent.

The not-for-profit organization, which had provided comments on the regulations as initially proposed, expressed appreciation for changes the Department made as a result of those comments. In expressing its appreciation, the organization recognized that the changes would "broaden access to this new resource beyond what was originally included in the proposed regulations." In its comments on the revised proposal, the organization suggested additional changes intended to further broaden access of Modified Mortgage Loans. However, the Department has determined that the consumer benefits of further broadening access to these loans are questionable.

Changes Made to Revised Proposed Rule:

The adopted rule includes the following changes from the revised proposal:

1. The description of Debt to Income Ratio ("DTI") has been moved to the definition section and revised. Sec. 83.2(d) defines "Debt-to-Income Ratio" or "DTI" to be "the result of dividing the Mortgagor's monthly housing payment (principal, interest, taxes and insurance) by the Mortgagor's gross monthly income. Gross monthly income shall be deemed to be income determined in accordance with 24 CFR 92.203(a)" – HUD's HOME income verification requirements;

2. The Sec. 83.2(c) definition of "Capital Improvements" now tracks the New York State Department of Taxation and Finance, Tax Bulletin ST-104.

3. The Department also changed the Sec. 83.11(f) provision regarding consultation by Mortgagors with an attorney or "HUD certified counsel-

ors" to substitute for the latter a "government approved housing counseling agency"; and

4. Amended Sec. 83.7(b)(1) to eliminate certain duplicative provisions from the regulation.

NOTICE OF ADOPTION

Reports to Central Organization

I.D. No. DFS-13-14-00003-A

Filing No. 503

Filing Date: 2014-06-19

Effective Date: 2014-07-09

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

Action taken: Amendment of Subpart 62-2 (Regulation 96) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 201, 301, 318, 319, 403, 2601, 3403, 3413 and 3432

Subject: Reports to Central Organization.

Purpose: To replace outdated references to ''PILR'' with ''central organization.''

Text or summary was published in the April 2, 2014 issue of the Register, I.D. No. DFS-13-14-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Jessica Heegan, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5683, email: jessica.heegan@dfs.ny.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Repeal of Parts 175, 177 and Sections 178.8 and 178.10 of 11 NYCRR; and Renumbering of 11 NYCRR Section 178.9 to 178.8

I.D. No. DFS-13-14-00005-A

Filing No. 504

Filing Date: 2014-06-19

Effective Date: 2014-07-09

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

Action taken: Repeal of Parts 175, 177 and sections 178.8 and 178.10; and renumbering of section 178.9 to 178.8 of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 1401, 1403, 1405, 1407, 1410 and 1413; and L. 2008, ch. 71

Subject: Repeal of Parts 175, 177 and sections 178.8 and 178.10 of 11 NYCRR; and renumbering of 11 NYCRR section 178.9 to 178.8.

Purpose: To repeal Parts and sections of 11 NYCRR made obsolete by enactment of statutory provisions that supersede and replace them.

Text or summary was published in the April 2, 2014 issue of the Register, I.D. No. DFS-13-14-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Michael Campanelli, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5290, email: michael.campanelli@dfs.ny.gov

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Credit Exposure Arising from Derivative Transactions

I.D. No. DFS-27-14-00009-P

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

Proposed Action: Addition of Part 117 to Title 23 NYCRR.

Statutory authority: Banking Law, sections 103 and 235; Financial Services Law, section 302

Subject: Credit exposure arising from derivative transactions.

Purpose: To provide for the consideration of credit exposure relating to derivative transactions.

Text of proposed rule: *PART 117*

LENDING LIMITS: INCLUSION OF CREDIT EXPOSURES ARISING FROM DERIVATIVE TRANSACTIONS

§ 117.1 Definitions.

For the purposes of this Part:

a) The appropriate Federal banking agency of a bank shall be the agency specified by Section 3(q) of the Federal Deposit Insurance Act (FDIA), 12 USC § 1813(q), or the successor to such provision.

b) Bank includes a bank or trust company or a savings bank formed under the Banking Law whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC).

c) Credit derivative means a financial contract that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure) to another party (the protection provider).

d) The current credit exposure of a bank to a counterparty on a particular date with respect to a derivative transaction other than a credit derivative shall be the amount that the bank reasonably determines would be its loss under the terms of the derivative contract covering such transaction if the counterparty defaulted on such date.

e) The credit exposure of a bank to a counterparty arising from derivative transactions other than credit derivatives is the higher of zero or the sum of the then positive current credit exposures with respect to such derivative transactions, provided, however, that in calculating such credit exposure, the bank may take into account netting to the extent specified in section 117.4(a).

f) Derivative transaction includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

g) Effective margining arrangement means a master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank's net credit exposure to the counterparty that exceeds $25 million created by the derivative transactions covered by the agreement.

h) Eligible credit derivative means a single-name credit derivative or a standard, non-tranched index credit derivative, provided that:

(1) The derivative contract is executed under standard industry credit derivative documentation and meets the requirements of an eligible guarantee and has been confirmed by both the protection purchaser and the protection provider;

(2) Any assignment of the derivative contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap, the derivative contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Bankruptcy, insolvency, restructuring (for obligors not subject to bankruptcy or insolvency) or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due and similar events;

(4) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract; and

(5) If the derivative contract allows for cash settlement, the contract incorporates a robust valuation process.

i) Eligible protection provider means:

(1) A sovereign entity (a central government, including the United States government; an agency; department; ministry; or central bank);

(2) This state or any city, county, town, village or school district of this state, the New York State Thruway Authority, the Metropolitan Transportation Authority, the Triborough Bridge and Tunnel Authority or The Port Authority of New York and New Jersey;

(3) Any state other than the State of New York;

(4) The Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;

(5) A Federal Home Loan Bank;

(6) The Federal Agricultural Mortgage Corporation;

(7) A depository institution, as defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c);

(8) A bank holding company, as defined in Section 2 of the Bank Holding Company Act, 12 U.S.C. § 1841;

(9) A savings and loan holding company, as defined in Section 10 of the Home Owners' Loan Act, 12 U.S.C. § 1467a;

(10) A securities broker or dealer registered with the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq.;

(11) An insurance company that is subject to the supervision of a state insurance regulator;

(12) A foreign banking organization;

(13) A non-United States-based securities firm or a non-United States-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies;

(14) A qualifying central counterparty; and

(15) Such other entity or entities as may be designated from time to time by the superintendent.

j) Readily marketable collateral means financial instruments and bullion that are salable under ordinary market conditions with reasonable promptness at a fair market value.

k) Financial market utility shall have the same meaning as used in Section 803(6) of the Dodd–Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5462(6).

l) The following terms shall have the same meaning as used in the Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches (Capital Adequacy Guidelines) of the bank's appropriate Federal banking agency.[1]

(1) Eligible guarantee;

(2) Qualifying netting agreement;

(3) Qualifying central counterparty.

§ 117.2 General Rule.

a) In computing the amount of loans of a bank outstanding to a person under Section 103.1 of the Banking Law or to a borrower under Section 235.8-c of the Banking Law at any specific time, the credit exposures of the bank arising from derivative transactions with respect to such person or borrower shall be included.

b) Such credit exposures shall be calculated as the sum of the bank's credit exposure to such person or borrower as a counterparty arising from derivative transactions other than credit derivatives plus the bank's credit exposure to such person or borrower as a counterparty arising from credit derivatives plus, where such person or borrower is the obligor on a reference exposure, the bank's credit exposure with respect to such person or borrower as obligor on such reference exposure arising from credit derivatives.

§ 117.3 Credit Derivatives.

a) Credit exposure to a counterparty. A bank shall calculate its credit exposure to a counterparty arising from credit derivatives by adding the net notional value of all protection purchased from the counterparty with respect to each reference exposure.

b) Credit exposure with respect to a reference exposure. A bank shall calculate the credit exposure with respect to a reference exposure arising from credit derivatives entered by the bank by adding the notional value of all protection sold on such reference exposure.

c) Exposure mitigants. In computing the exposures in paragraphs a and b hereof, the bank may take into account exposure mitigants to the extent specified in section 117.4.

§ 117.4 Exposure Mitigants.

a) Netting. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty with whom such bank has in force a qualifying master netting agreement, such bank may net the credit exposures covered by such qualifying master netting agreement.

b) Collateral. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty, such credit exposures may be reduced to the extent that such credit exposures have been secured with readily marketable collateral under an effective margining arrangement. The amount of such reduction shall be equal to the value of such collateral multiplied by the percentage applicable to such type of collateral as may be prescribed by the superintendent from time to time.

c) Hedging. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty or with respect to a particular reference exposure, such credit exposures may be reduced to the extent hedged by an eligible credit derivative from an eligible protection provider.

§ 117.5 Exception.

In computing its credit exposures arising from derivative transactions, a bank need not include credit exposures to a qualifying central counterparty that has been designated by the Financial Stability Oversight Council as a financial market utility that is, or is likely to become, systemically important.

§ 117.6 Alternate Valuation Method.

With the permission of the superintendent, a bank may utilize an alternate method to evaluate its credit exposures arising from derivative transactions.

§ 117.8 Residual Authority of the Superintendent.

Where the method or methods used by a bank fails to appropriately reflect the credit exposures of the bank arising from derivative transactions, the superintendent may direct such bank to use an alternate method or methods.

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[1] In the case of a bank that is a member of the Federal Reserve System (member bank), the applicable definitions appear at Section 2 of Appendix F to 12 C.F.R. Part 208, and the case an Federally-insured bank that is not a member of the Federal Reserve System (nonmember insured bank), the applicable definitions appear at Section 2 of Appendix D to 12 C.F.R. Part 325.

Text of proposed rule and any required statements and analyses may be obtained from: Sam L. Abram, Department of Financial Services, One State Street, NY, NY 10004-1511, (212) 709-1658, email: sam.abram@dfs.ny.gov

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

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

Regulatory Impact Statement

1. Statutory Authority

Section 14 of the Banking Law provides that the Superintendent of Financial Services (the "Superintendent") shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the New York Banking Law (the "Banking Law") authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law (the "FSL") authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

2. Legislative Objectives

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y).

In response to federal enactment of Section 611 of DFA, the New York Legislature amended the Banking Law regarding loan limits in July 2011 to authorize the Superintendent to determine the manner and extent to which credit exposure resulting from certain types of transactions, including derivative transactions, shall be taken into account for purposes of the statutory loan limits. (L. 2011, c. 182).

This emergency regulation implements the Superintendent's authority by setting forth the manner in which derivative transactions will be taken into account for purposes of the lending limit provisions of the Banking Law. Note that state chartered or licensed entities subject to DFA Section 610, including savings associations, and branches and agencies of foreign banking organizations, are not covered by the regulation.

3. Needs and Benefits

Derivative transactions, including swaps and options, are a basic tool used by many banking organizations to manage exposure to various types of risk, including interest rate, currency and credit risk. If the state's lending limit rules do not take account of credit exposure from derivatives transactions, DFA Section 611 will prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on state banks' ability to manage the exposures embedded in their existing balance sheets (including exposures from any derivatives contracts entered into prior to the cutoff date), as well as the risks arising out of their ongoing business. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave state banks at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

While noting that there already exists some flexibility in the lending limit statute to interpret what constitutes credit exposure, the objective of the amendment was to provide certainty that New York law will comply with the requirements of DFA so as to ensure that insured banks in New York could continue to engage in derivative transactions after the cutoff date in Section 611 of DFA.

4. Costs

Banks that use derivatives already have systems in place to measure and manage the exposures incurred and their effect on the banks' overall risk position. The Department currently reviews such systems as part of its regular safety and soundness examination of regulated organizations.

It is believed that most state banks which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be comparatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for these banks are expected to be minimal.

Banks that engage in a larger volume of more complex derivatives transactions already have more sophisticated systems and processes in place for managing their risks, including those associated with derivatives transactions. The regulation provides that these institutions may, with the permission of the Superintendent, use an "alternative valuation method" to measure their credit exposure resulting from derivatives. Such institutions are expected to seek permission to use measurement methods which reflect their existing risk management procedures, thus minimizing the additional compliance costs resulting from the regulation.

5. Local Government Mandates

None.

6. Paperwork

The regulation does not require that state banks produce any additional reports. Banks that use derivatives have internal systems to measure their exposures, including exposures resulting from derivatives. In the course of its regular safety and soundness examination, the Department expects to be able to review the bank's records and computations regarding compliance with applicable lending limits.

While a bank seeking permission from the Department to utilize an alternative valuation model will be expected to provide information supporting the reasonableness of the proposed model, it is anticipated that such models will normally already have been reviewed by the Department during the examination process.

7. Duplication

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

8. Alternatives

The Department could choose not to adopt a regulation with respect to loan limits that takes into consideration credit exposure to derivative transactions. However, under DFA Section 611 if such a regulation is not adopted insured state banks will not be able to engage in derivative transactions, a basic tool used by many banking organizations to manage their exposure to various types of risk, including interest rate, currency and credit risk. In addition, not adopting such a regulation would put state banks at a competitive disadvantage, since federally chartered banks will be able to continue to engage in derivative transactions to manage their exposure to risk.

The Department also considered adoption of a regulation similar to the interim rule adopted by the federal Office of the Comptroller of the Currency (the "OCC") regarding credit exposure arising from derivatives and securities financing transactions (the "OCC Interim Rule"). 77 FR 37265, 37275 (June 21, 201212), C.F.R. § 32 (2012). However, that rule is quite complex and requires institutions to devote significant resources to compliance. Given the non-complex nature of the derivatives activity of most state banks, the Department did not consider it necessary to impose such extensive requirements.

9. Federal Standards

Although DFA Section 611 prohibits state banks from engaging in derivative transactions after January 20, 2013 if state's law does not take into account credit exposure to derivative transactions, there are no federal standards for how state law is to do so.

The OCC Interim Rule applies to national banks and federal and state savings associations. Under Section 4 of the International Banking Act of 1978, federally licensed branches and agencies of foreign banks are generally subject to the same limitations on their activities as national banks. Thus, the OCC Interim Rule effectively applies to them as well and through the Foreign Bank Supervision Enhancements Act applies to state-licensed branches and agencies. See 12 USC § 3105(h). However, the OCC Interim Rule does not apply to state-chartered banks and savings banks.

10. Compliance Schedule

The regulation is effective immediately. However, it is recognized that banks will require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology.

Regulatory Flexibility Analysis

1. Effect of the Rule

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y). This emergency regulation implements the authority of the Superintendent of Financial Services (the "Superintendent") under Sections 14, 103 and 235(8-c) of the New York Banking Law (the "Banking Law") and under Section 302 of the Financial Services Law (the "FSL").

Section 14 of the Banking Law provides that the Superintendent shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the Banking Law authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

Those banks that are small businesses are predominantly in the business of making commercial loans. To the extent these banks utilize derivatives, they generally use non-complex derivative transactions to manage their exposure to interest rate risk. If this regulation is adopted, such banks will continue to be able to manage their risk exposure using derivatives. However, under DFA Section 611, failure to adopt a regulation applicable to these banks would have the effect of prohibiting them from engaging in derivative transactions, which would have a severe adverse effect on their ability to manage the risks embedded in their existing balance sheets as well as the risks arising out of their ongoing business. Such banks would also be left at a substantial competitive disadvantage relative to federally-chartered banking organizations, which will be able to continue to enter into derivative transactions so long as they do so in compliance with applicable federal regulations.

This regulation does not have any impact on local governments.

2. Compliance Requirements

It is believed that most banks which are small businesses and which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward. The regulation does not require that banks, including banks that are small businesses, produce any additional reports.

3. Professional Services

Banks that are small businesses and engage in derivative transactions will already have the information necessary to make the computation regarding the regulation from their existing risk management systems.

4. Compliance Costs

Those banks that are small businesses and use derivatives generally engage in a relatively limited number of non-complex derivative transactions. For such banks it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for such banks are expected to be minimal.

While new Part 117 is effective immediately, it is recognized that some banks may require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology. This provision should further serve to minimize compliance costs for those banks that are small businesses.

5. Economic and Technological Feasibility

The regulation will provide an economic benefit to banks, including banks that are small businesses, since they will be able to continue using derivatives to manage the risk exposures resulting from their normal business activities.

Compliance with the regulation should not present a technological challenge, since banks that use derivatives, including banks that are small businesses, already have in place systems to measure and manage their exposures from derivative transactions. Moreover, the provision of the

rule effectively giving banks until to July 1, 2013, to start using the credit exposure calculation methodology set forth in the regulation, or to get the Superintendent's approval to use an alternative calculation methodology, will facilitate the resolution of any remaining economic or technological issues facing individual banks, including banks that are small businesses.

6. Minimizing Adverse Impacts

If the state's lending limit does not take account of credit exposure from derivatives transactions, DFA Section 611 will prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on the ability of banks, including banks that are small businesses, to manage the exposures embedded in their balance sheets. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave banks, including banks which are small businesses, at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

7. Small Business and Local Government Participation

The Department has had informal discussions regarding preliminary versions of the regulation with industry associations representing banks which engage in derivatives activities, including banks that engage in significant derivatives activities as well as banks that are small businesses. The regulation takes account of the comments received in the course of this process.

Rural Area Flexibility Analysis

1. Effect of the Rule

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y). This emergency regulation implements the authority of the Superintendent of Financial Services (the "Superintendent") under Sections 14, 103 and 235(8-c) of the New York Banking Law (the "Banking Law") and under Section 302 of the Financial Services Law (the "FSL").

Section 14 of the Banking Law provides that the Superintendent shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the Banking Law authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

Those banks that are located in rural areas are predominantly in the business of making commercial loans. To the extent these banks utilize derivatives, they generally use non-complex derivative transactions to manage their exposure to interest rate risk. If this regulation is adopted, such banks will continue to be able to manage their risk exposure using derivatives. However, under DFA Section 611, failure to adopt a regulation applicable to these banks would have the effect of prohibiting them from engaging in derivative transactions, which would have a severe adverse effect on their ability to manage the risks embedded in their existing balance sheets, as well as the risks arising out of their ongoing business. Such banks would also be left at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivative transactions so long as they do so in compliance with applicable federal regulations.

2. Compliance Requirements

It is believed that most banks which are located in rural areas and which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward. The regulation does not require that banks, including banks that are located in rural areas, produce any additional reports.

3. Professional Services

Banks which are located in rural areas and engage in derivative transactions will already have the information necessary to make the computation regarding the regulation from their existing risk management systems.

4. Compliance Costs

To the extent banks located in rural areas use derivatives, they generally engage in a relatively limited number of non-complex derivative transactions. For such banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for such banks are expected to be minimal.

While new Part 117 is effective[immediately, it is recognized that some banks may require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology. This provision should further serve to minimize compliance costs for banks that are located in rural areas.

5. Economic and Technological Feasibility

The regulation will provide an economic benefit to banks, including banks that are located in rural areas, since they will be able to continue using derivatives to manage the risk exposures resulting from their normal business activities.

Compliance with the regulation should not present a technological challenge, since banks that use derivatives, including banks that are located in rural areas, already have in place systems to measure and manage their exposures from derivative transactions. Moreover, the provision of the rule effectively giving banks until to July 1, 2013 to start using the credit exposure calculation methodology set forth in the regulation, or to get the Superintendent's approval to use an alternative calculation methodology, will facilitate the resolution of any remaining economic or technological issues facing individual banks, including banks that are located in rural areas.

6. Minimizing Adverse Impacts

If the state's lending limit did not take account of credit exposure from derivatives transactions, DFA Section 611 would prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on the ability of banks, including banks that are located in rural areas, to manage the exposures embedded in their balance sheets. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave banks, including banks which are located in rural areas, at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

7. Rural Area Participation

The Department has had informal discussions regarding preliminary versions of the regulation with industry associations representing banks which engage in derivatives activities, including banks that engage in significant derivatives activities as well as banks that are located in rural areas. The regulation takes account of the comments received in the course of this process.

Job Impact Statement

The regulation will not have an adverse impact on employment in the state. Banking organizations that engage in derivative transactions already have systems and staff in place to manage the credit and other risks associated with those transactions.

Conversely, failing to adopt the regulation could have an adverse impact on employment. Under DFA Section 611, state banks would be prohibited from engaging in derivative transactions and therefore would need to find other uses for staff currently involved in derivatives activity. Moreover, if state banks were no longer able to use derivatives to manage the risks resulting from their current types and levels of business, they might be forced to reduce or restructure the banking services they provide, which could have a further adverse impact on employment levels for both the banks and their customers.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Mandatory Reporting of ATM Safety Act Compliance by Banking Institutions

I.D. No. DFS-27-14-00010-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 301.6 of Title 3 NYCRR.

Statutory authority: Banking Law, art. II-AA

Subject: Mandatory reporting of ATM Safety Act compliance by banking institutions.

Purpose: Changes reporting requirements in section 306.1 of the Superi-

ntendent's Regulations to be consistent with changes in the ATM Safety Act (Article II-AA of the Banking Law) made by Chapter 27 of the Laws of 2013. This proposal would implement the changed reporting requirements contemplated by the amended statute.

Text of proposed rule: PART 301. SECURITY AT AUTOMATED TELLER FACILITIES

Section 301.6. Report of compliance.

(a)

(1) The semi-annual report of compliance required to be filed pursuant to the provisions of section 75-g of the Banking Law shall be filed [within 75 days after the close of each calendar year covering the preceding calendar year] with the Department of Financial Services no later than the fifteenth day of January and July of each year or the following business day if that day is not a business day. This report shall be certified, under the penalties of perjury, and shall contain language substantially similar to the following:

I, _____, (person at the institution charged with enforcing compliance with article II-AA of the Banking Law) hereby certify, under the penalties of perjury, that all answers contained herein are true, accurate and complete.

[(2)] (A) All of the automated teller machine facilities operated by _____ (name of institution) which are subject to the provisions of article II-AA of the Banking Law (choose one or more of the following, as applicable):

(i) _____ are in full compliance with the provisions of that article; and/or

(ii) _____ are in full compliance with the variance or exemption (as the case may be) granted by the superintendent for the automated teller machine facility (or facilities) located at _____ (specific address); and/or

(iii) _____ are not in compliance with the provisions of article II-AA.

[(3)](B) _____ (name of institution) uses and maintains only T-120 (commercial/industrial) grade video tapes, or better, in accordance with the provisions of section 301.5 of this Part.

[(i)](2) In cases in which some or all of a banking institution's automated teller machine facilities are not in compliance with the provisions of article II-AA, the semi-annual report shall indicate the following additional information:

[(a)](A) the specific address of each such facility;

[(b)](B) the manner in which each such facility fails to meet the requirements of that article and the reasons for such non-compliance; and

[(c)](C) a plan to remedy such non-compliance at each such facility, including the expected correction date.

(b) [Upon notification] After notice of any violation of the provisions of section 75-c of the Banking Law is provided to the Department in any semi-annual report or such banking institution is notified of any violation of section 75-c of the Banking Law, such banking institution shall file a report of corrective action [required] pursuant to section 75-[j]g(2) of the Banking Law [shall be filed within] no later than 10 business days [from] following the filing of the semi-annual report or receipt of such notification of violation. That report shall be certified, under the penalties of perjury, and shall contain language substantially similar to the following:

I, _____, (person at the institution charged with enforcing compliance with article II-AA of the Banking Law) hereby certify, under the penalties of perjury, that all answers contained herein are true, accurate and complete. The automated teller machine facility operated by _____ (name of institution) located at _____ (specific address) which is the subject of one or more violations of the provisions of section 75-c of the Banking Law, is (chose one of the following):

(1) _____ in full compliance with the provisions of section 75-c as of _____ (date); or

(2) _____ not presently in compliance with the provisions of section 75-c and the annexed remedial plan has been implemented and shall be completed by _____ [(date no later than 30 days after initial notification of violation from the Department of Financial Services)]; upon the date of completion of the remedial plan, _____ (name of institution) shall file a certified report of compliance with the Department of Financial Services stating that the location meets the requirements of section 75-c. Annexed hereto is a description of the remedial plan.

Text of proposed rule and any required statements and analyses may be obtained from: Sam Abram, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1658, email: Sam.Abram@DFS.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority.

Section 227 of the Laws of 2013 became effective on July 31, 2013. It made amendments to Banking Law Sections 75-g and 75-j. The changes to Subsection 301(6) of Part 301 made herein are intended to make the regulation consistent with the changes made to Section 75-g.

The ATM Safety Act (the "Act"), Article II-A of the Banking Law, is intended to protect members of the public by imposing lighting, security camera and other requirements on ATMs operating in New York State. Section 75-n of the Banking Law grants the Superintendent with authority to adopt implementing regulations. Part 301 of the Superintendent's Regulations implements the Act.

Subsection 301(6) of Part 301 relates to periodic reporting obligations by banking institutions with respect to the compliance of their ATMs with the requirements of the Act. The changes made herein are intended to make the reporting process for banking institutions more efficient and less expensive. Changes are also made to make the regulation consistent with the newly amended law.

Chapter 227 made amendments to Subdivision 1 of Section 75-g of the Banking Law. It also added a new Subdivision 2 to the statute. The amendments to Subdivision 1 make clear that the reporting is to be on a semi-annual basis. They also made clear that all such reporting is to be done on an electronic basis. New Section 75-g(2) provides that any institution filing a semi-annual compliance report that shows noncompliance shall thereafter submit an additional report to the Department indicating whether the failure has been corrected, the reason for any failure that has not been corrected and the expected date of correction. Finally, for any violation not corrected within ten business days after the filing of the applicable compliance report, the institution also must report the date of completion of the corrective action.

2. Legislative objectives.

As noted, the Act is intended to protect members of the public by imposing lighting, security camera and other requirements on ATMs operating in New York State. The recent amendments are intended to automate the reporting of violations, thus enhancing the efficiency of the reporting process.

Part 301 implements the Act. The following is a summary of the major changes made by this proposal to Section 301(6) to implement Chapter 227:

1. The numbering of the section is changed to make the regulation consistent with the intent of the statute.

2. Paragraph (a) has been changed to make clear that compliance reporting is to be done on a semi-annual basis.

3. Clause (C) of subparagraph (2) of paragraph (a) has been changed to add a requirement that the banking institution indicate the expected date of completion of the corrective action.

4. Paragraph (b) has been modified to clarify that any banking institution that submitted a notice of violation in any semi-annual report or has otherwise been notified of any violation must file a report of corrective action no later than 10 business days following the filing of the semi-annual report or receipt of notice of a violation. This report must state whether the violation has been corrected or, if not, the expected date of completion. When the corrective action has been completed, Paragraph (b) also requires the banking institution to report the date of completion.

5. All reports must be certified.

3. Needs and benefits.

Prior to the amendments described above, the Act required banking institutions to make annual reports to the Department regarding their ATM compliance with the Act. This reporting was supported by on-site examinations by employees of the Department. This reporting obligation has been changed to a semi-annual reporting process. The statute also was amended to allow the reporting to be done electronically. In effect, while the Department retains its examination authority, the compliance emphasis is has been changed from a primarily examination-based system handled by the Department to a more comprehensive self-reporting system. Since banking institutions will have primary responsibility for monitoring and reporting, it is anticipated that the costs of compliance for both banks with ATMs and for the Department will be reduced.

The changes described herein are expected to simplify reporting and the cost of reporting for banking institutions. In addition, it is expected that the changes to the regulation will facilitate reporting by making the process somewhat more straight forward. They will also conform the regulation to the statute.

4. Costs.

As under the existing Part 301, banking institutions remain primarily responsible for ensuring that their ATMs are in compliance with the Act. Nevertheless, the cost of demonstrating their compliance with Act in writing will be significantly simplified as all such reporting will now be done electronically. The Department is developing an online system to provide for such reporting. An Interim system was in place for the first scheduled semi-annual reporting that occurred in January of 2014, and the Department is working to have in place a permanent system for subsequent reporting periods.

5. Local government mandates.
None.
6. Paperwork.
Going forward, reporting will be done electronically.
7. Duplication.
The revised regulation does not duplicate, overlap or conflict with any other regulations.
8. Alternatives.
The purpose of the proposal is to conform the regulation to changes in the statute and to carry out the statutory mandate to regulate bank owned ATMs pursuant to the Act. Failure to act would result in regulations that are inconsistent with the statute.
9. Federal standards.
None applicable.
10. Compliance schedule.
Chapter 227 became effective on July 31, 2013. The first semi-annual reports were filed in January, 2014.

Regulatory Flexibility Analysis

1. Effect of the Rule:
The revised regulation will not have any impact on local governments. However, a number of the banking institutions that maintain automatic teller machines ("ATMs") and will be affected by revised regulation are considered small businesses. Overall, there are in excess of 5200 ATMs regulated by the Department of Financial Services (the "Department").
2. Compliance Requirements:
As noted, the Department regulates over 5200 automatic teller machines ("ATMs") in the state. Chapter 227 of the laws of 2013 became effective on July 31, 2013. It made amendments to Section 75-g and 75-j of the Banking Law. The changes to Subsection 301(6) of Part 301 made herein are intended to make the regulation more consistent with the statute and also make compliance easier.
The ATM Safety Act (the "Act") is intended to protect members of the public by imposing lighting, security camera and other requirements on ATMs operating in New York State. Subsection 301(6) of Part 301 relates to periodic reporting obligations by banking institutions with respect to the compliance of their ATMs with the requirements of the Act. The changes made herein are intended to make the filing process for banking institutions more efficient and cheaper. Changes are also made to make the regulation more consistent with law and easier to follow.
3. Professional Services:
None.
4. Compliance Costs:
As under the existing Part 301, banking institutions remain primarily responsible for ensuring that their ATMs are in compliance with the Act. Nevertheless, the cost of demonstrating their compliance with Act in written will be significantly simplified as all such reporting will now be done electronically. The Department is developing an online system to provide for such reporting. A temporary system was in place in January, and the Department is working to have in place a permanent system by June of this year.
5. Economic and Technological Feasibility:
The rule-making should impose no adverse economic or technological burden on small businesses. Indeed, banking institutions should benefit from new electronic systems for reporting.
6. Minimizing Adverse Impacts:
It is expected that electronic reporting will significantly reduce overall compliance costs for industry. Also, the cost to the Department of its supervision of compliance with the Act should similarly be reduced. Since the Department assesses industry for these costs, the changes contemplated by these regulations should assist in further reducing industry costs.
7. Small Business and Local Government Participation:
The Department is in regular contact with banking institutions, including those that are small businesses, and industry associations regarding compliance with the Act. Banking institutions are interested in both improving their compliance and reducing the costs of compliance. The proposed adoption should facilitate banking institutions in attaining both goals. This regulation does not impact local governments.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers.
The New York State Department of Financial Services (the "Department") regulates over 5200 automatic teller machines ("ATMs") in the state, including numerous ATMs in rural areas.
The ATM Safety Act (the "Act"), Article II-A of the Banking Law, is intended to protect members of the public by imposing lighting, security camera and other requirements on ATMs operating in New York State. Section 75-n of the Banking Law grants the Superintendent with authority to adopt implementing regulations. Part 301 of the Superintendent's Regulations implements the Act.
Section 227 of the Laws of 2013 became effective on July 31, 2013. It made amendments to Banking Law Sections 75-g and 75-j. The changes to Subsection 301(6) of Part 301 made herein are intended to make the regulation consistent with the changes made to Section 75-g.
Subsection 301(6) of Part 301 relates to periodic reporting obligations by banking institutions with respect to the compliance of their ATMs with the requirements of the Act. The changes made herein are intended to make the filing process for banking institutions more efficient and less expensive. Changes are also made to make the regulation more consistent with law and easier to follow.
Chapter 227 made amendments to Subdivision 1 of Section 75-g of the Banking law. It also added a new Subdivision 2 to the statute. The amendments to Subdivision 1 make clear that the reporting is to be on a semi-annual basis. It also made clear that all such reporting is to be done on an electronic basis. New Section 75-g(2) provides that any institution filing a semi-annual compliance report that shows noncompliance shall thereafter submit an additional report to the Department indicating whether the failure has been corrected, the reason for any failure that has not been corrected and the expected date of correction. Finally, for any violation not corrected within ten business days after the filing of the applicable compliance report, the institution also must report the date of completion of the corrective action.
2. Compliance Requirements.
Prior to the amendments described above, the Act required banking institutions to make annual reports to the Department regarding their ATM compliance with the Act. This reporting was supported by on-site examinations by employees of the Department. In effect, while the Department retains its examination authority, the compliance emphasis is has been changed from a primarily examination-based system handled by the Department to a more comprehensive self-reporting system. This reporting obligation has been changed to a semi-annual reporting process. The statute also was amended to allow the reporting to be done electronically. Since banking institutions will have primary responsibility for monitoring and reporting, it is anticipated that the costs of compliance for both banks with ATMs and for the Department will be reduced.
3. Costs.
Banking institutions in rural areas should experience a more efficient compliance reporting system going forward. Indeed, expenses for compliance will remain the same as banking institutions will continue to have the primary responsibility for ensuring that there ATMs comply with law. However, ongoing reporting costs should be reduced as banks will have both a more streamlined reporting system and the ability to report electronically.
4. Minimizing Adverse Impacts.
It is expected that electronic reporting will significantly reduce overall compliance costs for industry. Also, the cost to the Department of its supervision of compliance with the Act should similarly be reduced. Since the Department assesses industry for these costs, the changes contemplated by these regulations should assist in further reducing industry costs.
5. Rural Area Participation.
The Department is in regular contact with banking institutions, including those that are located in rural areas, and industry associations regarding compliance with the Act. Banking institutions are interested in both improving their compliance and reducing the costs of compliance. The proposed adoption should facilitate banking institutions in attaining both goals. This regulation does not impact local governments.

Job Impact Statement

The requirement to comply with this regulation is not expected to have a significant adverse effect on jobs or employment. Section 227 of the Laws of 2013 became effective on July 31, 2013. It made amendments to Banking Law Sections 75-g and 75-j. The changes to Subsection 301(6) of Part 301 made herein are intended to make the regulation consistent with the changes made to Section 75-g.
The ATM Safety Act (the "Act"), Article II-A of the Banking Law, is intended to protect members of the public by imposing lighting, security camera and other requirements on ATMs operating in New York State. Section 75-n of the Banking Law grants the Superintendent with authority to adopt implementing regulations. Part 301 of the Superintendent's Regulations implements the Act.
Subsection 301(6) of Part 301 relates to periodic reporting obligations by banking institutions with respect to the compliance of their ATMs with the requirements of the Act. The changes made herein are intended to make the filing process for banking institutions more efficient and less expensive. Changes are also made to make the regulation more consistent with law and easier to follow.
Chapter 227 made amendments to Subdivision 1 of Section 75-g of the Banking law. It also added a new Subdivision 2 to the statute. The amendments to Subdivision 1 make clear that the reporting was to be on a semi-annual basis. It also made clear that all such reporting was to be done on an electronic basis. New Section 75-g(2) provides that any institution filing a semi-annual compliance report that shows noncompliance shall

thereafter submit an additional report to the Department indicating whether the failure has been corrected, the reason for any failure that has not been corrected and the expected date of correction. Finally, for any violation not corrected within ten business days after the filing of the applicable compliance report, the institution also must report the date of completion of the corrective action.

Banking institutions have and will continue to have primary responsibility for ensuring compliance with the Act. Indeed, the associated costs of reporting should be reduced as all reporting going forward should be reduced as all reporting going forward is to be completed electronically. This compliance with the amended regulation is not expected to have an adverse effect on employment.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Excess Line Placements Governing Standards

I.D. No. DFS-29-13-00002-RP

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

Proposed Action: Amendment of Part 27 (Regulation 41) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 316, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 3103, 5907, 5909, 5911, 9102, arts. 21 and 59

Subject: Excess Line Placements Governing Standards.

Purpose: To implement Chapter 61 of the Laws of 2011, conforming to the federal Nonadmitted and Reinsurance Reform Act of 2010.

Substance of revised rule: On July 21, 2010, President Obama signed into law the federal Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), which contains the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA"). The NRRA prohibits any state, other than the home state of an insured, from requiring a premium tax payment for excess (or "surplus") line insurance. The NRRA also subjects the placement of excess line insurance solely to the statutory and regulatory requirements of the insured's home state, and declares that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate excess line insurance with respect to such insured.

In addition, the NRRA provides that an excess line broker seeking to procure or place excess line insurance for an exempt commercial purchaser ("ECP") need not satisfy any state requirement to make a due diligence search to determine whether the full amount or type of insurance sought by the ECP may be obtained from admitted insurers if: (1) the broker procuring or placing the excess line insurance has disclosed to the ECP that the insurance may be available from the admitted market, which may provide greater protection with more regulatory oversight; and (2) the ECP has subsequently requested in writing that the broker procure the insurance from or place the insurance with an excess line insurer.

On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amended the Insurance Law to conform to the NRRA.

Insurance Regulation 41 (11 NYCRR Part 27) currently consists of 24 sections and one appendix addressing the regulation of excess line insurance placements.

The title of Section 27.0 is changed to read "Preamble and applicability," and Section 27.0 is amended to discuss the NRRA and Chapter 61 of the Laws of 2011 and to provide that Part 27 applies only when the insured's home state is New York.

Section 27.1 is amended to delete "eligible," "qualified United States financial institution," and "letter of credit" as defined terms, and to add three new defined terms: "exempt commercial purchaser," "insured's home state," and "United States."

The Department amended Section 27.2(a) to change a reference to "Insurance Department" to read "Department of Financial Services."

Section 27.3(a) is amended to provide an exception for an ECP consistent with Insurance Law Section 2118(b)(3)(F) and to change a reference to "Insurance Department" to read "Department of Financial Services."

Section 27.3(f) is amended to require an excess line broker and the producing broker to maintain files supporting declinations by authorized insurers where declinations are required.

A new Section 27.3(h) is added, which provides that Section 27.3(a), (b), and (c) do not apply to an excess line broker seeking to procure or place insurance in New York for an ECP if the broker discloses to the ECP that the insurance may or may not be available from the authorized market that may provide greater protection with more regulatory oversight, and the ECP has subsequently requested in writing that the licensee procure or place the insurance from an unauthorized insurer.

Section 27.4(b) is amended to delete a reference to "in this State" and Section 27.4(g) is repealed.

Section 27.5(f), (g), and (h) are amended to: (1) with regard to an ECP, require an excess line broker or the producing broker to affirm in part A or part C of the affidavit that the ECP was specifically advised in writing, prior to placement, that insurance may or may not be available from the authorized market, which may provide greater protection with more regulatory oversight; (2) require an excess line broker to affirm that the insured's home state is New York in part A of the affidavit; and (3) clarify that the premium tax is to be allocated in accordance with Section 27.9 of Insurance Regulation 41 for insurance contracts that have an effective date prior to July 21, 2011.

Section 27.6(b) is amended to make grammatical changes and to change "the Excess Line Association of New York" to "the excess line association."

Section 27.7(a) is amended to remove a reference to an unauthorized insurer that does not meet "eligibility standards for stamping by the excess line association" and to replace it with language that refers to an unauthorized insurer that does not "qualify to write excess line insurance in this State."

Section 27.8 is amended to: (1) require a licensed excess line broker to file electronically an annual premium tax statement, unless the Superintendent of Financial Services (the "Superintendent") grants the broker an exemption pursuant to Section 27.21 of Insurance Regulation 41; (2) acknowledge that payment of the premium tax may be made electronically; and (3) change a reference to "Superintendent of Insurance" to read "Superintendent of Financial Services."

Section 27.9 is amended to clarify how an excess line broker must calculate the taxable portion of the premium for: (1) insurance contracts that have an effective date prior to July 21, 2011; and (2) insurance contracts that have an effective date on or after July 21, 2011 and that cover property or risks located both inside and outside the United States.

Section 27.10(b) is amended to make grammatical changes.

Section 27.11 is amended to prohibit an unauthorized insurer from providing coverage if the coverage is prohibited by law.

Section 27.13 is amended to remove certain information from the list of information that an excess line broker must obtain and review prior to placing insurance with an unauthorized insurer, and to delete the prohibition against an excess line broker placing business with an excess line insurer unless the insurer has filed with the Superintendent a current listing that sets forth certain individual policy details.

Current Section 27.14 is repealed and a new Section 27.14 is added entitled, "Filings by unauthorized insurers; authorization to receive premium," which affirmatively requires an excess line insurer to file electronically with the Superintendent a current listing that sets forth certain individual policy details, and states that "pursuant to Insurance Law section 2121, any unauthorized insurer that delivers in New York to any excess line broker or any insured represented by such broker a contract of insurance pursuant to the application or request of such broker, acting for an insured other than himself or herself, will be deemed to have authorized the broker to receive on its behalf payment of any premium that is due on such contract at the time of its issuance or delivery or payment of any installment of such premium or any additional premium that becomes due or payable thereafter on such contract, provided that the broker receives the payment within 90 days after the due date of the premium or installment thereof or after the date of delivery of a statement by the insurer of the additional premium."

Sections 27.15 and 27.16 are repealed.

Sections 27.17, 27.18, 27.19, 27.20, and 27.21 are renumbered as Sections 27.15, 27.16, 27.17, 27.18, and 27.19.

Newly renumbered Section 27.15(b) (formerly Section 27.17(b)) is amended to make grammatical changes and to change a reference to "Insurance Department" to read "Department of Financial Services."

Newly renumbered Section 27.16(a) (formerly Section 27.18(a)) is amended to change a reference to Section 27.17(b) to read Section 27.15(b).

Newly renumbered Section 27.19(a) (formerly Section 27.21(a)) is amended to change a reference to Section 27.17(e) to read Section 27.15(e).

Section 27.22 is renumbered as Section 27.20.

Current Section 27.23 is repealed and a new Section 27.21 is added entitled, "Exemptions from electronic filing and submission requirements."

Section 27.24 is renumbered as Section 27.22.

The excess line premium tax allocation schedule set forth in appendix four is amended to apply to insurance contracts that have an effective date prior to July 21, 2011.

A new appendix five is added, which sets forth an excess line premium tax allocation schedule to apply to insurance contracts that have an effective date on or after July 21, 2011 and that cover property and risks located both inside and outside the United States.

Revised rule compared with proposed rule: Substantive revisions were made in sections 27.1, 27.7(a) and 27.13.

Text of revised proposed rule and any required statements and analyses may be obtained from Joana Lucashuk, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-2125, email: joana.lucashuk@dfs.ny.gov

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

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

Revised Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the promulgation of the Fourteenth Amendment to Insurance Regulation 41 (11 NYCRR Part 27) derives from Sections 301, 316, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 9102, and Article 21 of the Insurance Law, and Sections 202 and 302 of the Financial Services Law.

The federal Nonadmitted and Reinsurance Reform Act of 2010 (the "NRRA") significantly changed the paradigm for excess line insurance placements in the United States. Chapter 61 of the Laws of 2011 amended the Insurance Law and the Tax Law to conform to the NRRA.

Insurance Law Section 301 and Financial Services Law Sections 202 and 302 authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law, and effectuate any power granted to the Superintendent under the Insurance Law. Insurance Law Section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the Superintendent's approval.

Insurance Law Article 21 sets forth the duties and obligations of insurance brokers and excess line brokers. Insurance Law Section 2101 sets forth relevant definitions. Insurance Law Section 2104 governs the licensing of insurance brokers. Insurance Law Section 2105 sets forth licensing requirements for excess line brokers. Insurance Law Section 2110 provides grounds for the Superintendent to discipline licensees by revoking or suspending licenses or, pursuant to Insurance Law Section 2127, imposing a monetary penalty in lieu of revocation or suspension. Insurance Law Section 2116 permits payment of commissions to brokers and prohibits compensation to unlicensed persons. Insurance Law Section 2117 prohibits the aiding of an unauthorized insurer, with exceptions. Insurance Law Section 2118 sets forth the duties of excess line brokers, with regard to the placement of insurance with eligible foreign and alien excess line insurers, including the responsibility to ascertain and verify the financial condition of an unauthorized insurer before placing business with that insurer. Insurance Law Section 2121 provides that brokers have an agency relationship with insurers for the collection of premiums. Insurance Law Section 2122 imposes limitations on advertising by producers. Insurance Law Section 2130 establishes the Excess Line Association of New York ("ELANY").

Insurance Law Section 9102 establishes rules regarding the allocation of direct premiums taxable in New York, where insurance covers risks located both in and out of New York.

2. Legislative objectives: Generally, unauthorized insurers may not do an insurance business in New York. In permitting a limited exception for licensed excess line brokers to procure insurance policies in New York from excess line insurers, the Legislature established statutory requirements to protect persons seeking insurance in New York. The NRRA significantly changed the paradigm for excess (or "surplus") line insurance placements in the United States. The NRRA prohibits any state, other than the insured's home state, from requiring a premium tax payment for excess line insurance. Further, the NRRA subjects the placement of excess line insurance solely to the statutory and regulatory requirements of the insured's home state and declares that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate excess line insurance with respect to the insured. In addition, the NRRA establishes uniform eligibility standards for excess line insurers. A state may not impose additional eligibility conditions.

Under the new NRRA paradigm, an excess line broker now must ascertain an insured's home state before placing any property/casualty excess line business. Thus, if the insured's home state is not New York, even though the insured goes to the broker's office in New York, the excess line broker must be licensed in the insured's home state in order for the broker to procure the excess line coverage for that insured. Conversely, a person who is approached by an insured outside of New York must be licensed as an excess line broker in New York in order to procure excess line coverage for an insured whose home state is New York.

On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amended the Insurance Law to conform to the NRRA. This rule accords with the public policy objectives Congress and the Legislature sought to advance in enacting the NRRA and Chapter 61 by making conforming changes so that the rule does not conflict with them.

3. Needs and benefits: Insurance Regulation 41 governs the placement of excess line insurance. The purpose of the excess line law is to enable consumers who are unable to obtain insurance from authorized insurers to obtain coverage from eligible excess line insurers. This rule implements the provisions and purposes of Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the NRRA. The NRRA and Chapter 61 took effect on July 21, 2011 and have been impacting excess line placements since that date.

Prior to the enactment of the NRRA, Insurance Regulation 41 prohibited an excess line broker from placing coverage with an excess line insurer unless the insurer had established and maintained a trust fund. However, the new NRRA eligibility requirements do not include a trust fund with respect to foreign insurers (alien insurers, however, must maintain a trust fund that satisfies the International Insurers Department ("IID") of the National Association of Insurance Commissioners ("NAIC")). As such, New York no longer is requiring a trust fund with respect to foreign insurers.

In addition, Insurance Regulation 41 currently states that when the insured's home state is New York, an excess line broker may not place coverage with an unauthorized insurer unless the insurer has filed with the Superintendent a current listing that sets forth certain individual policy details. Such a requirement could be construed as an eligibility requirement not permitted under the NRRA. Accordingly, Insurance Regulation 41 is being amended to instead impose an affirmative requirement on an excess line insurer to file certain individual policy details when the insured's home state is New York, rather than prohibiting an excess line broker from placing coverage if the insurer has not filed these details.

Insurance Regulation 41 also currently requires an excess line broker to obtain and review certain information before placing insurance with an unauthorized insurer. The Department recognizes that certain of the required information is not publicly available and that as a result of the NRRA, an unauthorized insurer may not provide the information voluntarily to an excess line broker. Therefore, the Department is amending Insurance Regulation 41 to remove from the list certain information that an excess line broker must obtain and review.

Insurance Law Section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent. The amendment requires excess line brokers to file annual premium tax statements electronically, and requires excess line insurers to file electronically listings that set forth certain individual policy details. In addition, the Department is amending Insurance Regulation 41 to allow excess line brokers or insurers to apply for a "hardship" exception to any electronic filing or submission requirement.

4. Costs: The rule is not expected to impose costs on excess line brokers, and it merely conforms the requirements regarding placement of coverage with excess line insurers to the requirements in Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the NRRA. While new Section 27.14 imposes an affirmative requirement on an excess line insurer to file certain individual policy details when the insured's home state is New York, this section should not impose any additional costs on excess line insurers, because excess line insurers have already been filing this information. Although the amended rule will require excess line brokers to file annual premium tax statements and will require excess line insurers to file listings that set forth certain individual policy details electronically, most brokers and insurers already do business electronically. In fact, ELANY already requires documents to be filed electronically. Moreover, the regulation also provides a method whereby excess line brokers and insurers may apply for an exemption from any electronic filing or submission requirement.

Costs to the Department also should be minimal, as existing personnel are available to review any modified filings necessitated by the rule. In fact, filing forms electronically may produce a cost savings for the Department.

This rule does not impose compliance costs on any state or local governments.

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

6. Paperwork: The rule does not impose any new reporting require-

ments on regulated parties. While new Section 27.14 imposes an affirmative requirement on an excess line insurer to file certain individual policy details when the insured's home state is New York, this section does not impose any new reporting requirements on excess line insurers, because excess line insurers already are filing this information.

7. Duplication: The regulation will not duplicate any existing state or federal rule, but rather will implement and conform to the federal requirements.

8. Alternatives: Originally, when the Department promulgated this amendment on an emergency basis, it made an excess line insurer subject to Insurance Law Section 1213 (service of process on Superintendent as attorney for unauthorized insurers) if the insurer chooses not to maintain a trust fund. However, after further discussion with industry representatives, the Department has decided to eliminate the trust fund section altogether in order to achieve uniformity with other states in a manner consistent with the goals of the NRRA.

In addition, the Department considered continuing the requirement that when the insured's home state is New York, an excess line broker may not place coverage with an unauthorized insurer unless the insurer had filed with the Superintendent a current listing that sets forth certain individual policy details. However, after discussion with industry representatives, the Department decided to instead impose an affirmative requirement on an excess line insurer to file certain individual policy details when the insured's home state is New York.

The Department also considered continuing the requirement that an excess line broker obtain and review certain information before placing insurance with an unauthorized insurer. However, after discussion with ELANY and receipt of comments from industry, the Department decided to remove from the list certain information that an excess line broker must obtain and review because the Department recognized that certain information is not publicly available and that an excess line broker likely could not otherwise obtain it from an unauthorized insurer.

9. Federal standards: This regulation does not exceed any minimum standards of the federal government for the same or similar subject areas. Rather, the rule implements the provisions and purposes of Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the NRRA.

10. Compliance schedule: Pursuant to Chapter 61 of the Laws of 2011, this amendment, which has been previously promulgated on an emergency basis, impacts excess line insurance placements effective on and after July 21, 2011 and thus the permanent adoption will take effect upon publication of the rule in the State Register.

Revised Regulatory Flexibility Analysis

The revisions made to the earlier proposed rule have no special bearing on small businesses and no bearing on local governments; therefore, changes made to the last published rule do not necessitate revision to the previously published RFA.

Revised Rural Area Flexibility Analysis

The revisions made to the earlier proposed rule have no special bearing on persons located in rural areas; therefore, changes made to the last published rule do not necessitate revision to the previously published RAFA.

Revised Job Impact Statement

The revisions made to the earlier proposed rule have no bearing on jobs or employment opportunities; therefore, changes made to the last published rule do not necessitate revision to the previously published JIS.

Assessment of Public Comment

The New York State Department of Financial Services ("Department") received comments from a national trade association representing the excess line industry ("excess line trade organization"), a national property/casualty insurance trade organization ("property/casualty trade organization"), a national insurance trade organization ("insurance trade organization"), the New York stamping office, an excess line insurer, an attorney that represents an insurance trade organization for insurers that comprise the London market ("counsel for the London market"), and an attorney who represents excess line insurers ("counsel for excess line insurers"), in response to the publication of its proposed rule in the New York State Register.

Comments on specific parts of the proposed rule and the Department's responses thereto are discussed below.

11 NYCRR 27.1(q) ("Definition of Eligible")

Comment

The insurance trade organization commented that because the definition of "eligible" references satisfying the requirements of this rule, an unauthorized insurer's eligibility in New York is implicated, contrary to the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA"). The organization urged the Department to delete this language.

Department's Response

The Department deleted "eligible" as a defined term since the proposed rule no longer uses it.

Proposed Amendment to 11 NYCRR 27.11 ("Prohibited Activities")

Comment

The property/casualty trade organization and insurance trade organization commented that the language in the proposed rule prohibiting an insurer from providing coverage under certain circumstances is unnecessary and without authority. The organizations requested that the Department remove the language.

Department's Response

Unauthorized insurers may engage only in certain limited acts in New York, including in the excess line market, and excess line policies are subject to certain New York laws and regulations. Unauthorized insurers can be and have long been held accountable for violations of those laws. The NRRA is not a license for unauthorized insurers to operate outside of state law. With respect to placements where a state is the home state, the NRRA only preempts state law with respect to eligibility requirements; it does not preempt state law with respect to compliance requirements. The language highlights and makes clear to insurers that they can be held responsible for acting in violation of Insurance Law section 1102 by doing an insurance business in New York without a license or by otherwise violating the Insurance Law. Therefore, the Department did not remove this language.

Proposed Amendments to 11 NYCRR 27.13 ("Duty to Inquire")

Comment

With regard section 27.13(a)(1), which requires an excess line broker to obtain, review, and retain the financial statement filed by an alien unauthorized insurer with the National Association of Insurance Commissioners ("NAIC"), the excess line insurer commented that this information is not available to excess line brokers. The insurer requested that the Department remove this requirement with respect to alien unauthorized insurers.

With regard to section 27.13(a)(3) and (4), which require excess line brokers to obtain, review, and retain a copy of an unauthorized insurer's latest available report on examination issued by its home jurisdiction, and a certification from the insurer's home jurisdiction verifying that the insurer is authorized to write the kinds of insurance sought to be placed, the excess line insurer commented that non-U.S. regulators do not routinely provide this information to the public and excess line brokers therefore will not be able to fulfill this requirement with respect to alien unauthorized insurers. The insurer requested that the Department remove this requirement with respect to alien unauthorized insurers.

The New York stamping office stated that it will continue to seek the foregoing documents from insurers to relieve excess line brokers of the burden of seeking them and insurers of the burden of providing them to more than one party.

Counsel for excess line insurers suggested that the Department or NAIC make the foregoing documentation available to excess line brokers at no charge, because it would remove the need for and costs to insurers to provide the same information to multiple parties.

Department's Response

Recognizing that some of the information requested might be unavailable to an excess line broker, the Department amended section 27.13(a)(1) to require a copy only of a foreign insurer's most recent annual financial statement and to delete the requirement that the excess line broker obtain the standard financial statement filed with the NAIC by an alien insurer. The Department also amended section 27.13(a)(3) to require an excess line broker to obtain a copy of the insurer's latest report on examination only if accessible to the excess line broker, and amended section 27.13(a)(3) to require an excess line broker to obtain a certification from the insurer's home jurisdiction or any other documentation sufficient to ascertain and verify the fact that the insurer is authorized in its domiciliary jurisdiction to write the insurance policy proposed to be procured from it by the excess line broker. The foregoing language is consistent with Insurance Law section 2118(b)(3).

Comment

The property/casualty trade organization, excess line trade organization, and counsel for the London market commented that the duty to "obtain, review and retain" the stipulated list of documents and reports prior to the placement of coverage falls outside the criteria permitted by the NRRA. Counsel for the London market also commented that retaining this language will result in additional compliance and transaction costs, which ultimately will be passed on to consumers.

In addition, the property/casualty trade organization noted that the rule currently provides that, prior to placing business with an unauthorized insurer, an excess line broker must make inquiry sufficient to ascertain the insurer's financial stability and that it has capacity adequate to its business. The organization commented that this requirement can impose significant challenges for the excess line broker and create a heightened standard of care and liability exposure. The property/casualty trade organization and excess line trade organization also stated that it imposes obligations be-

yond the NRRA eligibility provisions, while counsel for excess line insurers observed that the requirements appear contrary to the intent of the NRRA that regulators and consumers may rely on the solvency regulation and other oversight performed by an insurer's domiciliary regulator.

The organizations requested that the Department delete this language and amend the rule to clarify that the excess line broker may place business with any foreign excess line insurer that is authorized in its domiciliary state and maintains the minimum capital and surplus required by the New York Insurance Law or this rule.

Department's Response

While the NRRA generally prohibits a state from imposing eligibility requirements on, or establishing eligibility criteria for, a foreign excess line insurer, or prohibiting an excess line broker from placing excess line insurance with an alien excess line insurer listed with the NAIC's International Insurers Department ("IID"), requiring an excess line broker to obtain, review, and retain certain documents is neither an eligibility criterion imposed on a foreign insurer nor a prohibition against placing insurance with an alien insurer. Rather, these requirements expand upon Insurance Law section 2118(a)(1), which requires an excess line broker to use due care when selecting an excess line insurer from which to procure a policy. While a state may not preclude an excess line broker from making a placement, by requiring the broker to make sufficient inquiry into the insurer's financial stability, the broker and the insured can make an informed decision as to whether such a placement is advisable and prudent.

As for resulting in additional compliance and transaction costs and creating a heightened standard of care and liability exposure, these requirements are longstanding and therefore should not impose any additional compliance or transaction costs or create a heightened standard of care or additional liability exposure.

Thus, the Department did not make any changes to the rule in light of this comment.

Comment

The excess line trade organization and counsel for excess line insurers commented that the requirement in section 27.13(g), which provides that an excess line broker must make inquiry sufficient to demonstrate that the insurer has complied with section 27.14 of the rule before placing business with an unauthorized insurer, is an eligibility requirement contrary to the NRRA. The organization asked the Department to remove the language.

Department's Response

The Department does not necessarily agree that section 27.13(g) is an eligibility requirement, but it would seem impractical for an excess line broker to ascertain easily whether an insurer has complied with section 27.14. Therefore, the Department removed this language.

Comment

The New York stamping office recommended that the Department seek to enhance the financial reporting requirements imposed by the NAIC's IID and to make the disclosure of the alien insurer financial information transparent to all participants in the marketplace.

Department's Response

The Department did not make any changes since this comment does not pertain to the rule.

Proposed Amendment to 11 NYCRR 27.14 ("Filings by Unauthorized Insurers")

Comment

The property/casualty trade organization, insurance trade organization, excess line trade organization, and counsel for the London market commented that the requirement that unauthorized insurers file individual policy details (the "EL-1 report") is an eligibility requirement in violation of the NRRA. The organizations urged the Department to remove this requirement.

Department's Response

This requirement is neither an eligibility criterion imposed on a foreign insurer nor a prohibition against placing insurance with an alien insurer, because requiring an insurer to file individual policy details does not prohibit an insurer from being eligible to write excess line insurance in New York or prohibit an excess line broker from placing excess line insurance with the insurer. In addition, this information is necessary because it is the only way for the Department to ensure that excess line brokers are reporting and paying the correct excess line tax.

Comment

The property/casualty trade organization commented that proposed section 27.14(a)(5), which requires an unauthorized insurer to file annually with the Superintendent such other information as the Superintendent may require, is too arbitrary and potentially damaging to the excess line marketplace given the requirements for this unknown information, and asked that the Department remove it.

Department's Response

The EL-1 report has long been filed by unauthorized insurers and the language regarding such additional information requested by the Superintendent is longstanding in the rule. It is limited to individual policy details to help ascertain whether the proper amount of tax has been paid by the brokers and therefore is neither arbitrary nor too broad. The Department does not see how it could be potentially damaging to the excess line marketplace under these circumstances. Therefore, the Department did not remove this language.

Comment

The insurance trade organization commented that the proposed language in section 27.14(b), which applies Insurance Law section 2121 regarding authorizing brokers to receive premium on behalf of insurers, is based on questionable authority. The organization asserts that the statutory authority cited for this language, Insurance Law section 2121, references insurance brokers and insurers and not excess lines brokers or unauthorized insurers. The organization requested that the Department delete this language.

Department's Response

This provision is intended to merely highlight and make clear the applicability of section 2121 to excess line transactions. Excess line brokers are merely a subset of insurance brokers. In order to be licensed as an excess line broker, a person must be licensed as an insurance broker first. In addition, Insurance Law section 2121 refers to insurers that deliver in this state an insurance contract to any insurance broker or any insured. This includes both authorized insurers and unauthorized insurers. Therefore, the Department did not delete this language.

Trust Fund

Comment

Counsel for excess line insurers requested that the Department add a provision to the proposed rule expressly authorizing trustee banks to terminate previously existing trust funds and release the monies in the trust funds to the insurer without Department approval or other requirement. Alternatively, counsel suggested that the Department establish and publish a formal process for releasing trust fund deposits as other states have.

Department's Response

As explained in Supplement No. 1 to Insurance Circular Letter No. 9 (2011), the NRRA does not void the obligations under a trust fund agreement entered into by an unauthorized foreign or alien insurer and a trustee prior to the NRRA's July 21, 2011 effective date. A trust fund agreement establishes the rights and responsibilities of the parties. It is a private agreement that, once established, provides for the protection of the beneficiary policyholders. While the NRRA prospectively preempts certain state laws as of July 21, 2011, it does not obviate a private agreement between parties entered into prior to that date. This rule cannot obviate a private agreement either. Therefore, the Department did not make any changes to the proposed rule in light of this comment.

Department of Health

EMERGENCY RULE MAKING

Children's Camps

I.D. No. HLT-27-14-00003-E
Filing No. 500
Filing Date: 2014-06-18
Effective Date: 2014-06-18

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

Action taken: Amendment of Subpart 7-2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

Finding of necessity for emergency rule: Preservation of public safety.

Specific reasons underlying the finding of necessity: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"), in order to coordinate and improve the State's ability to protect those persons having various physical, developmental, or mental disabilities and who are receiving services from various facilities or provider agencies. The Department must promulgate regulations as a "state oversight agency." These regulations will assure proper coordination with the efforts of the Justice Center.

Among the facilities covered by Chapter 501 are children's camps having enrollments with 20 percent or more developmentally disabled campers. These camps are regulated by the Department and, in some cases,

by local health departments, pursuant to Article 13-B of the Public Health Law and 10 NYCRR Subpart 7-2. Given the effective date of Chapter 501 and its relation to the start of the camp season, these implementing regulations must be promulgated on an emergency basis in order to assure the necessary protections for vulnerable persons at such camps. Absent emergency promulgation, such persons would be denied initial coordinated protections until the 2015 camp season. Promulgating these regulations on an emergency basis will provide such protection, while still providing a full opportunity for comment and input as part of a formal rulemaking process which will also occur pursuant to the State Administrative Procedures Act. The Department is authorized to promulgate these rules pursuant to sections 201 and 225 of the Public Health Law.

Promulgating the regulations on an emergency basis will ensure that campers with special needs promptly receive the coordinated protections to be provided to similar individuals cared for in other settings. Such protections include reduced risk of being cared for by staff with a history of inappropriate actions such as physical, psychological or sexual abuse towards persons with special needs. Perpetrators of such abuse often seek legitimate access to children so it is critical to camper safety that individuals who that have committed such acts are kept out of camps. The regulation provides an additional mechanism for camp operators to do so. The regulations also reduce the risk of incidents involving physical, psychological or sexual abuse towards persons with special needs by ensuring that such occurrences are fully and completely investigated, by ensuring that camp staff are more fully trained and aware of abuse and reporting obligations, allowing staff and volunteers to better identify inappropriate staff behavior and provide a mechanism for reporting injustice to this vulnerable population. Early detection and response are critical components for mitigating injury to an individual and will prevent a perpetrator from hurting additional children. Finally, prompt enactment of the proposed regulations will ensure that occurrences are fully investigated and evaluated by the camp, and that measures are taken to reduce the risk of re-occurrence in the future. Absent emergency adoption, these benefits and protections will not be available to campers with special needs until the formal rulemaking process is complete, with the attendant loss of additional protections against abuse and neglect, including physical, psychological, and sexual abuse.

Subject: Children's Camps.

Purpose: To include camps for children with developmental disabilities as a type of facility with in the oversight of the Justice Center.

Substance of emergency rule: The Department is amending 10 NYCRR Subpart 7-2 Children's Camps as an emergency rulemaking to conform the Department's regulations to requirements added or modified as a result of Chapter 501 of the Laws of 2012 which created the Justice Center for the Protection of Persons with Special Needs (Justice Center). Specifically, the revisions:

- amend section 7-2.5(o) to modify the definition of "adequate supervision," to incorporate the additional requirements being imposed on camps otherwise subject to the requirements of section 7-2.25
- amend section 7-2.24 to address the provision of variances and waivers as they apply to the requirements set forth in section 7-2.25
- amend section 7-2.25 to add definitions for "camp staff," "Department," "Justice Center," and "Reportable Incident"

With regard to camps with 20 percent or more developmentally disabled children, which are subject to the provisions of 10 NYCRR section 7-2.25, add requirements as follows:

- amend section 7-2.25 to add new requirements addressing the reporting of reportable incidents to the Justice Center, to require screening of camp staff, camp staff training regarding reporting, and provision of a code of conduct to camp staff
- amend section 7-2.25 to add new requirements providing for the disclosure of information to the Justice Center and/or the Department and, under certain circumstances, to make certain records available for public inspection and copying
- amend section 7-2.25 to add new requirements related to the investigation of reportable incidents involving campers with developmental disabilities
- amend section 7-2.25 to add new requirements regarding the establishment and operation of an incident review committee, and to allow an exemption from that requirement under appropriate circumstances
- amend section 7-2.25 to provide that a permit may be denied, revoked, or suspended if the camp fails to comply with the regulations, policies or other requirements of the Justice Center

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 September 15, 2014.

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

Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council is authorized by Section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. Article 13-B of the PHL sets forth sanitary and safety requirements for children's camps. PHL Sections 225 and 201(1)(m) authorize SSC regulation of the sanitary aspects of businesses and activities affecting public health including children's camps.

Legislative Objectives:

In enacting to Chapter 501 of the Laws of 2012, the legislature established the New York State Justice Center for the Protection of People with Special Needs (Justice Center) to strengthen and standardize the safety net for vulnerable people that receive care from New York's Human Services Agencies and Programs. The legislation includes children's camps for children with developmental disabilities within its scope and requires the Department of Health to promulgate regulations approved by the Justice Center pertaining to incident management. The proposed amendments further the legislative objective of protecting the health and safety of vulnerable children attending camps in New York State (NYS).

Needs and Benefits:

The legislation amended Article 11 of Social Services law as it pertains to children's camps as follows. It:

- included overnight, summer day and traveling summer day camps for children with developmental disabilities as facilities required to comply with the Justice Center requirements.
- defined the types of incident required to be reported by children's camps for children with developmental disabilities to the Justice Center Vulnerable Persons' Central Registry.
- mandated that the regulations pertaining to children's camps for children with developmental disabilities are amended to include incident management procedures and requirements consistent with Justice Center guidelines and standards.
- required that children's camps for children with developmental disabilities establish an incident review committee, recognizing that the Department could provide for a waiver of that requirement under certain circumstances.
- required that children's camps for children with developmental disabilities consult the Justice Center's staff exclusion list (SEL) to ensure that prospective employees are not on that list and to, where the prospective employee is not on that list, to also consult the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment (SCR) to determine whether prospective employees are on that list.
- required that children's camps for children with developmental disabilities publicly disclose certain information regarding incidents of abuse and neglect if required by the Justice Center to do so.

The children's camp regulations, Subpart 7-2 of the SSC are being amended in accordance with the aforementioned legislation.

Compliance Costs:

Cost to Regulated Parties:

The amendments impose additional requirements on children's camp operators for reporting and cooperating with Department of Health investigations at children's camps for children with developmental disabilities (hereafter "camps"). The cost to affected parties is difficult to estimate due to variation in salaries for camp staff and the amount of time needed to investigate each reported incident. Reporting an incident is expected to take less than half an hour; assisting with the investigation will range from several hours to two staff days. Using a high estimate of staff salary of $30.00 an hour, total staff cost would range from $120 to $1600 for each investigation. Expenses are nonetheless expected to be minimal statewide as between 40 and 50 children's camps for children with developmental disabilities operate each year, with combined reports of zero to two incidents a year statewide. Accordingly, any individual camp will be very unlikely to experience costs related to reporting or investigation.

Each camp will incur expenses for contacting the Justice Center to verify that potential employees, volunteers or others falling within the definition of "custodian" under section 488 of the Social Services Law (collectively "employees") are not on the Staff Exclusion List (SEL). The effect of adding this consultation should be minimal. An entry level staff person earning the minimum wage of $7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the Justice Center, within a few hours.

Similarly, each camp will incur expenses for contacting the Office of Children and Family Services (OCFS) to determine whether potential employees are on the State Central Registry of Child Abuse and Maltreatment (SCR) when consultation with the Justice Center shows that the prospective employee is not on the SEL. The effect of adding this consultation should also be minimal, particularly since it will not always be necessary.

An entry level staff person earning the minimum wage of $7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the OCFS, within a few hours. Assuming that each employee is subject to both screens, aggregate staff time required should not be more than six to eight hours. Additionally, OCFS imposes a $25.00 screening fee for new or prospective employees.

Camps will be required to disclose information pertaining to reportable incidents to the Justice Center and to the permit issuing official investigating the incident. Costs associated with this include staff time for locating information and expenses for copying materials. Using a high estimate of staff salary of $30.00 an hour, and assuming that staff may take up to two hours to locate and copy the records, typical cost should be under $100.

Camps must also assure that camp staff, and certain others, who fall within the definition of mandated reporters under section 488 of the Social Services Law receive training related to mandated reporting to the Justice Center, and the obligations of those staff who are required to report incidents to the Justice Center. The costs associated with such training should be minimal as it is expected that the training material will be provided to the camps and will take about one hour to review during routine staff training. Camps must also ensure that the telephone number for the Justice Center reporting hotline is conspicuously posted for campers and staff. Cost associated with such posting is limited, related to making and posting a copy of such notice in appropriate locations.

The camp operator must also provide each camp staff member, and others who may have contact with campers, with a copy of a code of conduct established by the Justice Center pursuant to Section 554 of the Executive Law. The code must be provided at the time of initial employment, and at least annually thereafter during the term of employment. Receipt of the code of conduct must be acknowledged, and the recipient must further acknowledge that he or she has read and understands it. The cost of providing the code, and obtaining and filing the required employee acknowledgment, should be minimal, as it would be limited to copying and distributing the code, and to obtaining and filing the acknowledgments. Staff should need less than 30 minutes to review the code.

Camps will also be required to establish and maintain a facility incident review committee to review and guide the camp's responses to reportable incidents. The cost to maintain a facility incident review committee is difficult to estimate due to the variations in salaries for camp staff and the amount of time needed for the committee to do its business. A facility incident review committee must meet at least annually, and also within two weeks after a reportable incident occurs. Assuming the camp will have several staff members participate on the committee, an average salary of $50.00 an hour and a three hour meeting, the cost is estimated to be $450.00 dollars per meeting. However, the regulations also provide the opportunity for a camp to seek an exemption, which may be granted subject to Department approval based on the duration of the camp season and other factors. Accordingly, not all camps can be expected to bear this obligation and its associated costs.

Camps are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Finally, the regulations add noncompliance with Justice Center-related requirements as a ground for denying, revoking, or suspending a camp operator's permit.

Cost to State and Local Government:

State agencies and local governments that operate children's camps for children with developmental disabilities will have the same costs described in the section entitled "Cost to Regulated Parties." Currently, it is estimated that five summer day camps that meet the criteria are operated by municipalities. The regulation imposes additional requirements on local health departments for receiving incident reports and investigations of reportable incidents, and providing a copy of the resulting report to the Department and the Justice Center. The total cost for these services is difficult to estimate because of the variation in the number of incidents and amount of time to investigate an incident. However, assuming the typically used estimate of $50 an hour for health department staff conducting these tasks, an investigation generally lasting between one and four staff days, and assuming an eight hour day, the cost to investigate an incident will range $400.00 to $1600. Zero to two reportable incidents occur statewide each year, so a local health department is unlikely to bear such an expense. The cost of submitting the report is minimal, limited to copying and mailing a copy to the Department and the Justice Center.

Cost to the Department of Health:

There will be routine costs associated with printing and distributing the amended Code. The estimated cost to print revised code books for each regulated children's camp in NYS is approximately $1600. There will be additional cost for printing and distributing training materials. The expenses will be minimal as most information will be distributed electronically. Local health departments will likely include paper copies of training materials in routine correspondence to camps that is sent each year.

Local Government Mandates:

Children's camps for children with developmental disabilities operated by local governments must comply with the same requirements imposed on camps operated by other entities, as described in the "Cost to Regulated Parties" section of this Regulatory Impact Statement. Local governments serving as permit issuing officials will face minimal additional reporting and investigation requirements, as described in the "Cost to State and Local Government" section of this Regulatory Impact Statement. The proposed amendments do not otherwise impose a new program or responsibilities on local governments. City and county health departments continue to be responsible for enforcing the amended regulations as part of their existing program responsibilities.

Paperwork:

The paperwork associated with the amendment includes the completion and submission of an incident report form to the local health department and Justice Center. Camps for children with developmental disabilities will also be required to provide the records and information necessary for LHD investigation of reportable incidents, and to retain documentation of the results of their consultation with the Justice Center regarding whether any given prospective employee was found to be on the SEL or the SCR.

Duplication:

This regulation does not duplicate any existing federal, state, or local regulation. The regulation is consistent with regulations promulgated by the Justice Center.

Alternatives Considered:

The amendments to the camp code are mandated by law. No alternatives were considered.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

Federal Standards:

Currently, no federal law governs the operation of children's camps.

Compliance Schedule:

The proposed amendments are to be effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Types and Estimated Number of Small Businesses and Local Governments:

There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. About 30% of summer day camps are operated by municipalities (towns, villages, and cities). Typical regulated children's camps representing small business include those owned/operated by corporations, hotels, motels and bungalow colonies, non-profit organizations (Girl/Boy Scouts of America, Cooperative Extension, YMCA, etc.) and others. None of the proposed amendments will apply solely to camps operated by small businesses or local governments.

Compliance Requirements:

Reporting and Recordkeeping:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties," "Local Government Mandates," and "Paperwork" sections of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in "Cost to State and Local Government" and "Local Government Mandates" portions of the Regulatory Impact Statement.

Other Affirmative Acts:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" "Local Government Mandates," and "Paperwork" sections of the Regulatory Impact Statement.

Professional Services:

Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Compliance Costs:

Cost to Regulated Parties:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Cost to State and Local Government:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in the "Cost to Regulated Parties" section of the Regulatory

Impact Statement. The obligations imposed on local government as the permit issuing official is described in "Cost to State and Local Government" and "Local Government Mandates" portions of the Regulatory Impact Statement.

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.

Minimizing Adverse Economic Impact:

The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

Small Business Participation and Local Government Participation:

No small business or local government participation was used for this rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the regulations, and training will be provided to affected entities with regard to the new requirements.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. Currently, there are seven day camps and ten overnight camps operating in the 44 counties that have population less than 200,000. There are an additional four day camps and three overnight camps in the nine counties identified to have townships with a population density of 150 persons or less per square mile.

Reporting and Recordkeeping and Other Compliance Requirements:

Reporting and Recordkeeping:

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Other Compliance Requirements:

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Professional Services:

Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Compliance Costs:

Cost to Regulated Parties:

The costs imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.

Minimizing Adverse Economic Impact on Rural Area:

The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized, and no impacts are expected to be unique to rural areas.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

Rural Area Participation:

No rural area participation was used for this rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the routine regulations, and training will be provided to affected entities with regard to the new requirements.

Job Impact Statement

No Job Impact Statement is required pursuant to Section 201-a (2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, because it does not result in an increase or decrease in current staffing level requirements. Tasks associated with reporting new incidents types and assisting with the investigation of new reportable incidents are expected to be completed by existing camp staff, and should not be appreciably different than that already required under current requirements.

EMERGENCY RULE MAKING

Standards for Adult Homes and Adult Care Facilities Standards for Enriched Housing

I.D. No. HLT-27-14-00007-E

Filing No. 516

Filing Date: 2014-06-20

Effective Date: 2014-06-20

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

Action taken: Amendment of Parts 487 and 488 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20, 20(3)(d), 34, 34(3)(f), 131-o, 460, 460-a—460-g, 461 and 461-a—461-h

Finding of necessity for emergency rule: Preservation of public safety.

Specific reasons underlying the finding of necessity: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"), in order to coordinate and improve the State's ability to protect those persons having various physical, developmental, or mental disabilities and who are receiving services from various facilities or provider agencies. The Department must promulgate regulations, as a "state oversight agency" of some of the covered facilities, in order to assure proper coordination with the efforts of the Justice Center Chapter 501 which took effect on June 30, 2013, and the Justice Center becomes operational.

Among the facilities covered by Chapter 501 are adult homes and enriched housing programs having a capacity of eighty or more beds, and in which at least 25% (twenty-five percent) of the residents are persons with serious mental illness as defined by section 1.03(52) of the mental hygiene law, but not including an adult home which is authorized to operate 55% (fifty-five percent) or more of its total licensed capacity of beds as assisted living program beds. Given the effective date of Chapter 501, these implementing regulations must be promulgated on an emergency basis in order to assure the necessary protections for vulnerable persons at such adult homes and enriched housing programs for an additional period likely extending several months. Absent emergency promulgation, such persons would be denied initial coordinated protections for several additional months, creating an unacceptable risk to residents. Promulgating these regulations on an emergency basis will provide such protection, while still providing a full opportunity for comment and input as part of a formal rulemaking process which will be implemented subsequently, as required by the State Administrative Procedures Act. The Department is authorized to promulgate these rules pursuant to Sections 20, 34, 131-o, 460, 460-a—460-g, 461, 461-a—461-h of the Social Services Law; and L. 1997, ch. 436; and L. 2012, ch. 501.

Subject: Standards for Adult Homes and Adult Care Facilities Standards for Enriched Housing.

Purpose: Revisions to Parts 487 and 488 in regards to the establishment of the Justice Center for Protection of People with Special Needs.

Substance of emergency rule: The Department proposes to amend 18 NYCRR Parts 487 and 488 to address the creation of the Justice Center for the Protection of Persons with Special Needs (Justice Center) pursuant to Chapter 501 of the Laws of 2012, and to conform the Department's regulations to requirements added or modified as a result of that Chapter Law. Specifically, the amendments:

- add definitions specific to facilities subject to the Justice Center of "abuse," "mistreatment," "neglect," "misappropriation of property," "reasonable cause," "reportable incident," "Justice Center," "significant incident," "custodian," "facility subject to the Justice Center," "psychological abuse," "Department," and " unlawful use or administration of a controlled substance" at sections 487.2(d)(1)-(13) and 488.2(c)(1)-13;
- amend sections 487.5 and 488.5 to add occurrences which would constitute a reportable incident to the list of occurrences which residents should not experience, and to require the operator of certain facilities to conspicuously post the telephone number of the Justice Center incident reporting hotline;

• amend sections 487.7 and 488.7 to clarify a facility's obligations regarding what incidents must be investigated, how they must be investigated and who must investigate them;

• amend sections 487.7 and 488.7 to replace outdated references to the State Commission on Quality of Care for the Mentally Disabled with references to the Justice Center;

• amend sections 487.7 and 488.7 to add a requirement addressing when reports must be provided to the Justice Center, and requiring such reports to conform to the requirements of the Justice Center;

• amend sections 487.9 and 488.9 to add a requirement for staff training in the identification of reportable incidents and facility reporting procedures, and to add a requirement for certain facilities regarding the provision of a code of conduct to employees, volunteers, and others providing services at the facility who could be expected to have resident contact;

• amend sections 487.9 and 488.9 to add a requirement that certain facilities consult the Justice Center's staff exclusion list with regard to prospective employees, volunteers, and others, and that when such person is not on the staff exclusion list, that such facilities also consult the State Central Registry, with regard to such persons. The facility must maintain documentation of such consultation. The amendments also address the hiring consequences associated with the outcome of those consultations;

• amend sections 487.9 and 488.9 to specifically include investigation of reportable incidents to the administrative obligations of facilities, and to the duties of a case manager;

• amend sections 487.9 and 488.9 to require the operator of a facility to designate an additional employee to be a designated reporter;

• amend sections 487.10 and 488.10 to add a new requirement that certain facilities provide certain information to the Justice Center, and make certain information public, at the request of the Justice Center, and to allow sharing of information between the Department and the Justice Center;

• add new sections 487.14 and 488.13 to address reporting of certain incidents; and

• add new sections 487.15 and 488.14 to address the investigation of reportable incidents involving facilities subject to the Justice Center.

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 September 17, 2014.

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

Summary of Regulatory Impact Statement

The Department believes that the proposed regulatory amendments enhance the health and safety of those served by adult homes and enriched housing programs.

Adult homes and enriched housing programs subject to the Justice Center will be required to consult the Justice Center's register of substantiated category one cases of abuse or neglect as established pursuant to section 495 of the Social Services Law prior to hiring certain employees, and where the person is not on that list, the facility will also be required to check the Office of Children and Family Services' Statewide Central Registry of Child Abuse and Maltreatment. The facility could not hire a person on the Justice Center's list, but would have the discretion to hire a person who was only on Office of Children and Family Services' list. Reporting and investigation obligations for all facilities would be expanded to cover "reportable incidents" which, are slightly more inclusive than what is covered by current reporting and investigation obligations. The amendments also add specific provisions addressing reporting and investigation procedures, to require the posting the telephone number of the Justice Center's reporting hotline, and to require the case manager to be capable of reporting and investigating incidents. Those amendments should not require any significant change in current practice or impose anything beyond nominal additional expense to facilities. Requirements imposed on facilities generally are limited to an obligation to train staff in the identification and reporting of reportable incidents. With regard to facilities subject to the Justice Center, that obligation, as well as the others imposed by the regulations, are required by virtue of Chapter 501 of the Laws of 2012. The costs imposed by the amendments are expected to be minimal. In many cases, particularly with regard to the investigation requirements, the amendments generally reflect existing practice, so should neither impose any significant new costs or require any significant change in practice.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

This rule imposes some new obligations and administrative costs on regulated parties (adult homes and enriched housing programs). Some of the changes to Sections 487 and 488 apply to all adult home and enriched housing facilities; other only apply to those adult homes and enriched housing facilities which fall under the purview of the Justice Center. None of the requirements imposed by the amendments would impose different, or unique, burdens on small businesses or local governments; the requirements apply equally statewide. The costs and obligations associated with the amendments are fully described in the "Costs to Regulated Parties" section of the Regulatory Impact Statement.

Most of the five-hundred twenty-two (522) certified adult homes in New York State, including the forty-seven (47) which fall under the purview of the Justice Center, are operated by small businesses as defined in Section 102 of the State Administrative Procedure Act. Those entities would be subject to all of the above additional requirements.

Of the six (6) facilities operated by local governments, two (2) are scheduled to close within the next year. Of the four (4) remaining homes, none fall within the scope of the Justice Department required reporting facilities. Accordingly, the only additional cost imposed on those four (4) homes would be those nominal costs associated with obligations applicable to all adult homes and enriched housing facilities, as described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Compliance Requirements:

As the facilities operated by local governments are not among those within the purview of the Justice Center for the Protection of Persons with Special Needs (Justice Center), the only impact upon facilities operated by local governments will be those resulting from obligations applicable to all adult homes and enriched housing facilities, as described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

The four (4) affected facilities run by local governments will experience minimal additional regulatory burdens in complying with the amendment's requirements, as functions related to Justice Center activities will not cause a need for additional staff or equipment.

Those facilities which constitute small businesses would be subject to additional requirements, as they include facilities both subject to, and not subject to, the purview of the Justice Center. The scope of the impact upon any given facility depends on whether it falls within the Justice Center's purview. Such obligations and impacts are fully described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. The amendments are not expected to create a need for any additional staff or equipment for those facilities.

The Department expects that regulated parties will be able to comply with these regulations as of their effective date, upon filing with the Secretary of State.

Professional Services:

No need for additional professional services is anticipated. Existing professional staff are expected to be able to assume any increase in workload resulting from the additional requirements.

Compliance Costs:

This rule imposes limited new administrative costs on regulated parties (adult homes and enriched housing programs), as described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. The changes to Sections 487 and 488 add additional administrative responsibilities for those adult home and enriched housing facilities within the Justice Center's jurisdiction. None of the requirements imposed by the amendments would impose different, or unique, burdens on small businesses or local governments; the requirements apply equally statewide.

Economic and Technological Feasibility:

The proposed regulation would present no economic or technological difficulties to any small businesses and local governments affected by this amendment. The infrastructure for contacting the Justice Center, and establishing an Incident Review Committee, are already in place.

Minimizing Adverse Impact:

Department efforts to consider minimizing the impact of the amendments, and its consideration of alternatives to the amendments, are discussed in the "Alternatives" section of the Regulatory Impact Statement.

These amendments will not have an adverse impact on the ability of small businesses or local governments to comply with Department requirements, as full compliance would require minimal enhancements to present hiring and follow-up practices.

Consideration was given to including a cure period to afford adult home and enriched housing programs an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the Department's ability to enforce the regulations for violations could expose this already vulnerable population to greater risk to their health and safety.

Small Business and Local Government Participation:

The Department will notify all New York State certified ACFs by a Dear Administrator Letter (DAL) informing them of this Justice Center expansion of the protection of vulnerable people. Regulated parties that

are small businesses and local governments are expected to be prepared to participate in required Justice Center activities on the effective date of this amendment because the staff and infrastructure needed for performance of these are already in place.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Of the forty-seven (47) current facilities that will fall under the purview of the Justice Center for the Protection of People with Special Needs (Justice Center), six (6) are located in rural counties, as follows: Allegany County, Cayuga County, Greene County, Genesee County, Monroe County and Rensselaer County. Of the 522 adult homes and enriched housing programs statewide, including those not under the purview of the Justice Center, 160 are in rural areas.

Reporting and Recordkeeping and Other Compliance Requirements:

Reporting, recordkeeping and other compliance requirements are addressed in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. None of the requirements imposed by the amendments would impose different, or unique, burdens on rural areas; the requirements apply equally statewide.

Other Compliance Requirements:

Compliance requirements are discussed in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. None of the requirements imposed by the amendments would impose different, or unique, burdens on rural areas; the requirements apply equally statewide.

Professional Services:

There are no additional professional services required to comply with the proposed amendments.

Compliance Costs:

Cost to Regulated Parties:

Compliance requirements and associated costs are discussed in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. None of the requirements imposed by the amendments would impose different, or unique, burdens on rural areas; the requirements apply equally statewide.

Economic and Technological Feasibility:

There are no changes requiring the use of technology. The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.

Minimizing Adverse Economic Impact on Rural Area:

Department efforts to consider minimizing the impact of the amendments, and its consideration of alternatives to the amendments, are discussed in the "Alternatives" section of the Regulatory Impact Statement.

Rural Area Participation:

Of the forty-seven (47) current facilities that will fall under the purview of the Justice Center, six (6) are located in rural counties, as follows: Allegany County, Cayuga County, Greene County, Genesee County, Monroe County and Rensselaer County. The Department will notify all New York State-certified adult care facilities (ACFs) by a Dear Administrator Letter (DAL) informing them of this expansion of requirements to protect people with special needs. Regulated parties in rural areas are expected to be able to participate in requirements of the Justice Center on the effective date of this amendment.

Job Impact Statement

No Job Impact Statement is required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, because it does not result in an increase or decrease in current staffing level requirements. Tasks associated with reporting new incidents types, reporting to the Justice Center for the Protection of People with Special Needs (Justice Center), as opposed to the Commission on the Quality of Care and Advocacy for People with Disabilities, making public certain information as directed by the Justice Center and assisting with the investigation of new reportable incidents are expected to be completed by existing facility staff. Similarly, the need for a medical examination of the patient in the course of investigating reportable incidents is similarly not appreciably different from the current practice of obtaining such examination under such circumstances. Accordingly, the amendments should not have any appreciable effect on employment as compared to current requirements.

NOTICE OF ADOPTION

Service Intensity Weights (SIWs) and Average Length-of-Stay (ALOS), Administrative Appeals and Out-of-State Providers

I.D. No. HLT-17-14-00014-A
Filing No. 515
Filing Date: 2014-06-20
Effective Date: 2014-07-09

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

Action taken: Amendment of Subpart 86-1 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-c(35)(c)

Subject: Service Intensity Weights (SIWs) and Average Length-of-Stay (ALOS), Administrative Appeals and Out-of-State Providers.

Purpose: To delay the rebasing of the acute hospital inpatient rates and implementation of the service intensity weights for 2014.

Text or summary was published in the April 30, 2014 issue of the Register, I.D. No. HLT-17-14-00014-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Law

NOTICE OF ADOPTION

Registration and Conduct of Investment Advisors

I.D. No. LAW-16-14-00008-A
Filing No. 553
Filing Date: 2014-06-24
Effective Date: 2014-07-09

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

Action taken: Amendment of sections 11.1(d), 11.14(a), 11.15; repeal of sections 11.7(a), 11.13(a)(6), 11.16 of Title 13 NYCRR.

Statutory authority: General Business Law, section 359, art. 23-A

Subject: Registration and conduct of investment advisors.

Purpose: To provide investors with information to reduce possibility of fraud; clarify current rules; and conform them with Federal law.

Text or summary was published in the April 23, 2014 issue of the Register, I.D. No. LAW-16-14-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: Gregory Krakower, Department of Law, 120 Broadway, New York, NY 10271, (212) 416-8030, email: gregory.krakower@ag.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

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

Assessment of Public Comment

The agency received no public comment.

Office of Mental Health

EMERGENCY RULE MAKING

Implementation of the Protection of People with Special Needs Act and Reforms to Incident Management

I.D. No. OMH-27-14-00004-E
Filing No. 501
Filing Date: 2014-06-18
Effective Date: 2014-06-18

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

Action taken: Repeal of Part 524; addition of new Part 524; and amendments of Parts 501 and 550 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.07, 7.09 and 31.04

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

Specific reasons underlying the finding of necessity: The immediate adoption of these amendments is necessary for the preservation of the health, safety, and welfare of individuals receiving services.

In December, 2012, the Governor signed the Protection of People with Special Needs Act (PPSNA). This new law created the Justice Center for the Protection of People with Special Needs (Justice Center) and established many new protections for vulnerable persons, including a new system for incident management in services operated or licensed by OMH and new requirements for more comprehensive and coordinated pre-employment background checks.

The amendment of OMH regulations is necessary to implement many of the provisions contained in the PPSNA.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals with mental illness who receive services in the OMH system. If OMH did not promulgate regulations on an emergency basis, many of the protections established by the PPSNA vital to the health, safety and welfare of individuals with mental illness would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting from inconsistent requirements. For example, the emergency regulations change the categories of incidents to conform to the categories established by the PPSNA. Without the promulgation of these amendments, agencies would be required to report incidents based on one set of definitions to the Justice Center and incidents based on a different set of definitions to OMH. Requirements for the management of incidents would also be inconsistent. Especially concerning regulatory requirements related to incident management and pre-employment background checks, it is crucial that OMH regulations be changed to support the new requirements in the PPSNA so that this initiative is implemented in a coordinated fashion.

For all of the reasons outlined above, this rule is being adopted on an Emergency basis until such time as it has been formally adopted through the SAPA rule promulgation process.

Subject: Implementation of the Protection of People with Special Needs Act and reforms to incident management.

Purpose: To enhance protections for people with mental illness served in the OMH system.

Substance of emergency rule: The emergency regulations are intended to conform regulations of the Office of Mental Health (OMH) to Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act or PPSNA). The primary changes include:

- 14 NYCRR Part 501 is amended by adding a new Section 501.5, entitled "Obsolete References," and then replaces any reference throughout OMH regulations to the Commission on Quality of Care and Advocacy for Persons with Disabilities with a reference to the Justice Center for the Protection of People with Special Needs.
- 14 NYCRR Part 524 (Incident Management) has been repealed and revised to incorporate categories of "reportable incidents" as established by the PPSNA and includes enhanced provisions regarding incident investigations. The amendments make changes related to definitions, reporting, investigation, notification and committee review of events and situations that occur in providers of mental health services licensed or operated by OMH. It is OMH's expectation that implementation of these amendments will enhance safeguards for persons with mental illness, which, in turn, will allow individuals to focus on their recovery. The amendments also require distribution of the Code of Conduct, developed by the Justice Center, to all employees. Providers must maintain signed documentation from such employees, indicating that they have received, and understand, the Code.
- Revisions to 14 NYCRR Part 550 are intended to facilitate and implement the consolidation of the criminal background check function in the Justice Center, and to make other conforming changes to the criminal background check function established by the PPSNA.

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 September 15, 2014.

Text of rule and any required statements and analyses may be obtained from: Sue Watson, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: Sue.Watson@omh.ny.gov

Regulatory Impact Statement

1. Statutory authority: Chapter 501 of the Laws of 2012, i.e., "The Protection of People with Special Needs Act," establishes Article 20 of the Executive Law, Article 11 of the Social Services Law, and makes a number of amendments in other statutes, including the Mental Hygiene Law.

Section 7.07 of the Mental Hygiene Law, charges the Office of Mental Health with the responsibility for seeing that persons with mental illness are provided with care and treatment, that such care, treatment, and rehabilitation are of high quality and effectiveness, and that the personal and civil rights of persons with mental illness receiving care and treatment are adequately protected.

Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

2. Legislative objectives: These regulatory amendments further the legislative objectives embodied in the Protection of People with Special Needs Act, as well as Sections 7.07, 7.09, and 31.04 of the Mental Hygiene Law. The amendments incorporate a number of reforms to regulations of the Office of Mental Health (OMH) in order to increase protections and improve the quality of services provided to persons receiving services from mental health providers operated or licensed by OMH.

3. Needs and benefits: The amendments include new and modified requirements for incident management programs, codified at 14 NYCRR Part 524, and also add and revise provisions of Parts 501 and 550 to implement Chapter 501 of the Laws of 2012. Known as "The Protection of People with Special Needs Act," this new law requires the establishment of comprehensive protections for vulnerable persons, including persons with mental illness, against abuse, neglect and other harmful conduct.

The Act created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems. The Justice Center operates a 24/7 hotline for reporting allegations of abuse, neglect and significant incidents in accordance with Chapter 501's provisions for uniform definitions, mandatory reporting and minimum standards for incident management programs. In collaboration with OMH, the Justice Center is also charged with developing and delivering appropriate training for caregivers, their supervisors and investigators. Additionally, the Justice Center is responsible for conducting criminal background checks for applicants, including those who will be working in the OMH system.

Chapter 501 of the Laws of 2012 also created a Vulnerable Persons' Central Register (VPCR). This register contains the names of custodians found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All custodians found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings. Custodians having committed egregious or repeated acts of abuse or neglect are prohibited from future employment in providing services for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Job applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

Pursuant to Chapter 501 of the Laws of 2012, the Justice Center is charged with recommending policies and procedures to OMH for the protection of persons with mental illness. This effort involves the development of requirements and guidelines in areas including but not limited to incident management, rights of people receiving services, criminal background checks, and training of custodians. In accordance with Chapter 501, these requirements and guidelines must be reflected, wherever appropriate, in OMH's regulations. Consequently, the amendments incorpo-

rate the requirements in regulations and guidelines recently developed by the Justice Center.

The amendments make changes to OMH's incident management process to strengthen the process and to provide further protection to people receiving services from harm and abuse. For example, the amendments make changes related to definitions, reporting, investigation, notification, and committee review of events and situations that occur in providers of mental health services licensed or operated by OMH. It is OMH's expectation that implementation of the amendments will enhance safeguards for persons with mental illness, which will in turn allow individuals to focus on their recovery.

4. Costs:

(a) Costs to the Agency and to the State and its local governments: OMH will not incur significant additional costs as a provider of services. While the regulations impose some new requirements on providers, OMH expects that it will comply with the new requirements with no additional staff. There may be minimal one-time costs associated with notification and training of staff.

Chapter 501 created the Justice Center, which assumes some designated functions previously performed by OMH. The Justice Center manages the criminal background check process and conducts some investigations that had previously been conducted by OMH. OMH experienced savings associated with the reduction in staff performing these functions; however, because the staff shifted to the Justice Center, the net effect is cost neutral.

There may be some minor costs associated with necessary modifications to NIMRS (the New York Incident Management Reporting System developed by OMH) to reflect Justice Center requirements.

Any costs or savings will have no impact on Medicaid rates, prices or fees. Therefore, there is no impact on New York State in its role paying for Medicaid services.

There are no costs to local governments as there are no changes to Medicaid reimbursement.

(b) Costs to private regulated parties: It is difficult to estimate the cost impact on private regulated parties; however, OMH expects that costs to providers will be minimal. OMH already requires the reporting and investigation of incidents. The implementation of these reforms in general will not result in costs. There may also be additional costs associated with the need for medical examinations in cases of alleged physical abuse or clinical assessments needed to substantiate a finding of psychological abuse. Again, OMH is not able to estimate these cost impacts. There are no costs associated with a check of the Staff Exclusion List. Other amendments made in the rule making merely clarify existing requirements or interpretive guidance, or can be implemented without cost to the provider.

OMH anticipates that generally any potential costs incurred will be mitigated by savings that the provider will realize from the improvements to the incident management process. OMH expects that in the long term, the amendments will ultimately reduce incidents and abuse in its system and increase efficiency and quality in the reporting, investigation, notification, and review of such events. OMH is not able to quantify the minor potential costs or the savings that might be realized by the promulgation of these amendments.

5. Local government mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: The new regulations require additional paperwork to be completed by providers. Examples of additional paperwork are found in new requirements pertaining to reporting reportable incidents to the Justice Center and making additional notifications. However, the Justice Center will likely predominantly utilize electronic format for incident reporting.

7. Duplication: The amendments do not duplicate any existing State or Federal requirements that are applicable to services for persons with mental illness. In some instances, the regulations reiterate current requirements in New York State law.

8. Alternatives: Current definitions of incidents in OMH regulations that require reporting and investigation exceed the criteria in the new statutory definitions in Chapter 501. OMH considered reducing or eliminating requirements applying to events and situations that do not meet the criteria in the statutory definitions for "reportable incidents." However, OMH chose to propose the continuation of protections associated with these events and situations.

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

10. Compliance schedule: The regulations will be effective immediately upon filing to ensure compliance with Chapter 501 of the Laws of 2012. OMH intends thereafter to continue to develop and transmit implementation guidance to regulated parties to assist them with compliance.

Regulatory Flexibility Analysis

1. Effect on small business: OMH has determined, through its Bureau of Inspection and Certification, that approximately 732 agencies provide services which are certified or licensed by OMH. OMH is unable to estimate the portion of these providers that may be considered to be small businesses (under 100 employees).

However, the amendments have been reviewed by OMH in light of their impact on small businesses. The regulations make revisions to OMH's requirements for incident management which will necessitate some changes in compliance activities and may result in additional costs and savings to providers, including small business providers. However, OMH is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, these changes are required by statute and OMH considers that the improvements in protections for people served in the OMH system will help safeguard individuals from harm and abuse; thus, the benefits more than outweigh any potential negative impact on providers.

2. Compliance requirements: The regulations add several new requirements with which providers must comply. Amendments associated with the implementation of Chapter 501 include a requirement that providers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries; however, OMH anticipates that providers are already obtaining examinations of physical injuries. While Chapter 501 also establishes an obligation to obtain a clinical assessment to substantiate a charge of psychological abuse, it is not immediately clear who will be responsible for obtaining, and paying for, that assessment.

Current OMH regulations require reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate some changes and reforms, the basic requirements are conceptually unchanged. OMH, therefore, expects that additional compliance activities (except as noted above) will be minimal. There is no associated cost with checking the Staff Exclusion List. The cost to check the Statewide Register of Child Abuse and Maltreatment is $25 per check; providers serving children are already incurring this cost. However, this would represent a new cost for providers who previously did not request such checks, though this cost could be passed by the provider to the applicant.

Providers subject to these regulations are already responsible for complying with incident management regulations. The regulations enhance some of these requirements, e.g., providers must comply with the new requirement to complete investigations within a 45-day timeframe. Providers must also comply with new requirements to enhance the independence of investigators and incident review committees. However, OMH expects that additional compliance activities associated with these enhanced requirements will be minimal.

3. Professional services: There may be additional professional services required for small business providers as a result of these amendments. The definition of psychological abuse references a need to determine specific impacts on an individual receiving services by means of a clinical assessment, but it is not immediately clear at what stage in the process that assessment must be maintained or who is responsible for obtaining and paying for it. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: There may be modest costs for small business providers associated with these amendments. There may be nominal costs for providers to comply with the expanded notification requirements, but OMH is unable to determine the cost impact. Furthermore, providers may experience savings if the Justice Center or OMH assumes responsibility for investigations that were previously conducted by provider staff. In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for providers as well as benefits to the wellbeing of individuals receiving services.

5. Economic and technological feasibility: The amendments may impose the use of new technological processes on small business providers. Providers have already been reporting incidents and abuse in NIMRS, and that technology will continue to be used. However, statutory requirements to report reportable incidents to the Justice Center in the manner specified by the Justice Center may impose new technology requirements if that is the manner specified by the Justice Center. However, this is not a direct impact caused by the regulations.

6. Minimizing adverse economic impact: The amendments may result in an adverse economic impact for small business providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OMH expects that compliance with these new regulations will result in savings in the long term and there may be some short term savings as a result of the conduct of investigations by the Justice Center.

OMH has reviewed the regulations to determine if there were any viable approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act; none were readily identified. However, OMH did not consider the exemption of small businesses from these amendments or the establishment of differing compliance or reporting requirements since OMH considers compliance

with the amendments to be crucial for the health, safety, and welfare of the individuals served by small business providers.

7. Small Business Participation: Chapter 501 of the Laws of 2012 was originally a Governor's Program Bill which received extensive media attention. Providers have had the opportunity to become familiar with its provisions since it was made available on various government websites last June. Furthermore, in accordance with statutory requirements, the rule was presented to the Mental Health Services Council for review and recommendations.

8. The amendments include a penalty for violating the regulations of a fine not to exceed $1,000 per day or $15,000 per violation in accordance with section 31.16 of the Mental Hygiene Law and/or may suspend, revoke, or limit an operating certificate or take any other appropriate action, in accordance with applicable law and regulations. However, due process is available to a provider via 14 NYCRR Part 503.

Rural Area Flexibility Analysis

1. Description of the types and estimation of the number of rural areas in which the rule will apply: OMH services are provided in every county in New York State. Forty-three counties have a population of less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. Additionally, 10 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, and Saratoga.

The amendments have been reviewed by OMH in light of their impact on rural areas. The regulations make revisions and in some cases enhance OMH's current requirements for incident management programs, which will necessitate some changes in compliance activities and result in additional costs and savings to providers, including those in rural areas. However, OMH is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, OMH considers that the improvements in protections for people served in the OMH system will help safeguard individuals from harm and abuse and that the benefits more than outweigh any potential negative impacts on all providers.

The geographic location of any given program (urban or rural) will not be a contributing factor to any additional costs to providers.

2. Compliance requirements: The regulations add some new requirements with which providers must comply. Amendments associated with the implementation of Chapter 501 include a requirement that providers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries, and there is a requirement that, for a finding of psychological abuse to be substantiated, a clinical assessment is needed in order to demonstrate the impact of the conduct on the individual receiving services.

Current OMH regulations require reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate some changes, the basic requirements are conceptually unchanged. OMH therefore expects that additional compliance activities associated with these changes will be minimal. However, there will be additional compliance activities associated with checking the Staff Exclusion List.

Providers must comply with the new requirement to complete investigations within a 45-day timeframe. Providers must also comply with new requirements to enhance the independence of investigators and incident review committees. However, OMH expects that additional compliance activities will be minimal since providers are already required to comply with existing incident management program requirements; these revisions primarily enhance current requirements.

3. Professional services: There may be additional professional services required for rural providers as a result of these amendments. The amendments will not add to the professional service needs of rural providers.

4. Compliance costs: There may be modest costs for rural providers associated with the amendments. There also may be nominal costs for rural providers to comply with the expanded notification requirements. However, all providers may experience savings if the Justice Center or OMH assumes responsibility for investigations that were previously conducted by provider staff.

In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for both urban and rural area providers as well as benefits to the wellbeing of individuals receiving services.

5. Minimizing adverse impact: The amendments may result in an adverse economic impact for rural providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OMH expects that compliance with these enhanced regulations will result in savings in the long term and there may be some short-term savings as a result of the conduct of investigations by the Justice Center.

OMH has reviewed the regulations to determine if there were any viable approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act; none were readily identified. However, OMH did not consider the exemption of rural area providers from the amendments or the establishment of differing compliance or reporting requirements, since OMH considers compliance with the amendments to be crucial for the health, safety, and welfare of the individuals served by rural area providers.

6. Participation of public and private interests in rural areas: Chapter 501 of the Laws of 2012 was originally a Governor's Program Bill which received extensive media attention. Providers have had the opportunity to become familiar with its provisions since it was made available on various government websites last June. Furthermore, in accordance with statutory requirements, the rule was presented to the Mental Health Services Council for review and recommendations.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because OMH does not anticipate a substantial adverse impact on jobs and employment opportunities.

The amendments incorporate a number of reforms to improve the quality and consistency of incident management activities throughout the OMH system. However, it is not anticipated that these reforms will negatively impact jobs or employment opportunities. The amendments that impose new requirements on providers, such as additional reporting requirements and the timeframe for completion of investigations, will not result in an adverse impact on jobs. OMH anticipates that there will be no effect on jobs as agencies will utilize current staff to perform the required compliance activities.

Chapter 501 of the Laws of 2012 and these implementing regulations will also mean that some functions that are currently performed by OMH staff will instead be performed by the staff of the Justice Center. OMH expects that the volume of incidents and occurrences investigated will be roughly similar. To the extent that the Justice Center performs investigations, oversees the management of reportable incidents, and manages requests for criminal history record checks, the result is expected to be neutral in that positions lost by OMH will be gained by the Justice Center.

It is therefore apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

Office of Parks, Recreation and Historic Preservation

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Aquatic Invasive Species Control at OPRHP Facilities

I.D. No. PKR-27-14-00002-P

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

Proposed Action: Addition of section 377.1(i)(8), (9) and (10) to Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, sections 3.09(2), (5), (8), (15) and (18) and 13.13; Environmental Conservation Law, section 9-1701

Subject: Aquatic invasive species control at OPRHP facilities.

Purpose: To control the introduction and spread of aquatic invasive species at facilities under OPRHP jurisdiction.

Text of proposed rule: Subdivision (i) of § 377.1 of Title 9 NYCRR is amended by adding new paragraphs (8), (9) and (10) to read as follows:

(8) Prior to launching, or attempting to launch a boat or watercraft from a boat launch site, a fishing access site, or any other site from which a boat or watercraft can be launched, or leaving such site, the operator shall:

(i) inspect the boat or watercraft for plants, aquatic life, animals, or parts thereof, which are visible, in, on, or attached to any part, including livewells and bilges; the motor, rudder, anchor or other appurtenants;

any equipment or gear; or the trailer or any other device used to transport or launch the boat or watercraft that may come into contact with the waterbody; and

(ii) remove any plant, aquatic life or animal, or parts thereof, observed during inspection prior to launching or leaving the site and dispose of it in designated receptacles provided at the site, or if no such receptacle is provided dispose of it in such a manner to avoid contact of the material with the waterbody.

(9)(i) An operator of a boat or watercraft shall not arrive at a boat launch site, a fishing access site, or any other site from which a boat or watercraft can be launched, or leave such a site after exiting a waterbody, without having drained the boat or watercraft, including bilge areas, livewells, bait wells and ballast tanks.

(ii) An operator of a boat or watercraft shall drain the watercraft, including bilge areas, livewells, bait wells and ballast tanks at a distance from the waterbody and in such a manner to avoid contact of the drainage with the waterbody.

(10) The provisions of paragraphs 8 and 9 of this subdivision shall not apply to:

(i) plants not otherwise defined in law or regulation as invasive species affixed to or transported in watercraft for use as camouflage for hunting or wildlife viewing purposes;

(ii) bait, including baitfish, legally used on a waterbody and possessed consistent with all applicable laws and regulations;

(iii) the use of plants or animals for habitat restoration, weed control, scientific research, or other activity approved by the office, consistent with all applicable laws and regulations; or

(iv) a dog or other companion animal as defined in section 350 of the Agriculture and Markets Law.

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen L. Martens, Associate Attorney, OPRHP, Albany, NY 12238 (USPS mail), 625 Broadway, Albany, NY 12207 (courier delivery), (518) 486-2921, email: rule.making@parks.ny.gov

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

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

Regulatory Impact Statement

1. Statutory Authority

The proposed amendment to 9 NYCRR Part 377.1 seeks to control the introduction and spread of invasive species by prohibiting the launching or attempt to launch of a boat or watercraft from boat launch facilities, fishing access sites and other sites from which a boat or watercraft can be launched under the jurisdiction of the Office of Parks, Recreation and Historic Preservation (Parks), unless the boat or watercraft is drained and visible plant or animal life attached to it or to its trailer or associated equipment have been removed. It also requires that the boat or watercraft be drained and visible plant or animal life attached be removed prior to leaving the site.

Parks, Recreation and Historic Preservation Law (PRHPL) Section 3.09(2) vest Parks with the duty to operate and maintain the sites, parks, and recreational facilities under its jurisdiction. PRHPL Section 3.09(5) requires that Parks provide for the health, safety and welfare of the public using facilities under its jurisdiction. PRHPL Section 3.09(8) empowers Parks to adopt, amend, or rescind such regulations as are necessary for the performance of its duties. PRHPL Section 3.09(15) provides that Parks shall enhance the natural resources on lands under its jurisdiction and Section 3.09(18) provides that Parks shall identify, protect, manage, and conserve important ecological and natural resources located on lands under its jurisdiction. PRHPL Section 13.13 provides that the Commissioner of Parks may regulate water sports and the operation, speed, or mooring of boats in or upon the waters or waterways under its jurisdiction.

2. Legislative Objectives

PRHPL Section 3.01 declares that the natural, ecological, historical, cultural, and recreational resources within the State park, recreation and historic site system are integral components of the State's environment and contribute substantially to the quality of that environment and to the quality of our lives. This section further declares that stewardship of the natural, ecological, historic, cultural and recreational resources within this system is a primary responsibility of the State. PRHPL Section 3.09 provides that the Office shall operate and maintain the State park, recreation and historic site system to conserve, protect and enhance these resources in a manner which will protect them for future generations.

Environmental Conservation Law (ECL) Section 9-1701 states the findings of the New York State Legislature concerning the threat that invasive species represent to the environment and economy of New York State. Specifically, the Legislature found that invasive species detrimentally affect the State's fresh and tidal wetlands, water bodies and waterways, forests, agricultural lands, meadows and grasslands, and other natural communities and systems by out-competing native species, diminishing biological diversity, altering community structure and, in some cases, changing ecosystem processes. Further, ECL Section 9-1701 states that the Legislature recognizes that the ecological integrity of an increasing number of publicly and privately owned parks and preserves is being adversely affected by invasive plants and animals, challenging the ability of land management agencies to effectively manage these sites.

The proposed amendment to 9 NYCRR Part 377.1 would provide a means for Parks to protect the natural and ecological resources of State Parks. By controlling the transport of aquatic invasive species by a boat or watercraft, trailer and associated equipment used at Parks' boat launches, fishing sites and other sites because this rule would address one of the primary pathways by which aquatic invasive species can be introduced from waterbody to waterbody.

Parks previously initiated new signage and outreach programs that advise boaters and anglers to follow clean, drain, dry voluntary protocols for controlling invasive species. Now, however, under the proposed rule the cleaning of watercraft would be mandated. The launching or removal of a boat or watercraft from State lands with visible plant or animal parts on the watercraft would be prohibited. Prior to launching or leaving the boat or watercraft would be drained at a sufficient distance from the waterbody. Preferably, the boat or watercraft would be drained prior to arrival at a Parks site; however, Parks staff or signs would indicate the appropriate location at the site for draining if an operator forgets to do it. The proposed rule would help Parks prevent further introduction and spread of aquatic invasive species transported between waterbodies.

The proposed rule would also complement the Department of Environmental Conservation's (DEC) regulatory efforts to control the introduction and spread of invasive species at its facilities. See, http://www.dec.ny.gov/regulations/34113.html#Part59Sect594Part190Sect19024p.

3. Needs and Benefits

Boats, watercraft, trailers and associated equipment are primary transport mechanisms for aquatic invasive species. Unless they are properly cleaned, drained and dried before used in a new waterbody, there is a high risk that aquatic invasive species could be introduced into that waterbody. Once introduced, aquatic invasive species such as zebra mussel and Eurasian water milfoil are extremely difficult or impossible to control or eliminate. Additionally, efforts to control or eliminate invasive species once established are costly and may not achieve the intended results. Populations of aquatic invasive species can grow to the point that they have a severe impact on recreational and commercial use of a waterbody. Excessive growth of aquatic invasive species can also substantially impact the tourism-based economies associated with these waterbodies. The proposed regulation would strengthen the State's ability to control the spread of aquatic invasive species. Newly developed educational signage placed at these sites includes recommended measures on preventing the spread of aquatic invasive species. These signs were developed for the existing voluntary compliance program and will continue in place for the regulatory program.

The New York State Park Police could issue a ticket to any user for failing to drain a boat or watercraft or failing to remove any visible plants and animals attached to it, the trailer or associated equipment prior to launching, or for failing to drain a boat or watercraft or remove visible plants and animals attached to it prior to departing a launch site. If ticketed, existing law establishes the penalty for non-compliance as a violation and payment of a fine up to $250 and a mandatory local surcharge. PRHPL Section 27.11 (b). Alternatively, non-compliance could result in imposition of imprisonment up to 15 days or imposition of both a fine and imprisonment. See, Parks, Recreation and Historic Preservation Law Sections 27.11 and 27.12; Penal Law Sections 10.00(3) and 80.05(4); see also, Criminal Procedure Law Section 1.20(39) definition of a "petty offense."

4. Costs

DEC estimates costs associated with the spread of aquatic invasive species amount to more than nine billion dollars annually in the U.S. http://www.dec.ny.gov/regulations/95116.html. There would be minimal cost to Parks for additional signage, and no costs to regulated boaters or local governments from this regulation.

5. Local Government Mandates

This regulation would not impose any programs, services, duties or responsibilities upon any county, city, town, village, school district or fire district.

6. Paperwork

No additional paperwork or record keeping would result from the proposed rule.

7. Duplication

No other State or federal regulations govern the transportation of aquatic invasive species associated with boats or watercraft, and trailers and associated equipment used at lands under Parks' jurisdiction. DEC has proposed similar regulations to amend 6 NYCRR Parts 59 and 190 that would be implemented at the boat launch sites and fishing access sites under its jurisdiction.

8. Alternatives

Continuing to rely on voluntary compliance with outreach to reduce the spread of aquatic invasive species would likely result in the continual expansion of aquatic invasive species introduction in New York State. The Parks Commissioner is a member of the New York Invasive Species Council (Council) created by the Legislature (ECL Section 9-1705). The proposed mandatory regulatory alternative was recommended by the Council's Advisory Committee in 2010 in its final report titled ''New York State Invasive Species Advisory Committee Recommendations of the Aquatic Invasive Species Transport Law Ad-Hoc Workgroup.''

9. Federal Standards

There are no federal standards that apply to the transport of aquatic invasive species in New York State.

10. Compliance Schedule

This regulation, if adopted, would become effective immediately upon publication of the Notice of Adoption in the State Register. No time would be needed to enable regulated persons to achieve compliance with this rule.

Regulatory Flexibility Analysis

This rule would help control the introduction and spread of invasive species by requiring an operator to drain a boat or watercraft and remove visible plant or animal life attached to it, and the trailer or associated equipment before launching the boat or watercraft from boating facilities under the jurisdiction of the Office of Parks, Recreation and Historic Preservation (Parks) and prior to leaving such facilities.

Parks has determined that the proposed rule would not impose any adverse economic impact or reporting, record keeping or compliance requirements on small businesses or local governments. The proposed rule would help reduce the spread of aquatic invasive species by boats, watercraft and trailers in New York State. Prolific growth of aquatic invasive species can seriously impact tourism-based economies associated with waters throughout New York State. This rule, by helping to reduce the spread of invasive species, would have a positive impact on water-based tourism, and the small businesses and local economies which rely on such tourism.

Boat owners and operators regulated by the proposed rule would have the ability to immediately satisfy the requirements of the rule and thereby prevent the imposition of penalties as soon as the rule takes effect. No cure period or opportunity for ameliorative action beyond the language already contained in the rule is necessary to provide boaters with the ability to immediately comply with the rule.

Since this rule would not impose an adverse impact on small businesses or local governments, a regulatory flexibility analysis is not required.

Rural Area Flexibility Analysis

This rule would help control the introduction and spread of invasive species by requiring an operator to drain a boat or watercraft and remove visible plant or animal life attached to it, and the trailer or associated equipment before launching the boat or watercraft from boating facilities under the jurisdiction of the Office of Parks, Recreation and Historic Preservation (Parks), and prior to leaving such facilities.

Parks has determined that the rule would not impose any adverse impact on rural areas or any reporting or recordkeeping requirements on public or private entities in rural areas. Compliance with the rule would only be required at Parks' facilities, many of which are located in rural areas. Compliance with the rule, however, is only required of persons using a watercraft at a Parks facility and, therefore, would not impose significant compliance requirements on public or private entities in rural areas.

Prolific growth of aquatic invasive species can seriously impact tourism-based economies in rural areas. The proposed rule would help reduce the spread of aquatic invasive species by boat, watercraft and trailers in New York State which would have a positive impact on rural water-based tourism.

Since the proposed rule would not impose an adverse impact on public or private entities in rural areas, a rural area flexibility analysis is not required for this regulatory proposal.

Job Impact Statement

This rule would help control the introduction and spread of invasive species by requiring an operator to drain a boat or watercraft and remove visible plant or animal life attached to it, and the trailer or associated equipment before launching the boat or watercraft from boating facilities under the jurisdiction of the Office of Parks, Recreation and Historic Preservation (Parks), and prior to leaving such facilities.

The rule would not have an adverse impact on jobs or employment in New York State. Reducing the spread of aquatic invasive species and maintaining quality aquatic recreation opportunities in New York could have a positive impact on jobs associated with water-based tourism. Parks, therefore, concludes that a job impact statement is not required.

Office for People with Developmental Disabilities

EMERGENCY RULE MAKING

Implementation of the Protection of People with Special Needs Act and Reforms to Incident Management

I.D. No. PDD-27-14-00005-E
Filing No. 505
Filing Date: 2014-06-19
Effective Date: 2014-06-22

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

Action taken: Amendment of Parts 624, 633 and 687; and addition of Part 625 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00; L. 2012, ch. 501

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

Specific reasons underlying the finding of necessity: The immediate adoption of these amendments is necessary for the preservation of the health, safety, and welfare of individuals receiving services.

In December 2012, the Governor signed the Protection of People with Special Needs Act (PPSNA). This new law created the Justice Center for the Protection of People with Special Needs (Justice Center) and established many new protections for vulnerable persons, including a new system for incident management in services operated or certified by OPWDD and new requirements for more comprehensive and coordinated pre-employment background checks.

OPWDD filed emergency regulations effective June 30, 2013 through September 25, 2013, and replacement emergency regulations effective September 26, 2013, December 25, 2013, and March 24, 2014 to implement many of the provisions contained in the PPSNA. The March 24, 2014 replacement emergency regulations are now expiring. New emergency regulations are necessary to continue implementing regulations that are in conformance with the PPSNA. If OPWDD did not file new emergency regulations effective June 22, 2014, regulatory requirements would revert to the regulations that were in effect prior to June 30, 2013.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals with developmental disabilities who receive services in the OPWDD system. If OPWDD did not promulgate regulations on an emergency basis, many of the protections established by the PPSNA vital to the health, safety, and welfare of individuals with developmental disabilities would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting from inconsistent requirements. For example, the emergency regulations change the categories of incidents to conform to the categories established by the PPSNA. Without the promulgation of these amendments, agencies would be required to report incidents based on one set of definitions to the Justice Center and incidents based on a different set of definitions to OPWDD. Requirements for the management of incidents would also be inconsistent. Especially concerning regulatory requirements related to incident management and pre-employment background checks, it is crucial that OPWDD regulations are changed to support the new requirements in the PPSNA so that this initiative is implemented in a coordinated fashion.

OPWDD was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes. OPWDD is making a number of revisions in the new emergency regulations, compared with the June 30, 2013; September 26, 2013; December 25, 2013; and March 24, 2014 regulations, based on input from the field and the Justice Center, and experience with the new systems and requirements gained over the past nine months. By filing new emergency regulations, OPWDD is able to revise the regulations to reflect recent input and current needs.

Subject: Implementation of the Protection of People with Special Needs Act and reforms to incident management.

Purpose: To enhance protections for people with developmental disabilities served in the OPWDD system.

Substance of emergency rule: The emergency regulations conform OPWDD regulations to Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act or PPSNA) by making a number of revisions. The major changes to OPWDD regulations made to implement the PPSNA are:

- Revisions to 14 NYCRR Part 624 (now titled "Reportable incidents and notable occurrences") to incorporate categories of "reportable incidents" as established by the PPSNA. Programs and facilities certified or operated by OPWDD must report "reportable incidents" to the Vulnerable Persons' Central Register (VPCR), a part of the Justice Center for the Protection of People with Special Needs (Justice Center). Part 624 is amended to incorporate other revisions related to the management of reportable incidents in conformance with various provisions of the PPSNA.
- Revisions to 14 NYCRR Section 633.7 concern the code of conduct adopted by the Justice Center in accordance with Section 554 of the Executive Law and impose requirements on programs certified or operated by OPWDD. The code of conduct must be read and signed by custodians who have regular and direct contact with individuals receiving services as specified in the regulations.
- Revisions to 14 NYCRR Section 633.22 reflect the consolidation of the criminal history record check function in the Justice Center. The Justice Center will receive requests for criminal history record checks and will process those requests, instead of OPWDD.
- A new 14 NYCRR Section 633.24 contains requirements for background checks (in addition to criminal history record checks).
- Revisions to Part 687 incorporate changes to criminal history record check and background check requirements in family care homes.

The regulations include numerous changes associated with incident management or the implementation of the PPSNA. These changes include:

- The amendments delete the current categories and definitions of events and situations that must be reported to agencies and OPWDD. The amendments add definitions of "reportable incidents." Types of reportable incidents are "abuse," "neglect," and "significant incidents." The amendments also add definitions of "notable occurrences." Part 624 includes requirements for reporting and investigating these types of events.
- The requirements of Part 624 are limited to events and situations that occur under the auspices of an agency.
- A new Part 625 contains requirements that apply to events and situations which are not under the auspices of an agency.
- The amendments mandate the use of OPWDD's Incident Report and Management Application (IRMA), a secure electronic statewide incident reporting system, for reporting information about specified events and situations, and remove the current requirement to submit a paper based incident report to OPWDD in certain instances.
- The amendments make several changes to requirements for investigations. The amendments require that investigations of specified events and situations be initiated immediately following occurrence or discovery (with limitations when it is anticipated that the Justice Center or the Central Office of OPWDD will conduct the investigation). Investigations conducted by agencies must be completed no later than thirty days after the initiation of an investigation, unless the agency documents an acceptable justification for an extension of the thirty-day time frame. The amendments also add new requirements to enhance the independence of investigators, and require agency investigators to use a standardized investigative report format.
- The amendments make several changes regarding Incident Review Committees (IRC). The amendments change requirements concerning membership of the IRC and include specific provisions concerning shared committees, using another agency's committee or making alternative arrangements for IRC review. The amendments also modify the responsibilities of a provider agency's IRC when an incident is investigated by the Central Office of OPWDD or the Justice Center.
- The amendments expand on requirements for notification to service coordinators.
- The amendments contain an explicit requirement that providers must comply with OPWDD recommendations concerning a specific event or situation or must explain its reasons for not complying with a recommendation within a month of the recommendation being made.
- When the Justice Center makes findings concerning matters referred to its attention and the Justice Center issues a report and recommendations to the agency regarding such matters, the agency is required to make a written response, within ninety days of receipt of such report, of action taken regarding each of the recommendations in the report.
- The amendments add a requirement that agencies retain records pertaining to incidents and allegations of abuse for a minimum time period of seven years. In cases when there is a pending audit or litigation, the pertinent records must be retained throughout the pendency of the audit or litigation. The amendments specify what information must be retained.
- The amendments add requirements that agencies check the "Staff Exclusion List" of the Vulnerable Persons' Central Register as a part of the background check process.
- The amendments also include requirements concerning background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013. These requirements are added to implement section 16.34 on the Mental Hygiene Law as amended by the PPSNA.
- In accordance with changes in Section 424-a of the Social Services Law, the amendments extend requirements for checks of the Statewide Central Register of Child Abuse and Maltreatment to employees and others that have the potential for regular and substantial contact with individuals receiving services in programs certified or operated by OPWDD. Prior to June 30, 2013, providers were only required to request an SCR check for those who have the potential for regular and substantial contact with children.
- Definitions are changed in Parts 624 and 633 to conform to PPSNA definitions.
- The amendments include revisions to reflect the restructuring of entities within OPWDD and OPWDD's name change.

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 September 16, 2014.

Text of rule and any required statements and analyses may be obtained from: Janet Felker, Regulatory Affairs Unit, Office for People With Developmental Disabilities, 44 Holland Avenue, 3rd Floor, Albany, NY 12229, (518) 474-1830, email: RAU.Unit@opwdd,ny.gov

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described will have no effect on the environment, and an E.I.S. is not needed

Regulatory Impact Statement

1. Statutory authority:

a. Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act), added Article 20 to the Executive Law and Article 11 to the Social Services Law and amended other laws including the Mental Hygiene Law. Chapter 501 incorporates requirements for implementing regulations by "State Oversight Agencies," which include OPWDD.

b. OPWDD has the statutory responsibility to provide and encourage the provision of appropriate programs and services in the area of care, treatment, rehabilitation, education, and training of persons with developmental disabilities, as stated in the New York State Mental Hygiene Law Section 13.07.

c. OPWDD has the statutory authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09(b).

d. OPWDD has the statutory authority to adopt regulations concerning the operation of programs, provision of services and facilities pursuant to the New York State Mental Hygiene Law Section 16.00.

2. Legislative Objectives: These emergency amendments further the legislative objectives embodied in Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act) and sections 13.07, 13.09(b), and 16.00 of the Mental Hygiene Law. The emergency amendments incorporate a number of reforms to OPWDD regulations in order to increase protections and improve the quality of services provided to people with developmental disabilities in OPWDD's system.

3. Needs and Benefits: The majority of the amendments include extensive new and modified requirements for OPWDD regulations in 14 NYCRR Part 624 pertaining to incident management. Additional amendments add and revise requirements in other OPWDD regulations in order to implement the Protection of People with Special Needs Act (PPSNA).

The PPSNA requires the establishment of comprehensive protections for vulnerable persons, including people with developmental disabilities, against abuse, neglect, and other harmful conduct. The PPSNA created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems. The Justice Center operates a 24/7 hotline for reporting abuse, neglect, and significant incidents in accordance with the PPSNA's provisions for uniform definitions, mandatory reporting, and minimum standards for incident management programs. In collaboration with OPWDD, the Justice Center is also charged with developing and delivering appropriate training for caregivers, their supervisors, and investigators. Additionally, the Justice Center is responsible for conducting criminal background checks for applicants in the OPWDD system.

The PPSNA creates a Vulnerable Persons' Central Register (VPCR). This register will contain the names of custodians found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All custodians found to have committed such acts have

the right to a hearing before an administrative law judge to challenge those findings. Custodians having committed egregious or repeated acts of abuse or neglect are prohibited from future employment in providing services for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

Pursuant to the PPSNA, the Justice Center is charged with recommending policies and procedures to OPWDD for the protection of people with developmental disabilities; this effort involves the development of requirements and guidelines in areas including but not limited to incident management, rights of people receiving services, criminal background checks, and training of custodians. In accordance with the PPSNA, these requirements and guidelines must be reflected, wherever appropriate, in OPWDD's regulations. Consequently, these amendments incorporate the requirements in regulations and guidelines developed by the Justice Center.

The amendments also make numerous changes to OPWDD's incident management process to strengthen the process and to provide further protection to people receiving serves from harm and abuse. For example, the amendments make changes related to definitions, reporting, investigation, notification, and committee review of events and situations both under and not under the auspices of OPWDD or a provider agency. It is OPWDD's expectation that implementation of the emergency amendments will enhance safeguards for people with developmental disabilities, which will in turn allow individuals to focus on achieving maximum independence and living richer lives.

The amendments also include requirements addressing background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law. These requirements, applicable to all programs and services operated, certified, approved, and/or funded by OPWDD, will augment the protections provided to people receiving services by the PPSNA.

4. Costs:

a. Costs to the agency and to the State and its local governments: OPWDD will not incur significant additional costs as a provider of services. While the regulations impose new requirements on providers, OPWDD expects that they will comply with the new requirements with no additional staff. Furthermore, OPWDD has already implemented some of the new requirements contained in the regulations in state-operated services through implementation of policy/procedure changes. There may be minimal one-time costs associated with notification and training of staff.

The PPSNA creates the Justice Center, which will assume designated functions that are now performed by OPWDD. The Justice Center will manage the criminal background check process and will conduct some investigations that had previously been conducted by OPWDD. OPWDD will experience savings associated with the reduction in staff performing these functions; however, the staff will be shifting to the Justice Center so the net effect will be cost neutral. Minimal additional OPWDD staff will be needed to implement some provisions of the PPSNA and implementing regulations, such as staff to coordinate MHL 16.34 background checks.

Any costs or savings will have no impact on Medicaid rates, prices or fees. Therefore, there is no impact on New York State in its role paying for Medicaid services.

There are no costs to local governments as there are no changes to Medicaid reimbursement and even if there were, the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

b. Costs to private regulated parties: It is difficult to estimate the cost impact on private regulated parties, however, OPWDD expects that cost to providers will be minimal. OPWDD already requires the reporting and investigation of incidents. The implementation of these reforms in general will not result in costs. There may be costs associated with the amendment of Section 424-a of the Social Service Law (as reflected in these regulations) which requires background checks of the Statewide Central Register of Child Abuse and Maltreatment (which cost $25 per check). However, OPWDD cannot estimate how many additional checks will be required. There may also be additional costs associated with the need for clinical assessments needed to demonstrate psychological abuse. There may be costs associated with the requirement that agencies conduct a "reasonably diligent search" for records of past abuse/neglect related to background checks required in accordance with Section 16.34 of the Mental Hygiene Law. Again, OPWDD is not able to estimate these cost impacts. Concerning the reforms to Part 624 that are in addition to the changes needed to implement the PPSNA, most of the amendments have either already been implemented by OPWDD policy directives (e.g. mandate to use IRMA), merely clarify existing requirements or interpretive guidance, or can be implemented without cost to the agency (e.g. restrictions on committee review).

There may be minor costs as a result of other amendments; however, OPWDD anticipates that generally any potential costs incurred would be mitigated by savings that the provider will realize from the improvements to the incident management process. OPWDD expects that in the long-term the amendments will ultimately reduce incidents and abuse in its system and increase efficiency and quality in the reporting, investigation, notification, and review of such events. OPWDD is not able to quantify the minor potential costs or the savings that might be realized by the promulgation of these amendments.

5. Local government mandates: There are no new requirements imposed by the rule on any county, city, town, village, or school, fire, or other special district.

6. Paperwork: The new regulations require additional paperwork to be completed by providers. Examples of additional paperwork are found in new requirements pertaining to reporting reportable incidents to the Justice Center and making additional notifications. The regulations require that all custodians with regular and direct contact in programs certified or operated by OPWDD review and sign the Justice Center's code of conduct on an annual basis. In addition, new paperwork is associated with the requirements for additional background checks (Staff Exclusion List, MHL 16.34 and Statewide Central Register of Child Abuse and Maltreatment). However, the regulations remove paperwork requirements in other ways, such as the deletion of the requirement for the completion of a paper based incident report for specified events or situations.

7. Duplication: The amendments do not duplicate any existing State or Federal requirements that are applicable to services for persons with developmental disabilities. In some instances, the regulations reiterate requirements in NYS law.

8. Alternatives: Current definitions of incidents in OPWDD regulations that require reporting and investigation exceed the criteria in the new statutory definitions in the PPSNA. OPWDD considered reducing or eliminating requirements applying to events and situations that do not meet the criteria in the statutory definitions for "reportable incidents," but OPWDD decided to include the continuation of protections associated with these events and situations as reflected in the definitions of notable occurrences.

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

10. Compliance schedule: The regulations will be effective on June 22, 2014 to ensure continued compliance with Chapter 501 of the Laws of 2012. The emergency regulations replace prior emergency regulations which were effective March 24, 2014 and expired on June 21, 2014.

Regulatory Flexibility Analysis

1. Effect on small business: OPWDD has determined, through a review of the certified cost reports, that most OPWDD-funded services are provided by non-profit agencies that employ more than 100 people overall. However, some smaller agencies that employ fewer than 100 employees overall would be classified as small businesses. Currently, there are approximately 700 agencies providing services which are certified, authorized or funded by OPWDD. OPWDD is unable to estimate the portion of these providers that may be considered to be small businesses.

The amendments have been reviewed by OPWDD in light of their impact on small businesses. The regulations make extensive changes to OPWDD's requirements for incident management that will necessitate significant changes in compliance activities and result in additional costs and savings to providers, including small business providers. However, OPWDD is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, OPWDD considers that the improvements in protections for people served in the OPWDD system will help safeguard individuals from harm and abuse and that the benefits more than outweigh any potential negative impacts on providers.

2. Compliance requirements: The regulations add a number of new requirements with which providers must comply. Amendments associated with the implementation of the PPSNA include a requirement that providers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries. For psychological abuse, a clinical assessment could be needed in order to demonstrate the impact of suspected psychological abuse. While OPWDD anticipates that providers are already obtaining examinations of physical injuries, clinical assessments of suspected psychological abuse are not generally obtained.

The regulations impose requirements that all new custodians with regular and direct contact in such programs must read and sign the code of conduct at the time of employment or affiliation, and that all custodians with regular and direct contact in such programs must read and sign the code of conduct at on an annual basis.

The PPSNA expanded requirements to obtain background checks of the

Statewide Central Register of Child Abuse and Maltreatment to require checks of employees (and others) who have the potential for regular and substantial contact with individuals receiving services in programs that are certified or operated by OPWDD. Prior to June 30, 2013 the statute limited this requirement to employees who have the potential for regular and substantial contact with children. The emergency regulations reflect the statutory changes to section 424-a of the Social Services Law in the PPSNA. While many providers that also serve children have been obtaining these checks, the new requirements clearly expand the pool of employees and others who must be checked. Further, OPWDD regulations require that agencies conduct SCR checks of applicants when the check is permitted by the Social Services Law.

The regulations also include requirements addressing background checks for potential employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law.

Prior OPWDD regulations already required reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate many changes and reforms, the basic requirements are conceptually unchanged. OPWDD therefore expects that additional compliance activities (except as noted above) will be minimal. Aside from the provisions related to implementation of the PPSNA, and section 16.34 of the Mental Hygiene Law, the amendments have either already been implemented by OPWDD policy directives, clarify existing requirements or interpretive guidance, or can be implemented without cost to the agency.

Agencies must comply with the new requirement to complete investigations within a 30 day timeframe. Agencies must also comply with new requirements to enhance the independence of investigators and agency incident review committees. However, OPWDD expects that additional compliance activities will be minimal since agencies are already required to comply with existing requirements that prohibit situations which compromise the independence of investigators and committee members.

The new requirements pertaining to the dissemination of agency policies and procedures, OPWDD incident management regulations, and written information specified by OPWDD add new compliance activities; however, the regulations minimize compliance activities by requiring that providers offer to provide such information in electronic format (unless paper copies are specifically requested) as opposed to requiring the provision of paper copies only. The amendments require that information be provided in conjunction with training that is mandated by current regulations in order to consolidate efforts, increase efficiency, and reduce compliance activities.

Enhancements in required notification to service coordinators will also add compliance activities for providers because providers will have to make additional notifications and/or provide subsequent information about an incident or occurrence to these parties.

The amendments that add a new requirement that agencies enter minutes of their incident review committee meetings into IRMA within three weeks of the meeting for serious incidents, allegations of abuse, and all deaths, may result in a minimal amount of additional clerical work. OPWDD expects that most agencies have adopted an electronic recordkeeping system to maintain their minutes and that these agencies would only have to copy and paste their minutes into IRMA. Agencies that do not have an electronic recordkeeping system and that maintain handwritten or typed minutes will have to assign staff to type the minutes into IRMA. OPWDD expects that these agencies will add this task to the duties of clerical staff who are trained and experienced in data entry and who can perform this function in an efficient manner.

The amendments extend access to information in accordance with Jonathan's Law and add a new requirement that agencies retain records pertaining to incidents and allegations of abuse for a minimum time period of seven years. In cases when there is a pending audit or litigation, the pertinent records must be retained throughout the pendency of the audit or litigation. The amendments specify what information must be retained. OPWDD considers that the new requirements will not add any additional compliance activities for agencies. OPWDD expects that generally most agencies have been implementing agency specific policies on record retention and that the new required record retention schedule merely standardizes existing policies/procedures. The amendments will have no effect on local governments.

3. Professional services: There may be additional professional services required for small business providers as a result of these amendments. The definition of psychological abuse references specific impacts on an individual receiving services that must be supported by a clinical assessment. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: There may be modest costs for small business providers associated with the amendments. There may be costs associated with obtaining a clinical assessment in the case of suspected psychological abuse. Additionally, there may be nominal costs for agencies to comply with the expanded notification requirements and requirements for the provision of policies and procedures when it is necessary to provide paper copies of information to the appropriate parties upon request. There are costs associated with the change to Section 424-a of the Social Services Law and OPWDD regulations which will require agencies to obtain additional background checks for employees and other individuals associated with the agencies. These checks cost $25 per check. However, OPWDD is unable to estimate how many additional checks will be needed and therefore cannot estimate the cost impact. There may be costs associated with new background check requirements in MHL 16.34, including costs associated with the requirement that agencies conduct a "reasonably diligent search" for past records of abuse/neglect. There may also be costs associated with requirements that agencies request a search of the "Staff Exclusion List." There may be costs associated with the requirement to train members of the Incident Review Committee.

Providers may experience savings if the Justice Center or OPWDD assume responsibility for investigations that were previously conducted by provider agency staff.

In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for providers as well as benefits to the wellbeing of individuals receiving services.

5. Economic and technological feasibility: The amendments may impose the use of new technological processes on small business providers. Providers have already been reporting incidents and abuse in IRMA in accordance with an existing OPWDD policy directive so the new requirements related to IRMA do not impose the use of new technological processes on small business providers. However, requirements to report reportable incidents to the Justice Center in the manner specified by the Justice Center may impose a requirement to use an electronic reporting system for that purpose, if that is the manner specified by the Justice Center. Currently the Justice Center is directing that reports be made either by telephone or by using a Web form, so the use of the Web form is optional.

6. Minimizing adverse economic impact: The amendments may result in an adverse economic impact for small business providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OPWDD expects that compliance with these new regulations will result in savings in the long term and there may be some short term savings as a result of the conduct of investigations by the Justice Center. Further, OPWDD expects that the amendments will provide some relief to providers by the removal of the previous requirement for a paper based incident report for reporting serious reportable incidents, allegations of abuse, and all deaths. OPWDD expects that these provisions will mitigate any adverse economic impact that results from complying with other new requirements.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. OPWDD modified several requirements to minimize adverse economic impact. As noted above, OPWDD eliminated the requirement that agencies complete paper forms when information about incidents is submitted electronically. In addition, the new regulations allow agencies to provide instructions on how to access information on incident management electronically to individuals, families and others, rather than requiring the provision of paper copies in all instances. Agencies are only required to make paper copies available upon request. OPWDD did not consider the exemption of small businesses from the amendments or the establishment of differing compliance or reporting requirements since OPWDD considers compliance with the emergency amendments to be crucial for the health, safety, and welfare of the individuals served by small business providers. Related to the requirement to conduct background checks in accordance with Section 16.34 of the Mental Hygiene Law, OPWDD has implemented several significant measures to streamline the process, such as the use of web-based forms.

7. Small business participation: The PPSNA was originally a Governor's Program Bill which received extensive media attention. Providers have had opportunities to become familiar with its provisions since it was made available on various government websites last June. Related to the components of the regulations that are unrelated to implementation of the PPSNA, draft regulations containing these components were sent out for review and comment to representatives of providers, including the New York State Association of Community and Residential Agencies (NYSACRA), on March 12, 2012. Some of the members of NYSACRA have fewer than 100 employees. OPWDD carefully considered the comments received and made some suggested changes to the amendments (e.g. eliminated the paper based incident report and allowed for the provision of policies and procedures in electronic format). OPWDD also presented the reforms at a widely-attended provider training in the fall of 2012. OPWDD

also hosted many informational sessions regarding the requirements in the prior emergency regulations during the spring and summer of 2013, including in-person sessions, webinars and state-wide videoconferences. OPWDD informed providers about the new requirements and invited public comment on the requirements. OPWDD has also responded to numerous questions and comments on prior emergency regulations. Finally, OPWDD has posted extensive information about the new requirements on its website.

8. (IF APPLICABLE): For rules that either establish or modify a violation or penalties associated with a violation: The emergency amendments do not establish or modify a violation or penalties associated with a violation.

Rural Area Flexibility Analysis

1. Description of the types and estimation of the number of rural areas in which the rule will apply: OPWDD services are provided in every county in New York State. 43 counties have a population of less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. Additionally, 10 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, and Saratoga.

The amendments have been reviewed by OPWDD in light of their impact on rural areas. The regulations make extensive changes to OPWDD's requirements for incident management that will necessitate significant changes in compliance activities and result in additional costs and savings to providers, including small business providers. However, OPWDD is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, OPWDD considers that the improvements in protections for people served in the OPWDD system will help safeguard individuals from harm and abuse and that the benefits more than outweigh any potential negative impacts on providers.

The geographic location of any given program (urban or rural) will not be a contributing factor to any additional costs to providers.

2. Compliance requirements: The regulations add a number of new requirements with which providers must comply. Amendments associated with the implementation of the PPSNA include a requirement that providers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries. For psychological abuse, a clinical assessment could be needed in order to demonstrate the impact of suspected psychological abuse. While OPWDD anticipates that providers are already obtaining examinations of physical injuries, clinical assessments of suspected psychological abuse are not generally obtained.

The regulations impose requirements that all new custodians with regular and direct contact in such programs must read and sign the code of conduct at the time of employment or affiliation, and that all custodians with regular and direct contact in such programs must read and sign the code of conduct on an annual basis.

The PPSNA expanded requirements to obtain background checks of the Statewide Central Register of Child Abuse and Maltreatment to require checks of employees (and others) who have the potential for regular and substantial contact with individuals receiving services. Prior to June 30, 2013 the statute limited this requirement to employees who have the potential for regular and substantial contact with children. The emergency regulations reflect the statutory changes to section 424-a of the Social Services Law in the PPSNA. While many providers that also serve children have been obtaining these checks, the new requirements clearly expand the pool of employees who must be checked. Further, OPWDD regulations require that agencies conduct SCR checks of applicants when the check is permitted by the Social Services Law.

The regulations also include requirements addressing background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law. Agencies are also required to request a check of the Staff Exclusion List maintained by the Justice Center.

Prior OPWDD regulations already required reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate many changes and reforms, the basic requirements are conceptually unchanged. OPWDD therefore expects that additional compliance activities (except as noted above) will be minimal. Aside from the provisions related to implementation of the PPSNA, and section 16.34 of the Mental Hygiene Law, the amendments have either already been implemented by OPWDD policy directives, clarify existing requirements or interpretive guidance, or can be implemented without cost to the agency.

Agencies must comply with the new requirement to complete investigations within a 30 day timeframe. Agencies must also comply with new requirements to enhance the independence of investigators and agency incident review committees. However, OPWDD expects that additional compliance activities will be minimal since agencies are already required to comply with existing requirements that prohibit situations which compromise the independence of investigators and committee members.

The new requirements pertaining to the dissemination of agency policies and procedures, OPWDD incident management regulations, and written information specified by OPWDD add new compliance activities; however, the regulations minimize compliance activities by requiring that providers offer to provide such information in electronic format (unless paper copies are specifically requested) as opposed to requiring the provision of paper copies only. The amendments require that information be provided in conjunction with training which is mandated by current regulations in order to consolidate efforts, increase efficiency, and reduce compliance activities.

Enhancements in required notification to service coordinators will also add compliance activities for providers because providers will have to make additional notifications and/or provide subsequent information about an incident or occurrence to these parties.

The amendments that add a new requirement that agencies enter minutes of their incident review committee meetings into IRMA within three weeks of the meeting for serious incidents, allegations of abuse, and all deaths, may result in a minimal amount of additional clerical work. OPWDD expects that most agencies have adopted an electronic recordkeeping system to maintain their minutes and that these agencies would only have to copy and paste their minutes into IRMA. Agencies that do not have an electronic recordkeeping system and that maintain handwritten or typed minutes will have to assign staff to type the minutes into IRMA. OPWDD expects that these agencies will add this task to the duties of clerical staff who are trained and experienced in data entry and who can perform this function in an efficient manner.

The amendments extend access to information in accordance with Jonathan's Law and add a requirement that agencies retain records pertaining to incidents and allegations of abuse for a minimum time period of seven years. In cases when there is a pending audit or litigation, the pertinent records must be retained throughout the pendency of the audit or litigation. The amendments specify what information must be retained. OPWDD considers that the new requirements will not add any additional compliance activities for agencies. OPWDD expects that generally most agencies have been implementing agency specific policies on record retention and that the new required record retention schedule merely standardizes existing policies/procedures. The amendments will have no effect on local governments.

3. Professional services: There may be additional professional services required for small business providers as a result of these amendments. The definition of psychological abuse references specific impacts on an individual receiving services that must be supported by a clinical assessment. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: There may be modest costs for small business providers associated with the amendments. There may be costs associated with obtaining a clinical assessment in the case of suspected psychological abuse. Additionally, there may be nominal costs for agencies to comply with the expanded notification requirements and requirements for the provision of policies and procedures when it is necessary to provide paper copies of information to the appropriate parties upon request. There are costs associated with the change to Section 424-a of the Social Services Law and OPWDD regulations which will require agencies to obtain additional background checks for employees and other individuals associated with the agencies. These checks cost $25 per check. However, OPWDD is unable to estimate how many additional checks will be needed and therefore cannot estimate the cost impact. There may be costs associated with new background check requirements in MHL 16.34, including costs associated with the requirement that agencies conduct a "reasonably diligent search" for past records of abuse/neglect. There may also be costs associated with requirements that agencies request a search of the "Staff Exclusion List." There may be costs associated with the requirement to train members of the Incident Review Committee.

Providers may experience savings if the Justice Center or OPWDD assumes responsibility for investigations that were previously conducted by provider agency staff.

In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for providers as well as benefits to the wellbeing of individuals receiving services.

5. Minimizing adverse impact: The amendments may result in an adverse economic impact for small business providers due to additional compliance activities and associated compliance costs. However, as stated

earlier, OPWDD expects that compliance with these new regulations will result in savings in the long term and there may be some short term savings as a result of the conduct of investigations by the Justice Center. Further, OPWDD expects that the amendments will provide some relief to providers by the removal of the previous requirement for a paper based incident report for reporting serious reportable incidents, allegations of abuse, and all deaths. OPWDD expects that these provisions will mitigate any adverse economic impact that results from complying with other new requirements.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act. OPWDD modified several requirements to minimize adverse economic impact. As noted above, OPWDD eliminated the requirement that agencies complete paper forms when information about incidents is submitted electronically. In addition, the new regulations allow agencies to provide instructions on how to access information on incident management electronically to individuals, families and others, rather than requiring the provision of paper copies in all instances. Agencies are only required to make paper copies available upon request. Related to the requirement to conduct background checks in accordance with Section 16.34 of the Mental Hygiene Law, OPWDD has implemented several significant measures to streamline the process, such as the use of web-based forms.

OPWDD did not consider the exemption of small businesses from the emergency amendments or the establishment of differing compliance or reporting requirements since OPWDD considers compliance with the emergency amendments to be crucial for the health, safety, and welfare of the individuals served by providers in rural areas.

6. Participation of public and private interests in rural areas: The PPSNA was originally a Governor's Program Bill that received extensive media attention. Providers have had opportunities to become familiar with its provisions since it was made available on various government websites last June. Related to the components of the regulations that are unrelated to implementation of the PPSNA, draft regulations containing these components were sent out for review and comment to representatives of providers, including NYSARC, the NYS Association of Community and Residential Agencies, NYS Catholic Conference, and CP Association of NYS, which represent providers in rural areas, on March 12, 2012. OPWDD carefully considered the comments received and made some suggested changes to the amendments (e.g. eliminated the paper based incident report and allowed for the provision of policies and procedures in electronic format). OPWDD also presented the reforms at a widely-attended provider training in the fall of 2012. OPWDD also hosted many informational sessions regarding the requirements in the prior emergency regulations during the spring and summer of 2013, including in-person sessions, webinars, and state-wide videoconferences. OPWDD informed providers about the new requirements and invited public comment on the requirements. OPWDD has also responded to numerous questions and comments on the prior emergency regulations. Finally, OPWDD has posted extensive information about the new requirements on its website.

Job Impact Statement

OPWDD is not submitting a Job Impact Statement for these amendments because OPWDD does not anticipate a substantial adverse impact on jobs and employment opportunities.

The amendments incorporate a number of reforms to improve the quality and consistency of incident management activities throughout the OPWDD system. Most of these reforms have already been implemented by OPWDD policy directive, such as the mandates to use IRMA and a standardized investigation format. Consequently these amendments will not affect jobs or employment opportunities.

The amendments that impose new requirements on providers, such as additional reporting requirements, the timeframe for completion of investigations, notification to the service coordinator and other parties of subsequent information about incidents and abuse, retention of records, and the provision of policies and procedures to specified parties, will not result in an adverse impact on jobs. OPWDD anticipates that there will be no effect on jobs as agencies will use current staff to perform the required compliance activities.

The PPSNA and these implementing regulations will require that providers request additional checks from the Statewide Central Register of Child Abuse and Maltreatment. The regulations also include requirements addressing background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law. OPWDD anticipates that the requests and checks will be made using current staff.

The PPSNA and these implementing regulations will also mean that some functions that are currently performed by OPWDD staff will instead be performed by the staff of the Justice Center. OPWDD expects that the volume of incidents and occurrences investigated will be roughly similar. To the extent that the Justice Center performs investigations, oversees the management of reportable incidents, and manages requests for criminal history record checks, the result is expected to be neutral in that positions lost by OPWDD will be gained by the Justice Center. OPWDD may add minimal new staff to perform functions required by the regulations, such as the requirements for MHL 16.34 checks.

It is therefore apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Approving a Waiver of 16 NYCRR Sections 894.1 Through 894.4

I.D. No. PSC-09-14-00008-A
Filing Date: 2014-06-18
Effective Date: 2014-06-18

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

Action taken: On 6/12/14, the PSC adopted an order approving the petition of the Town of Scipio, Cayuga County, to waive 16 NYCRR, sections 894.1 through 894.4 pertaining to the franchising process.

Statutory authority: Public Service Law, section 216(1)

Subject: Approving a waiver of 16 NYCRR sections 894.1 through 894.4.

Purpose: To approve a waiver of 16 NYCRR sections 894.1 through 894.4.

Substance of final rule: The Commission, on June 12, 2014, adopted an order approving a petition of Town of Scipio, Cayuga County to waive the requirements of sections 894.1, 894.2, 894.3 and 894.4 to expedite the franchising process, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-V-0047SA1)

NOTICE OF ADOPTION

Approving a Waiver of 16 NYCRR Sections 894.1 Through 894.4

I.D. No. PSC-11-14-00007-A
Filing Date: 2014-06-18
Effective Date: 2014-06-18

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

Action taken: On 6/12/14, the PSC adopted an order approving the petition of the Town of North Hudson, Essex County, to waive 16 NYCRR, sections 894.1 through 894.4 pertaining to the franchising process.

Statutory authority: Public Service Law, section 216(1)

Subject: Approving a waiver of 16 NYCRR sections 894.1 through 894.4.

Purpose: To approve a waiver of 16 NYCRR sections 894.1 through 894.4.

Substance of final rule: The Commission, on June 12, 2014, adopted an order approving a petition of Town of North Hudson, Essex County to waive the requirements of sections 894.1, 894.2, 894.3 and 894.4 to expedite the franchising process, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no.

or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-V-0015SA1)

NOTICE OF ADOPTION

Approving the Extension of the Temporary Annual Assessment

I.D. No. PSC-13-14-00008-A

Filing Date: 2014-06-18

Effective Date: 2014-06-18

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

Action taken: On 6/12/14, the PSC adopted an order implementing chapter 59 Part BB of the Laws of 2013 extending the Temporary Annual Assessment pursuant to Public Service Law, section 18-a(6).

Statutory authority: Public Service Law, sections 66(1), 80(1), (10), 89-c(1) and (10)

Subject: Approving the extension of the Temporary Annual Assessment.

Purpose: To approve the extension of the Temporary Annual Assessment.

Substance of final rule: The Commission, on June 12, 2014, adopted an order implementing chapter 59, Part BB of the Laws of 2013 extending a Temporary Annual Assessment, pursuant to Public Service Law, section 18-a(6), subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(09-M-0311SA6)

NOTICE OF ADOPTION

Approving the Reduction of the Percentage of Revenues to be Collected Via the Temporary Annual Assessment

I.D. No. PSC-16-14-00010-A

Filing Date: 2014-06-18

Effective Date: 2014-06-18

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

Action taken: On 6/12/14, the PSC adopted an order implementing chapter 57 Part S of the Laws of 2014 reducing the amount of the surcharge to be collected pursuant to Public Service Law 18-a(6).

Statutory authority: Public Service Law, sections 66(1), 80(1), (10), 89-c(1) and (10)

Subject: Approving the reduction of the percentage of revenues to be collected via the Temporary Annual Assessment.

Purpose: To approve the reduction of the percentage of revenues to be collected via the Temporary Annual Assessment.

Substance of final rule: The Commission, on June 12, 2014, adopted an order implementing chapter 57, Part S of the Laws of 2014 reducing the amount of the surcharge to be collected via the Temporary Annual Assessment, pursuant to Public Service Law, section 18-a(6), subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(09-M-0311SA7)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Waiver of 16 NYCRR Section 503.4

I.D. No. PSC-27-14-00016-P

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

Proposed Action: The Commission is considering whether to grant, reject or modify a request from New York American Water for a waiver of 16 NYCRR section 503.4 (quantity of service), while the company constructs a new well. The Commission may consider any related matters.

Statutory authority: Public Service Law, sections 89-b(1) and 89-c(1), (2)

Subject: Waiver of 16 NYCRR section 503.4.

Purpose: To grant, deny or modify the requested waiver of 16 NYCRR section 503.4.

Substance of proposed rule: On June 13, 2014, New York American Water, Inc. (NYAW) filed a petition requesting a 12 month waiver of 16 NYCRR § 503.4, which establishes the requirements for the quantity of supply for water utilities. NYAW states that its Sea Cliff District is currently supplied by two wells, which are adequate to meeting the District's needs, but under the Commission's standards should have an additional well to ensure adequate supply. NYAW further states that it is planning an additional well, and anticipates it being placed in service in the summer of 2015. NYAW requests a waiver of the requirements of 16 NYCRR § 503.4 until summer 2015 to allow it to complete its work. The Commission may grant, reject or modify the request and address any related issues.

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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-W-0215SP1)

State University of New York

NOTICE OF ADOPTION

Traffic and Parking Rules at Binghamton University

I.D. No. SUN-10-14-00003-A

Filing No. 521

Filing Date: 2014-06-23

Effective Date: 2014-07-01

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

Action taken: Amendment of Part 566 of Title 8 NYCRR.

Statutory authority: Education Law, sections 360(1) and 362

Subject: Traffic and Parking Rules at Binghamton University.

Purpose: Modification of existing rules.

Text or summary was published in the March 12, 2014 issue of the Register, I.D. No. SUN-10-14-00003-P.

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

Revised rule making(s) were previously published in the State Register on March 12, 2014.

Text of rule and any required statements and analyses may be obtained from: Barbara W. Scarlett, Associate Counsel, SUNY Binghamton, P.O. Box 6000, Binghamton, NY 13902-6000, (607) 777-4438, email: scarlett@binghamton.edu

Revised Regulatory Impact Statement

A revised regulatory impact statement 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.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis 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.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis 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.

Revised Job Impact Statement

A revised job impact statement 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.

Assessment of Public Comment

One comment was received from Assemblyman Kenneth P. ebrowski by letter dated April 29, 2014, received May 2, 2014, indicating that the proposed rules pertaining to electric vehicle recharging should not be limited to vehicles with parking registration.

The University did not revise the rules as the primary intent was to limit charging of vehicles to property installed charging devices as a health and safety issue and it is intended to allow all persons on campus to use the devices. In addition, there are four charging devices on campus, that there is minimum use of these charging devices and the campus is monitoring the use to determine next actions regarding charging devices. In addition, the campus is undergoing a transportation and parking study which will include an evaluation of the campus charging program and likely there will be other changes to the program which will require policy adjustments next year.