

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; or EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

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

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-33-06-00011-A
Filing No. 741
Filing date: July 23, 2007
Effective date: Aug. 8, 2007

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-33-06-00011-P, Issue of Aug. 16, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Correctional Services

NOTICE OF ADOPTION

Chateaugay Correctional Facility

I.D. No. COR-20-07-00001-A
Filing No. 738
Filing date: July 20, 2007
Effective date: Aug. 8, 2007

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

Action taken: Repeal of section 100.126(b) and addition of section 100.131 to Title 7 NYCRR.

Statutory authority: Correction Law, section 70

Subject: Chateaugay Correctional Facility.

Purpose: To amend the designation and classification for Chateaugay Correctional Facility.

Text or summary was published in the notice of proposed rule making, I.D. No. COR-20-07-00001-P, Issue of May 16, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 485-9613, e-mail: AJAnnucci@docs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Crime Victims Board

NOTICE OF ADOPTION

Reimbursement of Crime-Related Counseling Expenses

I.D. No. CVB-22-07-00002-A
Filing No. 737
Filing date: July 19, 2007
Effective date: Aug. 8, 2007

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

Action taken: Amendment of section 525.12(g)(2) of Title 9 NYCRR.

Statutory authority: Executive Law, sections 626 and 631

Subject: Reimbursement of crime-related counseling expenses which are filed more than one year after counseling has begun.

Purpose: To specifically outline the process by which the board may approve counseling expenses filed more than one year after the counseling

has begun in order for claimants or potential claimants to be aware of what services the board would consider reimbursable under its statutory authority.

Text or summary was published in the notice of proposed rule making, I.D. No. CVB-22-07-00002-P, Issue of May 30, 2007.

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

Text of rule and any required statements and analyses may be obtained from: John Watson, General Counsel, Crime Victims Board, One Columbia Circle, Suite 200, Albany, NY 12203, (518) 457-8066, e-mail: johnwatson@cvb.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Economic Development

NOTICE OF ADOPTION

Empire State Commercial Tax Credit Program

I.D. No. EDV-23-07-00003-A

Filing No. 743

Filing date: July 24, 2007

Effective date: Aug. 8, 2007

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

Action taken: Addition of Part 180 to Title 5 NYCRR.

Statutory authority: L. 2006, chs. 62 and 440

Subject: Empire State Commercial Tax Credit Program.

Purpose: To establish procedures for the allocation of tax credits.

Text or summary was published in the notice of proposed rule making, I.D. No. EDV-23-07-00003-P, Issue of June 6, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Thomas P. Regan, Department of Economic Development, 30 S. Pearl St., Albany, NY 12245, (518) 292-5123, e-mail: tregan@empire.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Education Department

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

Contracts for Excellence

I.D. No. EDU-20-07-00005-ERP

Filing No. 742

Filing date: July 24, 2007

Effective date: July 26, 2007

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

Emergency action taken: Addition of section 100.13 and amendment of section 170.12 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2), 211-d(1-9); and L. 2007, ch. 57

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Education Law section 211-d, as added by Chapter 57 of the Laws of 2007, to establish allowable programs and activities, criteria for public reporting by school districts of their total foundation aid expenditures and other requirements for purposes of preparation of contracts for excellence by certain specified school districts.

Education Law section 211-d requires each school district: (1) that has at least one school currently identified as (i) requiring academic progress or (ii) in need of improvement or (iii) in corrective action or (iv) in restructuring; and (2) that receives an increase in either (i) total foundation aid compared to the base year in an amount that equals or exceeds either \$15 million dollars or 10 percent of the amount received in the base year, whichever is less, or (ii) a supplemental educational improvement plan grant, to prepare a contract for excellence, which shall describe how the total foundation aid and supplemental educational improvement plan grants shall be used to support new programs and new activities or expand the use of programs and activities demonstrated to improve student achievement. The statute requires the Commissioner to establish by regulation the allowable programs and activities for such purposes. The statute also requires the Commissioner to prescribe a format by which each affected school district shall publicly report its expenditures of total foundation aid.

The proposed amendment was adopted at the April 23-24, 2007 Regents meeting as an emergency measure, effective April 27, 2007, in order to immediately establish allowable programs and activities, criteria for public reporting by school districts of their total foundation aid expenditures, and other requirements for contracts for excellence under Education Law section 211-d, so that affected school districts may timely prepare such contracts for the 2007-2008 school year pursuant to statutory requirements. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on May 16, 2007.

At the June 25-26, 2007 meeting of the Board of Regents, the Regents made a further substantial revision to the proposed rule, as set forth in the Revised Regulatory Impact Statement submitted herewith, to add the criteria for the Commissioner's approval of allowable programs selected by districts. Pursuant to the State Administrative Procedure Act section 202(4-a) cannot be adopted by regular (non-emergency) action until at least 30 days after publication of the revised rule in the State Register. Accordingly, since the Board of Regents meets at fixed intervals and there is no meeting scheduled for August 2007, the earliest the proposed amendment can be adopted by regular action is the September Regents meeting. However, the April emergency adoption will expire on July 25, 2007, 90 days after its filing with the Department of State on April 27, 2007. A lapse in the rule's effectiveness would disrupt implementation of the contract for excellence program under Education Law section 211-d. A second emergency adoption is therefore necessary to add the criteria for the Commissioner's approval of allowable programs selected by districts and to otherwise ensure that the emergency rule adopted at the April Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

Subject: Contracts for excellence.

Purpose: To implement Education Law section 211-d, as added by chapter 57 of the Laws of 2007, by establishing allowable programs and activities, criteria for public reporting by school districts of their total foundation aid expenditures, and other requirements for purposes of preparation of contracts for excellence by certain specified school districts.

Substance of emergency/revised rule: The Board of Regents has added section 100.13 and amended section 170.12 of the Commissioner's Regulations, as an emergency action effective July 26, 2007. The rule is necessary to implement Education Law section 211-d to establish allowable programs and activities, criteria for public reporting by school districts of their total foundation aid expenditures and other requirements for purposes of preparation of contracts for excellence by certain specified school districts. Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 16, 2007, the rule has been substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith. The following is a summary of the substance of the rule.

Section 100.13(a) provides definitions of: (1) total foundation aid; (2) supplemental educational improvement plan grant; (3) contract amount; (4) base year; (5) experimental programs; (6) highly qualified teacher; and (7) response to intervention program.

Section 100.13(b) establishes applicability provisions for purposes of determining whether a school district is required to prepare a contract for excellence. A contract shall be prepared by each district: (1) that has at least one school currently identified pursuant to section 100.2(p) as: (a) requiring academic progress; or (b) in need of improvement; or (c) in corrective action; or (d) in restructuring; and (2) that receives: (a) an increase in total foundation aid compared to the base year in an amount that equals or exceeds either fifteen million dollars or ten percent of the amount received in the base year, whichever is less; or (b) a supplemental educational improvement plan grant. For the 2007-2008 school year, such increase in total foundation aid shall be the amount of the difference between total foundation aid received for the current year and the total foundation aid base as defined in Education Law section 3602(1)(j). In the New York City school district, a contract shall be prepared for the city school district and each community district meeting the above criteria.

Section 100.13(c) establishes requirements for the preparation and submission of contracts. Each contract shall be in a format, and submitted pursuant to a timeline, as prescribed by the Commissioner and shall:

(1) describe how the contract amount shall be used to support new programs and new activities or expand the use of programs and activities demonstrated to improve student achievement, from the allowable programs and activities and/or authorized experimental programs pursuant to section 100.13(d);

(2) specify the new or expanded programs, from the allowable programs and activities and/or authorized experimental programs pursuant to section 100.13(d), for which each sub-allocation of the contract amount shall be used and affirm that such programs shall predominately benefit students with the greatest educational needs including, but not limited to: (a) limited English proficient (LEP) students and students who are English language learners (ELL); (b) students in poverty; and (c) students with disabilities;

(3) state, for all funding sources, whether federal, state or local, the instructional expenditures per pupil, the special education expenditures per pupil, and the total expenditures per pupil, projected for the current year and estimated for the base year; provided that no later than February 1 of the current school year, the school district shall submit a revised contract stating such expenditures actually incurred in the base year;

(4) include any programmatic data projected for the current year and estimated for the base year, as the Commissioner may require; and

(5) in the NYC school district, include a plan that meets the requirements of section 100.13(d)(2)(i)(a), to reduce average class sizes within five years for the following grade ranges: (a) prekindergarten through grade three; (b) grades four through eight; and (c) grades nine through twelve. Such plan shall be aligned with the capital plan of the NYC school district and include continuous class size reduction for low performing and overcrowded schools beginning in the 2007-2008 school year and thereafter and include the methods to be used to achieve proposed class sizes, such as the creation or construction of more classrooms and school buildings, the placement of more than one teacher in a classroom or methods to otherwise reduce the student to teacher ratio. Beginning in the 2008-2009 school year, such plan shall provide for reductions in class size that, by the end of the 2011-2012 school year, will not exceed the prekindergarten through grade 12 class size targets as prescribed by the Commissioner after his/her consideration of the recommendation of an expert panel appointed by the commissioner to conduct a review of existing class size research.

The Commissioner shall approve each contract meeting the provisions of section 100.13(c) and shall certify, for each contract, that the expenditure of additional aid or grant amounts is in accordance with Education Law section 211-d(2). Approval shall be given to contracts demonstrating to the satisfaction of the Commissioner that the allowable programs selected:

(i) predominately benefit students with the greatest educational needs, including but not limited to: (a) LEP and ELL students; (b) students in poverty; and (c) students with disabilities;

(ii) predominately benefit students in schools identified as requiring academic progress, or in need of improvement, or in corrective action, or restructuring and address the most serious academic problems in those schools; and

(iii) are based on practices supported by research or other comparable evidence in order to facilitate student attainment of State learning standards.

Section 100.13(d) establishes the allowable programs and activities, including experimental programs. Section 100.13(d)(1) establishes general requirements, including that such programs and activities: (1) predominately benefit students in schools identified as requiring academic pro-

gress, in need of improvement, in corrective action, or restructuring; (2) predominately benefit students with the greatest educational needs including, but not limited to: LEP and ELL students; students in poverty; and students with disabilities; (3) be consistent with federal and State statutes and regulations governing the education of such students; (4) be developed in reference to practices supported by research or other comparable evidence in order to facilitate student attainment of State learning standards; (5) where applicable, be accompanied by high quality, sustained professional development focused on content pedagogy, curriculum development, and/or instructional design in order to ensure successful implementation of each program and activity; (6) ensure that expenditures of the contract amount shall be used to supplement and not supplant funds expended by the district in the base year for such purposes; (7) ensure that all additional instruction is provided by appropriately certified teachers or highly qualified teachers where required by section 120.6 of this Title, emphasizing skills and knowledge needed to facilitate student attainment of State learning standards; and (8) be coordinated with all other allowable programs and activities included in the district's contract as part of the district's comprehensive educational plan.

Section 100.13(d)(2) establishes criteria for specific allowable programs and activities, which shall include: (1) class size reduction for (a) the NYC school district and (b) all other school districts; (2) student time on task; (3) teacher and principal quality initiatives; (4) middle school and high school restructuring; and (5) full-day kindergarten or prekindergarten programs.

Section 100.13(d)(2)(i) describes the requirements for class size reduction, including special provisions for the NYC school district. The NYC school district must allocate some of its total contract amount to class size reduction according to a plan, included in their contract and approved by the Commissioner pursuant to section 100.13(c), to reduce the average class size for the following grade ranges: prekindergarten to grade three, grades four through eight, and grades nine through twelve, commencing in the 2007-2008 school year and ending in the 2011-2012 school year, to target levels recommended by the expert panel appointed by the Commissioner. School districts outside of NYC shall establish class size reduction goals in the 2007-2008 school year and demonstrate measurable progress towards meeting such goals; and beginning with the 2008-2009 school year, shall demonstrate measurable progress towards meeting the target levels recommended by the expert panel. The proposed rule also mandates that, in NYC school district, priority be given to prekindergarten through grade 12 students in schools requiring academic progress, correction, improvement or in restructuring and to overcrowded schools. Furthermore, it requires that classrooms created shall provide adequate and appropriate physical space to students and staff, among others. Class size reduction may be accomplished through the creation of additional classrooms and buildings, through assignment of more than one teacher to a classroom or, in the NYC school district, by other methods to reduce the student to teacher ratio, as approved by the Commissioner.

Section 100.13(d)(2)(ii) provides that allowable programs and activities related to student time on task may be accomplished by: (1) lengthened school days, (2) lengthened school years and (3) dedicated instructional time, including individual intervention, tutoring and student support services.

Section 100.13(d)(2)(iii) prescribes requirements for teacher and principal quality initiatives, including: (1) recruitment and retention of teachers, (2) mentoring for teachers and principals in their first or second year of a new assignment, (3) incentive programs for teacher placement, (4) instructional coaches, and (5) school leadership coaches. Districts shall ensure that a highly qualified teacher is in every classroom and an appropriately certified principal is assigned to every school.

Section 100.13(d)(2)(iv) provides that allowable programs and activities for middle and high school restructuring include: (1) instructional program changes to improve student achievement and attainment of the State learning standards and (2) structural organization changes. The section further requires that those districts choosing to make organization changes must also make instructional program changes.

Section 100.13(d)(2)(v) provides that allowable programs and activities for full-day kindergarten or prekindergarten programs include: (1) a minimum full school day program, (2) a minimum full school day program with additional hours for children and families, (3) a minimum full school day program with additional hours in collaboration with community based agencies (prekindergarten only), and (4) classroom integration programs for students with disabilities (specifically for full-day prekindergarten).

Section 100.13(d)(3) lists the following requirements for experimental programs, not included in the allowable programs and activities described

above: (1) a maximum percentage of the contract amount that may be used for experimental programs, (2) a plan must be submitted to the Commissioner, (3) the program must be based on an established theoretical base supported by research or other comparable evidence, (4) the implementation plan for an experimental program must be accompanied by a program evaluation plan based on empirical evidence to assess the impact on student achievement, and (5) the experimental program shall be in partnership with an institution of higher education or other organization with extensive research experience and capacity.

Section 100.13(d)(3)(ii) states provides a maximum amount of up to \$30 million dollars or twenty-five percent of the contract amount, whichever is less, that a district may use in the 2007-2008 school year to maintain existing programs and activities listed in Education Law section 211-d(3)(a).

Section 100.13(e) establishes criteria for the development of a school district's contract for excellence pursuant to a public process, in consultation with parents or persons in parental relation, teachers, administrators, and any distinguished educator appointed pursuant to Education Law section 211-c, which shall include at least one public hearing. Special provisions for the NYC school district's development of the contracts are included.

Section 100.13(f) establishes requirements to assure procedures are in place by which parents or persons in parental relation may bring complaints concerning implementation of a district's contract for excellence, including special provisions for the NYC school district.

Section 100.13(g) establishes requirements for the public reporting by districts of their school-based expenditures of total foundation aid.

Section 170.12 (e)(1), relating to requirements of an annual audit of school district records, is amended to provide that the annual audit also include a certification by the accountant or, where applicable, the NYC comptroller, in a form prescribed by the Commissioner, that the increases in total foundation aid and supplemental educational improvement plan grants have been used to supplement, and not supplant funds allocated by the district in the base year for such purposes.

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 May 16, 2007, I.D. No. EDU-20-07-00005-P. The emergency rule will expire October 21, 2007.

Emergency rule compared with proposed rule: Substantial revisions were made in section 100.13(c)(2).

Text of rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Senior Deputy Commissioner of Education - P16, Education Department, 2M West Wing, Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: p16education@mail.nysed.gov

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

Regulatory Impact Statement

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 16, 2007, the following substantial revision was made to the proposed rule.

Paragraph (2) of subdivision (c) of section 100.13 was revised for purposes of clarification to add the criteria for the Commissioner's approval of allowable programs selected by districts. Approval shall be given to contracts demonstrating to the satisfaction of the Commissioner that the allowable programs selected by the district:

(i) predominately benefit those students with the greatest educational needs, including but not limited to:

- (a) students with limited English proficiency and students who are English language learners;
- (b) students in poverty; and
- (c) students with disabilities;

(ii) predominately benefit those students in schools identified as requiring academic progress, or in need of improvement, or in corrective action, or restructuring and address the most serious academic problems in those schools; and

(iii) are based on practices supported by research or other comparable evidence in order to facilitate student attainment of State learning standards.

The above revision to the proposed rule does not require any changes to the previously published Regulatory Impact Statement.

Regulatory Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 16, 2007, the proposed rule has been substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above revision to the proposed rule does not require any revisions to the previously published Regulatory Flexibility Analysis.

Rural Area Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 16, 2007, the proposed rule has been substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above revision to the proposed rule does not require any revisions to the previously published Rural Area Flexibility Analysis.

Job Impact Statement

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 16, 2007, the proposed rule has been substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The proposed rule, as so revised, is necessary to implement Education Law section 211-d, as added by Chapter 57 of the Laws of 2007, to establish allowable programs and activities, criteria for public reporting by school districts of their total foundation aid expenditures and other requirements for purposes of preparation of contracts for excellence by certain specified school districts. The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the rule that it 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.

Assessment of Public Comment

Since publication of Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 16, 2007, the Department received the following comments on the proposed rule.

1. COMMENT:

Career and technical education programs, arts and music programs, after-school programs, summer camp programs and instructional technology programs should be included as allowable programs and activities.

DEPARTMENT RESPONSE:

The proposed rule has been revised to clarify that such programs may be included as allowable programs and activities, provided the programs meet the applicable requirements of section 100.13(d) and are approved by the Commissioner pursuant to 100.13(c)(2).

2. COMMENT:

The State Education Department should identify the quality standards and outcomes school districts must incorporate in determining how to use Contract for Excellence funds for after-school programs. Partnerships between schools and community-based organizations should be strongly encouraged.

DEPARTMENT RESPONSE:

The Department believes that these concerns can be best addressed in guidance.

3. COMMENT:

Some commenters stated that contract funds should be able to be used as a class size reduction initiative for the creation or construction of classroom space. Another commenter stated that the statute does not require the Regents to authorize the use of Contract for Excellence funds for the local share of capital expenditures as part of a class-size reduction plan. Such use of Foundation Aid funds could supplant local resources, which is prohibited under the law. The law clearly intended that Foundation Aid would only be used for operating purposes.

DEPARTMENT RESPONSE:

The Department agrees that contract funds may be used for construction, but advises that school districts should first use building aid and EXCEL aid for school construction.

Removing the option of using Foundation Aid for the creation or construction of more classrooms and school buildings, an activity specifically mentioned in the statute as an example of methods to reduce class sizes, would contravene the statute. Foundation aid is a general aid that may be used for capital as well as operating expenses, and there is no language in the statute that limits the type of expense for which the increased Foundation aid may be used. The new funds provided under this year's budget identified as being subject to the Contract for Excellence requirements were not appropriated solely to correct funding formula inequities, but to fund new and expanded programs under broad areas proven to improve student achievement. One of the five areas targeted was

class-size reduction. Helping fund the creation of additional classroom space to achieve that goal, by paying all or part of the local share of the costs of construction, must be an allowable activity. Otherwise, this goal can only be achieved by putting additional teachers in existing classrooms, which is clearly not the Legislature's intent for this program. School districts, of course, may not use the increased Foundation aid to supplant existing funds except as authorized by the statute, but there will be situations in which such aid may be used to defray the local share of construction costs without supplanting.

4. COMMENT:

Providing additional teachers in the classroom to reduce the student to teacher ratio, an allowable option under the class-size reduction program in New York City, is desirable; however, it must be considered a transitory measure until new seats are created within the five year framework.

DEPARTMENT RESPONSE:

While we cannot speak to the legislative intent regarding the length of time this option would be allowed under the five year class-size reduction plan required under the Contract for Excellence requirements, there is no specific time limit established in the plain language of the statute. A statutory change may be needed to clarify this matter.

5. COMMENT:

There is nothing in the authorizing statute (Education Law section 211-d) to justify imposition on school districts outside the City of New York the limitation that if such districts elect to reduce class size by adding a teacher to a classroom, they must not exceed classroom targets set by the Commissioner after consideration of recommendations from an expert panel charged with reviewing class size reduction research.

DEPARTMENT RESPONSE:

The Department disagrees. Although Education Law section 211-d(2)(b)(ii) sets forth specific class size reduction criteria applicable to the City of New York, section 211-d(3)(a) includes class size reduction as an allowable program and activity for all school districts and authorizes the Commissioner to adopt regulations regarding such allowable programs and activities. Requiring that school districts not exceed class size targets established by the Commissioner is consistent with this statutory authority and is necessary to ensure accountability of contract for excellence funds used for class size reduction.

6. COMMENT:

Section 100.13(d)(2)(iii)(c) should be revised for purposes of consistency with Education Law section 211-d to replace "highly qualified teacher" with "highly qualified and experienced teacher." The proposed rule should define "highly qualified and experienced teachers".

DEPARTMENT RESPONSE:

Section 100.13(d)(2)(iii)(c) has been revised to conform to Education Law section 211-d. The proposed rule already includes a provision defining "highly qualified teacher." With respect to "experienced" teachers, the Department believes that since this provision concerns incentive programs by school districts to encourage highly qualified and experienced teachers to work in low-performing schools, such determinations are best left to individual school districts, with guidance to be provided by the Department as necessary.

7. COMMENT:

Support was expressed for the inclusion in the proposed rule of "dedicated instructional time" as one of the "time on task" activities authorized for use of Contract funds.

DEPARTMENT RESPONSE:

Since dedicated instructional time is already included in section 100.13(d)(2)(a)(ii)(3) as one of the "student time on task" allowable programs and activities, no response is necessary.

8. COMMENT:

Mentoring should also be authorized to remedy deficient performance by a veteran teacher.

DEPARTMENT RESPONSE:

Section 100.13(d)(2)(iii)(b) has been revised to also permit mentoring to improve the performance of teachers and principals who are not newly appointed, consistent with collective bargaining and other applicable requirements.

9. COMMENT:

There should not be a two-year limit for mentoring (allowing mentoring only for teachers and principals in the first or second year of a new assignment). Mentoring should be provided throughout an educator's initial 3-year probationary period.

DEPARTMENT RESPONSE:

Section 100.13(d)(2)(ii)(b) has been revised to delete the provision limiting mentoring to teachers and principals who are in their first or second year of a new assignment.

10. COMMENT:

The proposed rule should be revised to authorize individuals holding certification titles as school district administrator (SDA), school administrator and supervisor (SAS), and school business administrator (SBA) to be eligible to serve as school leadership coaches.

DEPARTMENT RESPONSE:

Section 100.13(d)(2)(iii)(e) has been revised to allow individuals holding SDA, SAS and/or SBA title certification to be eligible to serve as school leadership coaches.

11. COMMENT:

Instructional coaches should also be authorized to assist teachers with pedagogical and classroom management techniques.

DEPARTMENT RESPONSE:

Section 100.13(d)(2)(iii)(d) has been revised to also permit instructional coaches to provide professional development to teachers in pedagogy and/or classroom management, to improve student attainment of State learning standards.

12. COMMENT:

The proposed rule should recognize that ultimate authority for decisions on the development of Contract for Excellence Plans must be exercised by duly chosen public officials and should not require concurrence from a private entity. Another commenter stated that there must be clear uniform guidelines for meaningful public participation and the proposed rule must require districts to work with parent-student groups to maximize student success.

DEPARTMENT RESPONSE:

Consistent with Education Law section 211-d, section 100.13(e) requires that school districts solicit public comment on their contracts for excellence for the 2007-2008 school year, and develop their contracts for excellence for subsequent school years in consultation with parents or persons in parental relation, teachers, administrators, and any distinguished educator appointed under Education Law section 211-c, and hold at least one public hearing. Although school districts must consult with the persons specified, there is nothing in the proposed rule that requires school districts to obtain their approval or concurrence for decisions on the development of the contracts.

13. COMMENT:

There seems to be an inconsistency with the proposed rule's provisions in 100.13(d)(2)(vi), which ensures Contract funds shall be used to supplement and not supplant funds expended in the base year, and section 100.13(d)(3)(e)(ii), allowing up to 25% to maintain investments in the allowable programs.

DEPARTMENT RESPONSE:

There is no inconsistency in the proposed rule's provisions. Section 100.13(d)(3)(ii) provides that *notwithstanding the provisions of subdivision (d) of section 100.13*, a school district may use, in the 2007-2008 school year, up to \$30 million or 25% of the contract amount, whichever is less, to maintain investments in allowable programs and activities. Therefore, the supplement and not supplant provision in 100.13(d)(3)(ii) does not apply to such use.

14. COMMENT:

Section 100.13(d)(iii) (a), which includes programs to recruit and retain certified and highly qualified teachers through recruitment strategies and retention incentives, should be revised to also include school administrators.

DEPARTMENT RESPONSE:

Section 100.13(d)(iii) (a) has been revised to include principals and now reads as follows: "(a) programs and activities to recruit and retain appropriately certified and highly qualified teachers and appropriately certified principals through the development and implementation of recruitment strategies and retention incentives."

15. COMMENT:

The proposed rule should require boards of education to create policies regarding the filing of complaints under section 100.13(f), in consultation with building administrators, to ensure sound procedures and that all complaints are tracked and administered correctly. The words "implementation of" should be deleted from section 100.13(f) because they have potential to open door to a myriad of unintended complaints that will bog-down the process.

DEPARTMENT RESPONSE:

No revision is necessary. Section 100.13(f) already requires boards of education to assure that procedures are in place by which parents may

bring complaints concerning implementation of the district's contract of excellence, including procedures providing for the filing of complaints with the building principal with an appeal to the superintendent of schools or for filing of the complaint directly with the superintendent of schools, and providing for an appeal to the board of education, and an appeal of the board's determination to the Commissioner. Education Law section 211-d(7) authorizes "complaints concerning the implementation of the district's contract for excellence." Therefore, the term "implementation of" cannot be deleted from section 100.13(f).

16. COMMENT:

The proposed rule must ensure that allowable programs/activities predominately benefit the neediest students, and target schools with high concentrations of high need students, which may include, but should not be limited to, schools under registration review and schools in need of improvement.

DEPARTMENT RESPONSE:

Section 100.13(c)(2) was amended at the June 2007 Regents meeting to provide, among other things, that the Commissioner's approval shall be given to contracts demonstrating that the allowable programs and activities: (i) predominately benefit those students with the greatest educational needs; and (ii) predominately benefit those students in schools identified as requiring academic progress, or in need of improvement, or in corrective action, or restructuring and address the most serious academic problems in those schools.

17. COMMENT:

The proposed rule must require that contracts are clear, simple and easily understandable, show how much money will be spent on a school-by-school and program-by-program basis, and how these programs serve the neediest students and are designed to meet specific needs of specific students, including English language learners and students with disabilities.

DEPARTMENT RESPONSE:

The Department has been concerned about all of these issues. As a result, the Department developed a system for collecting information from school districts that included concise statements of achievement issues and special populations and the contract for excellence strategy. The system collects information at the school level for each of the allowable programs and activities included in the statute including metrics to measure the change that districts expect to occur as a result of the expenditure of contract for excellence dollars. In addition the system gathers information on the extent of targeting resources to students with the greatest educational needs.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Delegation of Authority Concerning Charter Schools

I.D. No. EDU-32-07-00007-P

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

Proposed action: Amendment of section 3.16 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 206 (not subdivided), 207 (not subdivided), 305(1), (2) and (20) and 2857 (1) and (1-a); and L. 2007, ch. 57, part D-2, section 7

Subject: Delegation of authority to conduct and hold public hearings concerning charter schools under Education Law section 2857 (1-a).

Purpose: To delegate to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857 (1-a).

Text of proposed rule: Section 3.16 of the Rules of the Board of Regents is amended, effective November 15, 2007, as follows:

§ 3.16 Delegation of authority with respect to [charter school complaints] *charter schools*.

(a) *Complaints against charter schools.* The Board of Regents delegates to the Commissioner of Education the authority to receive, investigate and respond to complaints presented to the Board of Regents pursuant to Education Law section 2855(4), the authority to issue appropriate remedial orders pursuant to Education Law section 2855(4), and the authority to place a charter school on probationary status and to develop and impose a remedial action plan pursuant to Education Law section 2855(3).

(b) *Hearings.* The Board of Regents delegates to the Commissioner of Education the authority to conduct and hold public hearings to solicit

comments from the community in connection with the issuance, revision or renewal of a charter pursuant to Education Law section 2857(1-a).

Text of proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Senior Deputy Commissioner of Education - P16, Education Department, 2M West Wing, Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: p16education@mail.nysed.gov

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

Education Law section 206 authorizes the Regents, any committee thereof, the Commissioner, the deputy and any associate and assistant commissioner of education and the counsel of the State Education Department to take testimony or hear proofs relating to their official duties, or in any matter which they may lawfully investigate.

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

Education Law section 305(1) provides that the Commissioner is the chief executive officer of the State system of education and of the Board of Regents, and charged with the enforcement of all general and special laws relating to the educational system of the State and the execution of all educational policies determined by Regents. Section 305(2) provides that the Commissioner shall have general supervision over all schools and institutions subject to the Education Law or any statute relating to education. Section 305(20) provides that the Commissioner shall have and execute such further powers and duties as he shall be charged with by the Regents.

Effective July 1, 2007, Education Law section 2857(1) was amended by section 7 of Part D-2 of Chapter 57 of the Laws of 2007 to require, among other things, school districts in which charter schools are located to hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter. In addition, a new Education Law section 2857(1-a) was enacted that provides that "[i]n the event the school district fails to conduct a public hearing, the board of regents shall conduct a public hearing to solicit comments from the community in connection with the issuance, revision, or renewal of a charter."

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to delegate to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a).

NEEDS AND BENEFITS:

The proposed amendment is necessary to delegate to the Commissioner of Education the Board's authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a). Having the Board of Regents personally conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter is not deemed to be the most appropriate and efficacious means to address this matter, considering the scope of duties of the Board, the limited number of times that the Board meets during the year, and the time demands placed on individual Board members. It has been determined that delegation of such responsibility to the Commissioner will provide for the most efficient and expeditious means to conduct such hearings.

COSTS:

(a) Costs to State government: none. The proposed amendment is necessary to delegate to the Commissioner the Board's authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's

charter pursuant to Education Law section 2857(1-a), and will not impose any additional costs on the State beyond those inherent in the statute.

(b) Costs to local government: none. The proposed amendment does not impose any costs on school districts or charter schools. The proposed amendment merely delegates to the Commissioner the Board's authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a).

(c) Cost to private regulated parties: none. The proposed amendment does not affect any private regulated parties.

(d) Cost to regulating agency for implementation and continued administration of this rule: none. The proposed amendment merely delegates to the Commissioner the Board's authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a). The proposed amendment will not impose any additional costs on the State Education Department beyond those inherent in the statute.

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty or responsibility upon school districts, charter schools or other local governments. It merely delegates to the Commissioner the Board's authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a).

PAPERWORK:

The proposed amendment does not impose any additional reporting, record keeping or other paperwork requirements upon school districts or charter schools. It merely delegates to the Commissioner the Board's authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a).

DUPLICATION:

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

ALTERNATIVES:

Having the Board of Regents personally conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter was not deemed to be the most appropriate and efficacious means to address this matter, considering the scope of duties of the Board, the limited number of times that the Board meets during the year, and the time demands placed on individual Board members. It has been determined that delegation of such responsibility to the Commissioner will provide for the most efficient and expeditious means to conduct such hearings.

FEDERAL STANDARDS:

There are no applicable Federal standards.

COMPLIANCE SCHEDULE:

The proposed amendment does not impose any compliance requirements or costs on charter schools, but merely delegates to the Commissioner the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a).

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment applies to school districts and charter schools, and will delegate to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a). The proposed amendment does not impose any economic impact, or 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:

EFFECT OF RULE:

The proposed rule applies to all school districts and charter schools in the State. There are currently 97 charter schools in existence.

COMPLIANCE REQUIREMENTS:

The proposed amendment does not establish any reporting, recordkeeping or other compliance requirements on school districts or charter schools. It merely delegates to the Commissioner of Education the Board of Re-

gents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a).

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

The proposed amendment does not impose any compliance costs on school districts or charter schools. It merely delegates to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a).

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any compliance requirements or compliance costs on school districts or charter schools. It merely delegates to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a). It has been determined that delegation of such responsibility to the Commissioner will provide for the most efficient and expeditious means to conduct such hearings.

LOCAL GOVERNMENT PARTICIPATION: Comments on the proposed amendment were solicited from school districts through the offices of the district superintendents of each supervisory district in the State. Copies of the proposed amendment have been provided to each charter school for review and comment.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts and charter schools within 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.

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

The proposed amendment does not establish any reporting, recordkeeping or other compliance requirements, or impose any additional professional services requirements on school districts or charter schools in rural areas. It merely delegates to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a).

COSTS:

The proposed amendment does not impose any compliance costs on school districts or charter schools in rural areas. It merely delegates to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a).

MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any compliance requirements or compliance costs on school districts or charter schools. It merely delegates to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a). Having the Board of Regents personally conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter is not deemed to be the most appropriate and efficacious means to address this matter, considering the scope of duties of the Board, the limited number of times that the Board meets during the year, and the time demands placed on individual Board members. It has been determined that delegation of such responsibility to the Commissioner will provide for the most efficient and expeditious means to conduct such hearings.

RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from the Department's Rural Advisory Committee. Comments on the proposed amendment were also solicited from school districts through the offices of the district superintendents of each supervisory district in the State. In addition, copies of

the proposed rule have been provided to each charter school for review and comment.

Job Impact Statement

The proposed amendment applies to school districts and charter schools, and will delegate to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a). The proposed amendment 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 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Civil Enforcement Proceedings

I.D. No. EDU-32-07-00008-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 31 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6506(1), 6512(1), 6513(1), and 6516(1)-(7)

Subject: Civil enforcement proceedings for the unauthorized practice of the professions and the unauthorized use of a professional title.

Purpose: To implement Education Law section 6516, as added by chapter 615 of the Laws of 2003, by specifying the requirements and procedures for the submission of complaints, investigations, hearing requests and stay requests; the content of cease and desist orders; the standards for the imposition of civil penalties and restitution and the procedures for hearings and appeals.

Substance of proposed rule (Full text is posted at the following State website: www.op.nysed.gov): The Board of Regents proposes to add Part 31 to the Rules of the Board of Regents relating to civil enforcement proceedings for the unauthorized practice of the professions and the unauthorized use of a professional title.

Section 31.1 provides that the new Part applies to all proceedings commenced pursuant to section 6516 of the Education Law.

Subdivision (a) of section 31.2 provides that any person or organization who has reasonable cause to believe that a person has violated any provision of section 6512 or 6513 of the Education Law may file a written complaint, on a form prescribed by the Commissioner, with the professional conduct officer. This subdivision specifies the procedure for filing a complaint and the information to be included in such complaint.

Subdivision (b) of section 31.2 authorizes the department to investigate a complaint, when appropriate, or initiate its own investigation if the department has information indicating that a violation of section 6512 or 6513 has occurred. The results of such investigation must then be forwarded to the professional conduct officer, or his designee, for consultation with a member of the applicable state professional board to determine whether there is substantial evidence of unauthorized practice or unauthorized use of a title and whether further action is warranted.

Subdivision (a) of section 31.3 authorizes the department to issue a cease and desist order, on a form prescribed by the commissioner, if the department has reasonable cause to believe that a person has violated section 6512 or 6513 of the Education Law.

Subdivision (b) of section 31.3 specifies the content of cease and desist orders, including a particularized description of the alleged violation; an order to cease the specified unlawful activity; written notification of the respondent's right to request a hearing within 30 days of receipt of the cease and desist order and where a hearing request form can be obtained; written notification of respondent's right to request a stay of the cease and desist order at the time a hearing is requested and where a form to request a stay can be obtained, written notification of respondent's right to file an answer to the cease and desist order and written notification of respondent's rights at a hearing.

Subdivision (c) of section 31.3 specifies the service requirements for cease and desist orders.

Subdivision (d) of section 31.3 specifies that whenever the department concludes that civil penalties and/or restitution may be warranted, it shall serve a notice, specifying the allegations of unlawful activity and the department's intention to order the respondent to make restitution and/or

impose a civil penalty. The department shall include in such notice a notice of hearing regarding the civil penalty and/or restitution sought, unless a hearing is currently pending. The notice shall be on a form prescribed by the Commissioner and should specify the civil penalty sought for each violation.

Subdivision (a) of section 31.4 authorizes the Department to impose a civil penalty of up to \$5,000 for each violation whenever the department concludes that civil penalties may be warranted.

Paragraph (1) of subdivision (a) of section 31.4 sets forth the factors to be considered in determining whether to impose a civil penalty.

Paragraph (2) of subdivision (a) of section 31.4 states that in the event that respondent violates a cease and desist order during the course of a hearing or appeal, the department may deem such violation to constitute sufficient cause upon which to seek a civil penalty.

Subdivision (b) of section 31.4 authorizes the Department to order restitution to any person who has an interest in money or property acquired by the respondent as a result of the unauthorized practice of a profession or the unauthorized use of a professional title.

Paragraph (1) of subdivision (b) of section 31.4 sets forth the factors to be considered in determining whether to order restitution.

Paragraph (2) of subdivision (b) of section 31.4 provides that any person who seeks to make a claim for restitution based upon respondent's unlawful practice or unauthorized use of a professional title shall submit a written claim for restitution to the department, on a form prescribed by the Commissioner, and specifies the information to be included in a claim for restitution.

Subdivision (a) of section 31.5 requires a respondent to request a hearing conducted by the department within 30 days of receipt of a cease and desist order if the respondent wishes to contest the cease and desist order.

Subdivision (b) of section 31.5 requires hearing requests to be in writing, on a form prescribed by the Commissioner, and specifies the information to be included in the hearing request.

Subdivision (c) section 31.5 provides the address for the submission of hearing requests.

Subdivision (d) of section 31.5 permits the respondent to file an answer to a cease and desist order and sets forth the filing and service requirements for such answer and specifies the information to be included in an answer.

Section 31.6 permits the respondent to file a written application for a stay of the cease and desist order with the professional conduct officer, on a form prescribed by the commissioner, stating the facts and the law upon which stay shall be granted.

Subdivision (a) of section 31.6 sets forth the procedures for, and information to be included in, a stay request.

Subdivision (b) of section 31.6 authorizes the hearing officer to grant a stay pending an ultimate determination, if in his or her judgment, the issuance of such stay is necessary, upon consideration respondent's likelihood of success on the merits, any irreparable harm and a balancing of the equities. This subdivision requires the hearing officer to issue a decision on the stay request within five business days of the request for a stay.

Subdivision (a) of section 31.7 requires the hearing officer to schedule a date for the hearing within 15 days of receipt of a hearing request, following consultation with the parties. Additional hearing dates may be set after consultation with the parties.

Subdivision (b) of section 31.7 authorizes the hearing officer to grant adjournments for good cause upon written request by a party.

Subdivision (c) of section 31.7 requires that the parties exchange evidence and witness lists at least five days prior to the initial hearing date and permits the hearing officer to allow additional evidence and witnesses, at his or her discretion.

Subdivision (d) requires that the Department be represented by an attorney and permits the respondent to appear personally or be represented by an attorney.

Subdivision (e) of section 31.7 allows post-hearing submissions if they are authorized in advance of the submission by the hearing officer.

Subdivision (f) of section 31.7 places the burden of proof on the department and requires the department to prove by a preponderance of the evidence the facts and circumstances constituting a violation of section 6512 or 6513 of the Education Law.

Subdivision (g) of section 31.7 specifies the information to be included in the hearing officer's written report.

Subdivision (h) of section 31.7 requires service of the written report on the parties, together with notice of the parties right to an administrative hearing within 10 days of the conclusion of the hearing. This subdivision also clarifies that a hearing shall be deemed concluded upon the hearing

officer's receipt of the transcript and any post hearing submissions authorized by the hearing officer.

Paragraph (1) of subdivision (h) of section 31.7 specifies the content of the notice of appeal, which is to be contained in the hearing officer's written report.

Paragraph (2) of subdivision (h) specifies the service requirements for the written report and the notice of an administrative appeal.

Subdivision (i) of section 31.7 provides that the decision of the hearing officer shall be final, unless it is appealed to the Regents Review Committee within 20 days of the receipt of the hearing officer's report.

Subdivision (a) of section 31.8 provides that either party may appeal the hearing officer's report to the Regents Review Committee by filing a notice of appeal and establishes the form and content of the notice of appeal.

Subdivision (b) of section 31.8 sets forth the composition of the Regents Review Committee.

Subdivision (c) of section 31.8 provides that the respondent has the right to appear before the Regents Review Committee, or the Regents Review Committee may require the respondent to appear. This subdivision also sets forth the information to be included in the notification of the Regents Review Committee meeting.

Subdivision (d) of section 31.8 requires the Regents Review Committee to review the hearing officer's report and determine whether the department has met its burden of proving, by a preponderance of the evidence, that respondent has violated section 6512 or 6513 of the Education Law and to support an order of restitution and/or whether the civil penalty imposed by the hearing officer was arbitrary and capricious. This subdivision also specifies what information the Regents Review Committee may consider when making its determination.

Subdivision (e) of section 31.8 requires the Regents Review Committee to transmit a written report of its review and a recommendation to the Board of Regents. The Board of Regents shall review the report and recommendation and determine whether respondent has violated each charge identified in the cease and desist order and determine what penalties and/or restitution, if any, to impose.

Paragraph (1) of subdivision (e) of section 31.8 sets forth the information that the Board of Regents may consider in its review of the report and recommendation of the Regents Review Committee.

Paragraph (2) of subdivision (e) of section 31.8 sets forth the requirements for service of the order of the Board of Regents and requires that such order contain written notification that the decision of the Board of Regents is final and binding and that review of such order may be obtained in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules commenced in Supreme Court, Albany County. The written notification must also contain a statement that the decision shall not be stayed or enjoined unless the party applies to the supreme court pursuant to Article 63 of the Civil Practice Law and Rules.

Subdivision (f) of section 31.8 authorizes the Regents Review Committee and the Board of Regents to remand a proceeding to the hearing officer.

Text of proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Frank Munoz, Associate Commissioner, Office of the Professions, State Education Department, 2nd Fl. West Wing, Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 486-1765, e-mail: opopr@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 (1) of section 6506 of the Education Law authorizes the Board of Regents to supervise the practice of the professions and to promulgate rules to carry out such supervision.

Paragraph (1) of Section 6512 makes it a felony for any unauthorized person to practice, offer to practice, or hold himself out as being able to practice in any profession in which a license is a prerequisite to such practice.

Paragraph (1) of Section 6513 makes it a misdemeanor for any unauthorized person to use a professional title.

Section 6516 of the Education Law authorizes the State Education Department to issue cease and desist orders, conduct administrative pro-

ceedings, impose civil penalties and order restitution when a person is engaged in the unauthorized practice of a profession or the unauthorized use of a professional title.

2. LEGISLATIVE OBJECTIVES:

In 2003, the Legislature enacted Section 6516 of the Education Law, authorizing the State Education Department to issue cease and desist orders, conduct administrative proceedings, impose civil penalties and order restitution in instances of the unauthorized practice of a profession or the unauthorized use of a professional title under Sections 6512 and 6513 of the Education Law. The proposed amendment implements the requirements of Section 6516 of the Education Law, by specifying the requirements and procedures for the submission of complaints, investigations, hearing requests and stay requests; the content of cease and desist orders; the standards for the imposition of civil penalties and restitution and the procedures for hearings and appeals.

3. NEEDS AND BENEFITS:

Section 6512 of the Education Law makes it a crime for any unauthorized person to practice or to offer to practice a profession. Similarly, Section 6513 of the Education Law makes it a crime for an unauthorized person to use a professional title. Prior to 2003, the Education Department investigated alleged violations of these sections, and, in situations where such violations were substantiated, the Education Department reported such violations to the attorney general with a request for prosecution.

In 2003, the Legislature enacted Section 6516 of the Education Law, authorizing the State Education Department to issue cease and desist orders, conduct administrative proceedings, impose civil penalties of up to \$5,000 per violation and order restitution in instances of the unauthorized practice of a profession or the unauthorized use of a professional title. Specifically, this statute permits the Department to issue a cease and desist order when the Department has reasonable cause to believe that any person has violated section 6512 or 6513 of the Education Law. The cease and desist order must advise the respondent of his or her right to contest the order through a hearing before a hearing officer designated by the Department and of his or her right to request a stay of the order. The decision of the hearing officer is final, unless appealed to a Regents Review Committee by the respondent or the Department. The Regents Review Committee then makes a report to the Board of Regents which makes the final administrative decision. Review of that decision is available by means of an Article 78 proceeding in Albany County Supreme Court.

The proposed amendment is needed to implement the requirements of Section 6516 of the Education Law by specifying the requirements for the submission of complaints, investigations, hearing requests and stay requests; the contents of a cease and desist order; the standards for the imposition of civil penalties and restitution and the procedures for hearings and appeals.

4. COSTS:

(a) Costs to State Government: The proposed amendment implements statutory requirements. It will not impose any costs on State government beyond those necessary to implement the procedures required by the legislation.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None. The proposed amendment will not impose any cost on private regulated parties, beyond those imposed by the statute.

(d) Cost to the regulatory agency: As stated above in "Costs to State Government", the proposed amendment does not impose costs on the State Government, including the State Education Department, beyond those necessary to implement the procedures required by the legislation.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment implements the requirements of section 6516 of the Education Law, as amended by chapter 615 of the Laws of 2003, relating to the establishment of administrative procedures regarding complaints of the unauthorized practice of the professions or the unauthorized use of a professional title. It does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment will not require any paperwork beyond that required by the statute but does specify the content of statutorily established documents, including the hearing request, the stay request, the answer to a cease and desist order and the administrative appeal.

7. DUPLICATION:

The proposed amendment does not duplicate other existing State or Federal requirements. Rather, it complements the ongoing authority of the New York State Attorney General to criminally prosecute the unauthorized practice of a profession or the unauthorized use of a professional title, and

the authority of the Attorney General and the State Education Department to apply to the State Supreme Court for an order enjoining or restraining such activities.

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment, and none were considered. The amendment implements statutory requirements.

9. FEDERAL STANDARDS:

There are no federal standards relating to administrative proceedings to address complaints regarding the unauthorized practice of a profession or the unauthorized use of a professional title.

10. COMPLIANCE SCHEDULE:

The proposed amendment must be complied with on its effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

Section 6516 of the Education Law, as added by Chapter 615 of the Laws of 2003, authorizes the State Education Department to issue cease and desist orders, conduct administrative proceedings, impose civil penalties and order restitution in instances of the unauthorized practice of a profession or the unauthorized use of a professional title. The proposed amendment implements the requirements of Section 6516 of the Education Law, by specifying the requirements and procedures for the submission of complaints, investigations, hearing requests and stay requests; the content of cease and desist orders; the standards for the imposition of civil penalties and restitution and the procedures for hearings and appeals. The proposed amendment will have no effect on small businesses and does not regulate local governments.

Because it is evident from the nature of this proposed amendment that it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one was not prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to all persons practicing a licensed profession or utilizing a professional title without being authorized to do so, including those who live in the 44 rural counties of New York State with less than 200,000 inhabitants and the 71 towns in urban counties of New York State 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 needed to implement the requirements of section 6516 of the Education Law, as added by Chapter 615 of the Laws of 2003, authorizing the State Education Department to issue cease and desist orders, conduct civil enforcement proceedings, impose civil penalties and order restitution where persons have engaged in the unauthorized practice of a profession or the unauthorized use of a professional title. The proposed amendment implements the requirements of Section 6516 of the Education Law, by specifying the requirements and procedures for the submission of complaints, investigations, hearing requests and stay requests; the contents of cease and desist orders; the standards for the imposition of civil penalties and restitution and the procedures for hearings and appeals.

The proposed amendment establishes procedures for filing a complaint when a person or organization has reasonable cause to believe that a person has violated any provision of section 6512 or 6513 of the Education Law. Section 6512 of the Education Law makes it a crime for any unauthorized person to practice or to offer to practice a profession. Similarly, Section 6513 of the Education Law makes it a crime for an unauthorized person to use a professional title. If appropriate, the department will investigate the complaint, and the results of such investigation will be referred to the professional conduct officer, or his designee. After consultation with a professional member of the applicable state board for the profession, the professional conduct officer, or his designee, shall determine whether there is substantial evidence of the unauthorized practice of a profession or unauthorized use of a professional title to warrant the issuance of a cease and desist order.

Whenever the department has reasonable cause to believe that a person has violated any provision of section 6512 or 6513 of the Education Law, the department may issue and serve upon such person a written order to cease and desist from such violation. The proposed amendment describes the content of the cease and desist order and requires that whenever the department concludes that civil penalties and/or restitution may be warranted, it serve, along with the cease and desist order, a notice of hearing

on the allegations of unlawful activity and the department's intention to order respondent to make restitution and/or impose a civil penalty.

The proposed amendment also sets forth the factors to be considered in determining whether to impose a civil penalty and/or restitution. The amendment further provides that if a respondent contests the cease and desist order, he or she shall request that a hearing be conducted within 30 days of receipt of such cease and desist order and the amendment sets forth the requirements for a request for a hearing.

The proposed amendment permits a respondent to request a stay of the cease and desist order and sets forth the requirements and procedures for requesting a stay. The amendment also establishes procedures for the hearing and requirements for the evidence that may be presented at the hearing.

The amendment establishes procedures for an appeal of the hearing officer's decision to the Regents Review Committee and for the review of such decision by the Board of Regents. The proposed regulation will not require regulated parties, including those located in rural areas, to hire professional services in order to comply, and will not impose any additional recordkeeping requirements.

3. COSTS:

The proposed regulation does not impose any additional costs on public or private entities located in rural areas, beyond those imposed by the statute.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements statutory requirements and makes no exception for individuals who live or work in rural areas. The Department has determined that the requirements should apply to all individuals practicing a licensed profession or utilizing a professional license, without being authorized to do so, to protect consumers. Because of the nature of the proposed rules, alternative approaches for rural areas were not considered.

5. RURAL AREAS PARTICIPATION:

Feedback concerning rules to implement section 6516 of the Education Law was sought from statewide organizations representing parties having an interest in professional licensure. These entities have members who live or work in rural areas.

Job Impact Statement

Section 6516 of the Education Law, as added by Chapter 615 of the Laws of 2003, authorizes the State Education Department to issue cease and desist orders, conduct administrative proceedings, impose civil penalties and order restitution in instances of the unauthorized practice of a profession or the unauthorized use of a professional title. The proposed amendment implements the requirements of Section 6516 of the Education Law, by specifying the requirements and procedures for the submission of complaints, investigations, hearing requests and stay requests; the content of cease and desist orders; the standards for the imposition of civil penalties and restitution and the procedures for hearings and appeals.

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fiscal Maintenance of Effort

I.D. No. EDU-32-07-00009-P

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

Proposed action: Addition of section 170.13 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided) and 305(1) and (2) and 2576(5-b); and L. 2007, ch. 57, part B, section 9

Subject: Fiscal maintenance of effort.

Purpose: To define "city funds" for purposes of determining maintenance of effort in cities having a population of one hundred twenty-five thousand or more inhabitants and less than one million inhabitants pursuant to Education Law, section 2576(5-b), including State and private funding sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement.

Text of proposed rule: Section 170.13 of the Regulations of the Commissioner of Education is added, effective November 15, 2007, as follows:

§ 170.13 Definition of “city funds” for purposes of determining maintenance of effort for cities having a population of one hundred twenty-five thousand or more inhabitants and less than one million inhabitants pursuant to Education Law section 2576(5-b).

For purposes of this section and Education Law section 2576(5-b), “city funds” shall mean funds of each city having a population of one hundred twenty-five thousand or more inhabitants and less than one million inhabitants derived from any source except:

(a) funds contained within the capital budget;
 (b) funds from county sales tax revenues shared with such city;
 (c) funds derived from any federal source; and
 (d) funds derived from any state or private sources over which the city has no discretion, including:

- (1) gifts for specific purposes;
- (2) grants in aid for specific purposes; or
- (3) insurance proceeds authorized pursuant to Education Law section 1718(2) in addition to that which has been previously budgeted.

Text of proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Senior Deputy Commissioner of Education - P16, Education Department, 2M West Wing, Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: p16education@mail.nysed.gov

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

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

Education Law section 2576(5-b), as added by section 9 of Part B of Chapter 57 of the Laws of 2007, requires each school district in cities having a population of one hundred twenty-five thousand or more inhabitants and less than one million inhabitants to maintain their fiscal effort in support of education. The statute requires the Commissioner to establish by regulation the definition of state and private sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement.

LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the authority conferred by the above statutes and is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, by defining state and private sources over which the city has no discretion.

NEEDS AND BENEFITS:

The proposed rule is needed to implement the statutory requirements. The rule establishes a definition of “city funds” for purposes of determining the fiscal maintenance of effort requirement in Education Law section 2576(5-b), including state and private funding sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement, thus ensuring that the requirement pertains only to funds over which the cities have control.

State Education Department research on the maintenance of local effort in support of schools has documented that school districts tend to reduce local effort when they receive State Aid increases. Without a statutory requirement or formula structure that requires maintenance of local effort there is no way to ensure that State Aid increases provided for the purpose of increasing student achievement will result in additional programs and services for students, rather than tax relief or the funding of other city services.

COSTS:

- a. Costs to State government: None.
- b. Costs to local governments: None.
- c. Costs to private, regulated parties: None.
- d. Costs to the Education Department of implementation and continuing compliance: None.

The rule is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, and does not impose any costs beyond those inherent in the statute. The rule establishes a definition of “city funds” for purposes of determining the fiscal maintenance of effort requirement in Education Law section 2576(5-b), including state and private funding sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement, thus ensuring that the requirement pertains only to funds over which the cities have control.

LOCAL GOVERNMENT MANDATES:

The proposed rule is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, and does not impose any additional program, service, duty or responsibility on local governments. The rule establishes a definition of “city funds” for purposes of determining the fiscal maintenance of effort requirement in Education Law section 2576(5-b), including state and private funding sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement, thus ensuring that the requirement pertains only to funds over which the cities have control.

PAPERWORK:

The proposed rule is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, and does not impose any reporting requirements beyond those inherent in the statute. The rule establishes a definition of “city funds” for purposes of determining the fiscal maintenance of effort requirement in Education Law section 2576(5-b), including state and private funding sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement, thus ensuring that the requirement pertains only to funds over which the cities have control. School districts will demonstrate compliance with the proposed rule through the submission of fiscal data submitted for the receipt of State aid.

DUPLICATION:

The proposed rule will not duplicate, overlap or conflict with any other State or federal statute or regulation, and is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007.

ALTERNATIVES:

There were no significant alternatives and none were considered. Education Law section 2576(5-b) requires the Commissioner to establish by regulation the definition of state and private sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the statute’s maintenance of effort requirement, thus ensuring that the requirement pertains only to funds over which the cities have control.

FEDERAL STANDARDS:

The proposed rule is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, and does not exceed any minimum federal standards. Federal maintenance of effort requirements exist for specific federal funding programs, but there are no substantive federal standards that are applicable to the use of state funds for education.

COMPLIANCE SCHEDULE:

The proposed rule is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007. The maintenance of effort requirements imposed on certain school districts are effective for school year 2007-08. School districts will submit data demonstrating they maintained their effort in relation to the prior school year in their annual financial reports filed with the State Education Department on September 1 of each year.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, relating to the calculation of fiscal maintenance of effort requirements for certain city school districts, by defining funds from state and private sources over which the city has no discretion. The proposed rule 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 rule 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:

EFFECT OF RULE:

The proposed rule applies to those four school districts in the State that have been determined to meet the statutory requirements in Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, necessitating compliance with the statute's maintenance of effort requirements. These are the large city school districts of Rochester, Syracuse, Buffalo and Yonkers.

COMPLIANCE REQUIREMENTS:

The proposed rule is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, and does not impose any additional reporting, recordkeeping or other compliance requirements on affected school districts. The rule establishes a definition of "city funds" for purposes of determining the fiscal maintenance of effort requirement in Education Law section 2576(5-b), including state and private funding sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement, thus ensuring that the requirement pertains only to funds over which the cities have control.

PROFESSIONAL SERVICES:

Compliance with the proposed rule can be incorporated in existing district procedures for budgeting, accounting and reporting and does not necessitate any additional professional services.

COMPLIANCE COSTS:

The rule is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, and does not impose any costs beyond those inherent in the statute. The rule establishes a definition of "city funds" for purposes of determining the fiscal maintenance of effort requirement in Education Law section 2576(5-b), including state and private funding sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement, thus ensuring that the requirement pertains only to funds over which the cities have control.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, and does not impose any additional technological requirements or costs on affected school districts. The rule merely establishes a definition of "city funds" for purposes of determining the fiscal maintenance of effort requirement in Education Law section 2576(5-b), including state and private funding sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement, thus ensuring that the requirement pertains only to funds over which the cities have control.

MINIMIZING ADVERSE IMPACT:

Education Law section 2576(5-b), as added by section 9 of Part B of Chapter 57 of the Laws of 2007, requires each school district in cities having a population of one hundred twenty-five thousand or more inhabitants and less than one million inhabitants to maintain their fiscal effort in support of education. The statute requires the Commissioner to establish by regulation the definition of state and private sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement.

The proposed rule is necessary to implement Education Law section 2576(5-b) and is applicable to the four large city school districts of Rochester, Syracuse, Buffalo and Yonkers. Consequently, the major provisions of the proposed rule are statutorily imposed and it is not feasible to establish differing compliance or reporting requirements or timetables or to exempt affected school districts from coverage by the rule. The development of the proposed rule took into account Department consultation with the large city districts over the years.

LOCAL GOVERNMENT PARTICIPATION:

Guidance memos to the regulated parties that are local governments – school districts and their component schools – were sent out from the Senior Deputy Commissioner for P-16 education of the State Education Department on April 4, and April 9, 2007. In these two documents, the Education Department sought the input, impact, questions and feedback of the proposed rule on districts as well as communicating in broad terms, the nature of the requirement. Comments on the proposed amendment were solicited from school districts through the offices of the district superintendents of each supervisory district in the State.

Rural Area Flexibility Analysis

The proposed rule is necessary to implement Education Law section 2576(5-b), as added by section 9 of Part B of Chapter 57 of the Laws of 2007, which requires each school district in cities having a population of one hundred twenty-five thousand or more inhabitants and less than one million inhabitants to maintain their fiscal effort in support of education, and further requires the Commissioner to establish by regulation the definition of state and private sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement.

Accordingly, the proposed rule applies to the large city school districts of Rochester, Syracuse, Buffalo and Yonkers, and does not apply to any school districts 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. The proposed rule does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on public or private entities in rural areas. Because it is evident from the nature of the proposed rule that it does not affect rural areas, no further measures were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed amendment is necessary to implement Education Law section 2576(5-b), as added by Chapter 57 of the Laws of 2007, relating to the calculation of fiscal maintenance of effort requirements for certain city school districts, by defining funds from state and private sources over which the city has no discretion. The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the rule that it 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.

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

Requirements Related to Licensure as a Licensed Clinical Social Worker

I.D. No. EDU-32-07-00010-P

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

Proposed action: Amendment of sections 74.2, 74.3, 74.4 and 74.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6501, 6504, 6507(2)(a), 7704(2)(c), (d) and 7705

Subject: Requirements relating to licensure as a licensed clinical social worker, limited permits to practice licensed clinical social work and the supervision of clinical social work services provided by a licensed master social worker.

Purpose: To revise the requirements for admission to an examination for licensure as a licensed clinical social worker. The amendment also clarifies the supervision requirements for a licensed master social worker practicing licensed clinical social work and the supervised experience requirements for licensure as a licensed clinical social worker and for limited permits to practice licensed clinical social work

Text of proposed rule: 1. Paragraph (2) of subdivision (b) of section 74.2 of the Regulations of the Commissioner of Education is amended, effective November 15, 2007, as follows:

(2) Requirements for admission to examination for licensure as a licensed clinical social worker.

(i) To be admitted to the licensing examination, the candidate shall be required to:

(a) file an application for licensure with the department;

(b) pay the fees for the licensure application and first registration period; [and]

(c) present satisfactory evidence of having met the education requirement for licensure as a clinical social worker, as prescribed in section 74.1(c) of this Part, including receipt of the social work degree; and

(d) present satisfactory evidence of having met the experience requirements for licensure as a clinical social worker, as prescribed in section 74.3 of this Part.

2. Clause (e) of subparagraph (i) of paragraph (3) of subdivision (a) of section 74.3 of the Regulations of the Commissioner of Education is amended, effective November 15, 2007, as follows:

(e) the supervisor provides at least one hour per week or two hours every other week of in-person individual or group clinical supervision, provided that [no more than 50 percent of the required hours of in-person supervision may be group] *at least two hours per month shall be individual clinical supervision.*

3. Subparagraph (v) of paragraph (3) of subdivision (b) of section 74.4 of the Regulations of the Commissioner of Education is amended, effective November 15, 2007, as follows:

(v) the supervisor provides at least one hour per week or two hours every other week of in-person individual or group clinical supervision, provided that [no more than 50 percent of the required hours of in-person supervision may be group] *at least two hours per month shall be individual clinical supervision.*

4. Subparagraph (v) of paragraph (1) of subdivision (b) of section 74.6 of the Regulations of the Commissioner of Education is amended, effective November 15, 2007, as follows:

(v) the supervisor provides at least one hour per week or two hours every other week of in-person individual or group clinical supervision, provided that [no more than 50 percent of the required hours of in-person supervision may be group] *at least two hours per month shall be individual clinical supervision.*

Text of proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Frank Munoz, Associate Commissioner, State Education Department, Office of the Professions, Education Bldg., 2nd Fl., West Wing, 89 Washington Ave., Albany, NY 12234, (518) 486-1765, e-mail: 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.

Section 6501 of the Education Law requires any applicant seeking admission to practice a profession in this state to obtain a license issued by the State Education Department.

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

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

Paragraph (c) of subdivision (2) of section 7704 of the Education Law establishes the experience requirements for licensure as a licensed clinical social worker.

Paragraph (d) of subdivision (2) of section 7704 of the Education Law establishes the examination requirements for licensure as a licensed clinical social worker.

Section 7705 of the Education Law authorizes the State Education Department to issue a limited permit to practice social work as a licensed clinical social worker to an applicant whose qualifications have been approved for admission to the examination.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes by revising the requirements relating to admission to the licensing examination for licensure as a clinical social worker. The proposed amendment also clarifies the supervised experience requirements for licensure as a clinical social worker and for limited permits to practice licensed social work and the supervision requirements for clinical social work services provided by a licensed master social worker.

3. NEEDS AND BENEFITS:

Currently, section 74.2(b)(2) of the Regulations of the Commissioner of Education permits an applicant for licensure as a licensed clinical social worker to be admitted to the licensing examination prior to meeting any experience requirements. The proposed amendment revises these requirements to require candidates to present satisfactory evidence of completion of the experience requirements set forth in section 74.3 of the Regulations of the Commissioner of Education prior to admission to the licensing examination. This amendment is needed to conform to the content of the licensing examination, which is based on the expectation that the applicant will have completed at least two years of post-degree supervised experience.

The amendment also clarifies the supervision requirements for a licensed master social worker practicing licensed clinical social work and the supervised experience requirements for licensure as a licensed clinical social worker and for limited permits to practice licensed clinical social work. Currently, the regulations require that a supervisor provide at least one hour per week or two hours every other week of in-person individual or group clinical supervision, provided that no more than 50 percent of the required hours of in-person supervision may be group clinical supervision. The proposed amendment clarifies the current regulations to require supervision of at least one hour per week of individual or group supervision, with at least two hours of individual supervision each month. This amendment is needed to eliminate confusion in the supervised experience requirements in the existing regulations.

4. COSTS:

(a) Costs to State government. The regulation will not impose any additional cost on State government.

(b) Cost to local government. None.

(c) Cost to private regulated parties. None.

(d) Cost to the regulatory agency. As stated above in Costs to State government, the proposed amendment does not impose any costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty, or responsibly upon local governments.

6. PAPERWORK:

The proposed regulation requires each candidate for licensure as a licensed clinical social worker to present satisfactory evidence of having met the prescribed experience requirements prior to admission to the examination for licensure as a licensed clinical social worker.

7. DUPLICATION:

The proposed regulation does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

There are no viable alternatives to the proposed regulation and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards for the licensure of licensed clinical social workers.

10. COMPLIANCE SCHEDULE:

The amendment will be effective on its stated effective date. Because of the nature of the proposed amendment, no additional period of time is needed to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendment revises the requirements for admission to an examination for licensure as a licensed clinical social worker. The amendment also clarifies the supervision requirements for a licensed master social worker practicing licensed clinical social work and the supervised experience requirements for licensure as a licensed clinical social worker and for limited permits to practice licensed clinical social work. It does not impose any adverse economic impact, reporting, recordkeeping, or other compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed regulation 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. The proposed amendment revises the requirements for admission to an examination for licensure as a licensed clinical social worker. The amendment also clarifies the supervision requirements for a licensed master social worker practicing licensed clinical social work and the experience requirements for licensure as a licensed clinical social worker and for limited permits to practice licensed clinical social work. There are currently 22,256 licensed clinical social workers registered to practice in New York State, about 11 percent of which reside in rural areas.

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

The proposed amendment revises the requirements for entry to the licensing examination for licensure as a licensed clinical social worker. Specifically, the amendment requires all candidates to present satisfactory evidence that they have completed the experience requirements set forth in section 74.3 of the Regulations of the Commissioner of Education.

The proposed regulation will not require regulated parties, including those located in rural areas, to hire professional services in order to comply, and will not impose any additional recordkeeping requirements.

3. COSTS:

The proposed regulation does not impose additional costs on applicants for licensure as a licensed clinical social worker beyond the costs imposed by Section 7704 of the Education Law.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment revises the requirements for admission to an examination for licensure as a licensed clinical social worker. The amendment also clarifies the supervision requirements for a licensed master social worker practicing licensed clinical social work and the experience requirements for licensure as a licensed clinical social worker and for limited permits to practice licensed clinical social work. Because of the nature of the proposed amendment, the State Education Department does not believe it to be warranted to establish different requirements for licensed clinical social workers and/or licensed master social workers who live or work in rural areas.

5. RURAL AREAS PARTICIPATION:

Comments on the proposed regulations were solicited from statewide organizations representing all parties having an interest in the practice of licensed clinical social work. Included in this group were the State Board for Social Work and professional associations representing the social work profession. These groups have members who live or work in rural areas. Also, the Department solicited comment from all colleges and universities in the State that offer social work programs, including those located in rural areas, and public and private entities, including state and local governments, that employ individuals that live or work in rural areas. Each organization has been provided notice of the proposed rule making and an opportunity to comment.

Job Impact Statement

The proposed amendment revises the requirements for admission to an examination for licensure as a licensed clinical social worker. The amendment also clarifies the supervision requirements for a licensed master social worker practicing licensed clinical social work and the experience requirements for licensure as a licensed clinical social worker and for limited permits to practice licensed clinical social work. The proposed amendment would not have a substantial adverse impact on the number of jobs and employment opportunities in the field of social work. In fact, the proposed amendment will have no impact on the number of jobs and employment opportunities in this field. Because it is evident from the nature of the proposed amendment that it would have no impact on jobs 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

State Aid for Public Library Construction

I.D. No. EDU-32-07-00011-P

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

Proposed action: Amendment of section 90.12 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 215 (not subdivided) and 273-a5; and L. 2007, ch. 53, section 1; L. 2007, ch. 57, part B, section 4

Subject: State aid for public library construction.

Purpose: To prescribe eligibility requirements and criteria for applications for State aid for library construction, and to conform the commissioner's regulations to recent changes made to Education Law, section 273-a.

Text of proposed rule: 1. Paragraph (5) of subdivision (a) of section 90.12 of the Regulations of the Commissioner of Education is amended, effective November 15, 2007, as follows:

(5) Renovation means the overall improvement or conversion of an existing building, *exclusive of routine maintenance*, resulting in increased operational efficiency and economy.

2. Subdivision (c) of section 90.12 of the Regulations of the Commissioner of Education is amended, effective November 15, 2007, as follows:

(c) Content of applications. Each application shall assure that:

(1) . . .

(2) the nonstate share of the cost of the project is or will be available[, that];

(3) the project has been started or will begin within 180 days after approval by

the commissioner[,] and [that the project] will be completed promptly and in accordance with the application;

[(3)] (4) the approved project will be conducted in accordance with all applicable Federal, State, and local laws and regulations;

[(4)] (5) the project has not been completed prior to the date of the application;

[(5)] for all new projects or] (6) where [otherwise] required by law, competitive bidding procedures will be followed; and

[(6)] (7) the premises constructed, acquired, renovated, rehabilitated or leased will be usable for library purposes for at least [20] 10 years from completion of the project.

3. Paragraph (1) of subdivision (e) of section 90.12 of the Regulations of the Commissioner of Education is amended, effective November 15, 2007, as follows:

(1) Costs eligible for approval shall include:

(i) . . .

(ii) . . .

(iii) . . .

(iv) purchase and installation of initial equipment and furnishings as a project component of subparagraphs (i), (ii) or (iii) of this paragraph;

(v) site preparation and grading as a project component of subparagraphs (i), (ii) or (iii) of this paragraph;

(vi) replacement of a library building's mechanicals, including, but not limited to, heating, ventilation, air conditioning, cooling, electrical, and plumbing systems;

(vii) replacement of permanent components of a library building, including, but not limited to, windows, doors, roofs, and lighting systems;

(viii) supervision of the construction, renovation or rehabilitation; and

(ix) such other costs as may be approved by the commissioner.

4. Paragraph (2) of subdivision (e) of section 90.12 of the Regulations of the Commissioner of Education is amended, effective November 15, 2007, as follows:

(2) Costs ineligible for approval shall include, but shall not be limited to:

(i) . . .

(ii) . . .

(iii) . . .

(iv) purchase of books and other library materials; [and]

(v) landscaping; and

(vi) routine maintenance.

5. Subdivision (f) of section 90.12 of the Regulations of the Commissioner of Education is amended, effective November 15, 2007, as follows:

(f) Schedule of payment of State aid for library construction. (1) [Ninety-percent] *Fifty-percent* payment of awarded State aid for approved costs of the project will be made after notification of applicant by the commissioner of approval for funding.

(2) *Forty percent of such aid shall be payable in the State fiscal year following the year in which funding was provided.*

(3) The 10-percent final payment will be made after submission of satisfactory evidence that the project has been completed *in accordance with the terms of the approved application* [according to the approved application and has been accepted by the applicant].

Text of proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Janet M. Welch, State Librarian and Assistant Commissioner for Libraries, Education Department, Office of Cultural Education, Rm. 10C34, Albany, NY 12230, (518) 474-5930, e-mail: jwelch2@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Education Law section 215 authorizes the Board of Regents, the Commissioner of Education, or their representatives, to visit, examine and inspect schools or institutions under the educational supervision of the State and other institutions admitted to the University of the State of New

York, as defined in Education Law section 214, and to require, as often as desired, duly verified reports indicating the results of such examinations and inspections in a form prescribed by the Board of Regents and the Commissioner of Education.

Education Law section 273-a provides for State aid for projects for the acquisition, construction, renovation and rehabilitation of buildings of public libraries and public library systems chartered by the Regents of the State of New York or established by act of the Legislature, upon approval by the Commissioner of Education. Subdivision (5) of section 273-a authorizes the Commissioner of Education to adopt rules and regulations as are necessary to carry out the purposes and provisions of this section.

Section 1 of Chapter 53 of the Laws of 2007 appropriates \$14 Million for public library construction and renovation projects approved pursuant to Education Law section 273-a.

Section 4 of Part B of Chapter 57 of the Laws of 2007 amended Education Law section 273-a to change the payment schedule for State aid for library construction and renovation projects from a 90/10 percent basis to a 50/40/10 percent basis. 50 percent of State aid shall be payable to each public library system or public library upon approval of the application. 40 percent shall be payable in the next State fiscal year. The remaining 10 percent shall be payable upon project completion.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement Education Law section 273-a, as amended by Chapter 57 of the Laws of 2007.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes made to Education Law section 273-a by Chapter 57 of the Laws of 2007, so that the payment schedule of State aid for library construction is changed to a 50/40/10 percent basis from a 90/10 percent basis and further, so that funds for public library construction and renovation projects, appropriated pursuant to Chapter 53 of the Laws of 2007, are timely awarded, pursuant to statutory requirements, to eligible public libraries and public library systems. Chapter 53 of the Laws of 2007 appropriates \$14 Million for public library construction and renovation projects.

4. COSTS:

- (a) Costs to the State: none.
- (b) Costs to local governments: none.
- (c) Costs to private, regulated parties: none.

The proposed amendment relates to State aid for public library systems and public libraries and does not affect private parties.

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

The proposed amendment merely conforms the Commissioner's Regulations to Education Law section 273-a, as amended by Chapter 57 of the Laws of 2007, and does not impose any additional costs on the State, local governments, or the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment concerns applications for State aid for library construction and applies to all public library systems and public libraries seeking such aid, including public libraries established by local governments, but does not directly impose any additional program, service, duty or responsibility upon any county, city, town, village, school district, fire district, or other special district. The proposed amendment is needed to conform the Commissioner's Regulations to recent changes made to Education Law section 273-a, as discussed in the Needs and Benefits section above.

6. PAPERWORK:

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law section 273-a, as amended by Chapter 57 of the laws of 2007, and does not impose any additional paperwork requirements upon the State beyond those inherent in the statute. The proposed amendment substitutes a 50/40/10 percent payment schedule for a 90/10 percent payment schedule, which will result in additional paperwork for public library systems and public libraries in order to draw down their funds.

7. DUPLICATION:

The proposed amendment duplicates no existing State or federal requirements and is necessary to conform the Commissioner's Regulations to recent amendments made to Education Law section 273-a by Chapter 57 of the Laws of 2007.

8. ALTERNATIVES:

There were no significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

The proposed amendment does not exceed any minimum standard of the federal government.

10. COMPLIANCE STANDARDS:

It is anticipated that public library systems and public libraries will be able to achieve compliance with these changes within two weeks from the adoption of the amended rule.

Regulatory Flexibility Analysis

(a) Small Businesses:

The proposed amendment concerns applications for State aid for library construction by public library systems and public libraries and does not impose any adverse economic impact, or any adverse 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.

(b) Local Governments:

EFFECT OF RULE:

The proposed rule applies to public library systems and public libraries who seek State aid for library construction, including 395 public libraries established by local governments.

Compliance Requirements:

The proposed rule applies to public library systems and public libraries who seek State aid for library construction, including those public libraries established by local governments, but does not directly impose any compliance requirements on local governments.

The proposed amendment is needed to conform the Commissioner's Regulations to recent changes made to Education Law section 273-a by Chapter 57 of the Laws of 2007, so that the payment schedule of State aid for library construction is changed to a 50/40/10 percent basis from a 90/10 percent basis and further, so that funds for public library construction and renovation projects, appropriated pursuant to Chapter 53 of the Laws of 2007, are timely awarded, pursuant to statutory requirements, to eligible public library systems and public libraries. Chapter 53 of the Laws of 2007 appropriates \$14 Million for public library construction and renovation projects.

PROFESSIONAL SERVICES:

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

Compliance costs:

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes made to Education Law section 273-a by Chapter 57 of the Laws of 2007, and will not impose any additional compliance costs on local governments.

Economic and technological feasibility:

The proposed amendment does not impose any new technological requirements or costs on local governments.

Minimizing adverse impact:

The proposed amendment is needed to conform the Commissioner's Regulations to recent changes made to Education Law section 273-a by Chapter 57 of the Laws of 2007. The proposed amendment applies to public library systems and public libraries that seek State aid for library construction, including those public libraries established by local governments, but does not directly impose any compliance requirements or costs on local governments. The proposed amendment has been carefully drafted to meet statutory requirements while minimizing the impact on public libraries and public library systems. The proposed amendment will permit public libraries greater flexibility in applying for grant funds.

Local government participation:

The recent legislation that provides \$14 Million in construction funding originated with the ten recommendations of the Regents Commission on Library Services. It is a component of the proposed New Century Libraries legislation, which was based on the recommendations made by the Commission after two years of studying the State's libraries, including 14 public meetings held throughout the State to solicit input from the public and the library community.

In addition, in 2003, staff of the New York State Library's Division of Library Development participated in a conference call with representatives of the Public Library System Directors Organization (PULISDO) and also attended the annual PULISDO meeting to discuss the construction program which resulted in suggestions for changing the program.

The proposed amendments to Regulation 90.12 are required by Education Law, and additional changes have been made to facilitate the applica-

tion procedures at the recommendation of the State's public library systems.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to public library systems and public libraries who seek State aid for library construction, including those located in the 44 rural counties having less than 200,000 inhabitants and in the 71 towns within urban counties having a population density of 150 persons per square mile or less.

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

The proposed amendment applies to public library systems and public libraries who seek State aid for library construction, including those public libraries located in rural areas. The proposed amendment is needed to conform the Commissioner's Regulations to recent amendments made to Education Law section 273-a. Chapter 57 of the Laws of 2007 amended section 273-a to change the payment schedule for State aid for library construction from a 90/10 percent basis to a 50/40/10 percent basis.

The proposed amendment does not impose any additional professional services requirements. The proposed amendment provides greater flexibility to public libraries and public library systems in applying for State aid for library construction, and does not impose any additional compliance requirement on public libraries or public library systems located in rural areas.

3. COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law section 273-a, as amended by Chapter 57 of the Laws of 2007, and will not impose any additional costs on public libraries or public library systems located in rural areas.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment applies to public library systems and public libraries who seek State aid for library construction, including those public libraries and public library systems located in rural areas. The proposed amendment is needed to conform the Commissioner's Regulations to recent amendments made to Education Law section 273-a by Chapter 57 of the Laws of 2007. The proposed amendment has been carefully drafted to meet statutory requirements while minimizing the impact on public libraries and public library systems.

The proposed amendment applies to public libraries and public library systems across the State, and accordingly, it was not possible to provide for a lesser standard or an emergency exemption for public libraries located in rural areas.

5. RURAL AREA PARTICIPATION:

The recent legislation that provides \$14 Million in construction funding originated with the ten recommendations of the Regents Commission on Library Services. It is a component of the proposed New York Knowledge Initiative legislation and builds on the New Century Libraries proposal, which was based on the recommendations made by the Commission after two years of studying the State's libraries, including 14 public meetings held throughout the State to solicit input from the public and the library community.

In addition, in 2003, staff of the New York State Library's Division of Library Development participated in a conference call with representatives of the Public Library System Directors Organization (PULISDO) and also attended the annual PULISDO meeting to discuss the construction program which resulted in suggestions for changing the program.

The proposed amendments to Regulation 90.12 are required by Education Law, and additional changes have been made to facilitate the application procedures at the recommendation of the State's public library systems.

Job Impact Statement

The proposed amendment concerns applications for State aid for library construction by public library systems and public libraries and will not have an adverse impact on job or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no adverse impact on jobs or employment opportunities, no further measures were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Procedures for Public Hearings Concerning Charter Schools

I.D. No. EDU-32-07-00012-P

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

Proposed action: Addition of section 119.4 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 206 (not subdivided), 207 (not subdivided), 305(1), (2) and (20) and 2857(1); and L. 2007, ch. 57, part D-2, section 7

Subject: Procedures for public hearings concerning charter schools.

Purpose: To establish procedures for the conduct of public hearings by school districts to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law, section 2857(1).

Text of proposed rule: Section 119.4 of the Regulations of the Commissioner of Education is added, effective November 15, 2007, as follows:

§ 119.4 Hearings prior to the issuance, revision, or renewal of a charter school pursuant to Education Law section 2857(1).

Within thirty days of initially receiving notice of the receipt of an application for the formation of a new charter school, of an application for the renewal of an existing charter school, or of a charter school's request to revise its existing charter, the school district in which the charter school is located shall hold a public hearing to solicit comments from the community in connection with the foregoing. Such hearing shall be held within the community potentially impacted by the proposed action or charter school. When a revision involves the relocation of a charter school to a different school district, the proposed new school district shall also hold a hearing within such thirty-day period. The school district shall, at the time of its dissemination, provide the State Education Department with a copy of the public hearing notice. The school district shall, no later than the business day next following the hearing, provide written confirmation to both the charter school's charter entity and the State Education Department that the hearing was held, along with the date and time of the hearing. In addition, such school district shall submit copies of any and all written records or comments generated from the hearing to the charter school's charter entity and the State Education Department within 15 business days of the hearing.

Text of proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Senior Deputy Commissioner of Education - P16, Education Department, 2M West Wing, Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: p16education@mail.nysed.gov

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

Education Law section 206 authorizes the Regents, any committee thereof, the Commissioner, the deputy and any associate and assistant commissioner of education and the counsel of the State Education Department to take testimony or hear proofs relating to their official duties, or in any matter which they may lawfully investigate.

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

Education Law section 305(1) provides that the Commissioner is the chief executive officer of the State system of education and of the Board of Regents, and charged with the enforcement of all general and special laws relating to the educational system of the State and the execution of all educational policies determined by Regents. Section 305(2) provides that the Commissioner shall have general supervision over all schools and institutions subject to the Education Law or any statute relating to education. Section 305(20) provides that the Commissioner shall have and execute such further powers and duties as he shall be charged with by the Regents.

Education Law section 2857(1), as amended by section 7 of Part D-2 of Chapter 57 of the Laws of 2007, provides that prior to the issuance, revision, or renewal of a charter, the school district in which the charter school is located shall hold a public hearing to solicit comments from the

community in connection with the foregoing. Such hearing must be held in the community potentially impacted by the proposed charter school. When a revision involves the relocation of a charter school to a different school district, the proposed new school district shall also hold such hearing.

LEGISLATIVE OBJECTIVES:

Consistent with the statutory authority set forth above, the proposed rule will establish procedures for the conduct of charter school public hearings by the school district pursuant to Education Law section 2857(1).

NEEDS AND BENEFITS:

The proposed rule is necessary to prescribe procedures for the conduct of charter school public hearings by a school district to solicit comments from the community in connection with the issuance, revision, or renewal of a charter pursuant to Education Law section 2857(1). It has been determined that the procedures set forth in the proposed rule will provide for the most efficient, thorough and expeditious means to conduct such hearings.

COSTS:

(a) Costs to State government: none. The proposed rule is necessary to establish procedures for the conduct of charter school public hearings by school districts pursuant to Education Law section 2857(1), as amended by Chapter 57 of the Laws of 2007, and will not impose any additional costs on the State beyond those inherent in the statute.

(b) Costs to local government: none. The proposed rule does not impose any additional costs on school districts beyond those inherent in Education Law section 2857(1), as amended by Chapter 57 of the Laws of 2007. Such costs would be associated with school districts' submission of copies of any and all written records or comments generated from the hearing to the charter school's charter entity and the State Education Department.

(c) Cost to private regulated parties: none. The proposed rule does not affect any private regulated parties.

(d) Cost to regulating agency for implementation and continued administration of this rule: none. The proposed rule will not impose any additional costs on the State beyond those inherent in Education Law section 2857, as amended by Chapter 57 of the Laws of 2007.

LOCAL GOVERNMENT MANDATES:

The proposed rule is necessary to establish procedures for the conduct of charter school public hearings by school districts to solicit comments from the community in connection with the issuance, revision, or renewal of a charter pursuant to Education Law section 2857(1), as amended by Chapter 57 of the Laws of 2007, and will not impose any additional program, service, duty or responsibility upon school districts beyond those inherent in the statute.

Consistent with the statute, proposed section 119.4 provides that within thirty days of initially receiving notice of the receipt of an application for the formation of a new charter school, of an application for the renewal of an existing charter school, or of a charter school's request to revise its existing charter, the school district in which the charter school is located shall hold a public hearing to solicit comments from the community in connection with the foregoing. Such hearing shall be held within the community potentially impacted by the proposed action or charter school. When a revision involves the relocation of a charter school to a different school district, the proposed new school district shall also hold a hearing within such thirty day period. The school district shall, no later than the business day next following the hearing, provide written confirmation to both the charter school's charter entity and the State Education Department that the hearing was held, along with the date and time of the hearing. In addition, such school district shall submit copies of any and all written records or comments generated from the hearing to the charter school's charter entity and the State Education Department within five business days of the hearing.

PAPERWORK:

The school district shall, at the time of its dissemination, provide the State Education Department with a copy of the public hearing notice. The school district shall, no later than the business day next following the hearing, provide written confirmation to both the charter school's charter entity and the State Education Department that the hearing was held, along with the date and time of the hearing. In addition, such school district shall submit copies of any and all written records or comments generated from the hearing to the charter school's charter entity and the State Education Department within 15 business days of the hearing.

DUPLICATION:

The proposed rule does not duplicate any existing State or Federal requirements.

ALTERNATIVES:

The proposed rule is necessary to establish procedures for the conduct of charter school public hearings by school districts pursuant to Education Law section 2857(1). There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no applicable Federal standards.

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small Businesses:

The proposed rule applies to school districts and charter schools, and will establish procedures for the conduct of charter school public hearings by the school district to solicit comments from the community in connection with the issuance, revision, or renewal of a charter pursuant to Education Law section 2857(1). The proposed rule does not impose any economic impact, or other compliance requirements on small businesses. Because it is evident from the nature of the proposed rule 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:

EFFECT OF RULE:

The proposed rule applies to all school districts and charter schools in the State. There are currently 97 charter schools in existence.

COMPLIANCE REQUIREMENTS:

The proposed rule is necessary to establish procedures for the conduct of charter school public hearings by school districts to solicit comments from the community in connection with the issuance, revision, or renewal of a charter pursuant to Education Law section 2857(1), and will not impose any additional reporting, recordkeeping or other compliance requirements on school districts or charter schools beyond those inherent in the statute.

Consistent with the statute, proposed section 119.4 provides that within thirty days of initially receiving notice of the receipt of an application for the formation of a new charter school, of an application for the renewal of an existing charter school, or of a charter school's request to revise its existing charter, the school district in which the charter school is located shall hold a public hearing to solicit comments from the community in connection with the foregoing. Such hearing shall be held within the community potentially impacted by the proposed action or charter school. When a revision involves the relocation of a charter school to a different school district, the proposed new school district shall also hold a hearing within such thirty day period. The school district shall, no later than the business day next following the hearing, provide written confirmation to both the charter school's charter entity and the State Education Department that the hearing was held, along with the date and time of the hearing. In addition, such school district shall submit copies of any and all written records or comments generated from the hearing to the charter school's charter entity and the State Education Department within five business days of the hearing.

PROFESSIONAL SERVICES:

The proposed rule does not impose any additional professional services requirements on school districts or charter schools.

COMPLIANCE COSTS:

The proposed rule is necessary to establish procedures for the conduct of charter school public hearings by school districts pursuant to Education Law section 2857(1), as amended by Chapter 57 of the Laws of 2007, and will not impose any additional costs on school districts or charter schools beyond those inherent in the statute. Such costs would be associated with school districts' submission of copies of any and all written records or comments generated from the hearing to the charter school's charter entity and the State Education Department.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule does not impose any additional compliance costs on school districts or charter schools beyond those inherent in the statute. The proposed rule does not impose any additional technological requirements on school districts or charter schools.

MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to establish procedures for the conduct of charter school public hearings by school districts to solicit comments from the community in connection with the issuance, revision, or renewal of a charter pursuant to Education Law section 2857(1), as amended by Chapter 57 of the Laws of 2007. Consequently, the major provisions of the proposed rule are statutorily imposed and it is not feasible to establish

differing compliance or reporting requirements or timetables or to exempt affected school districts from coverage by the rule. The proposed amendment has been carefully drafted to meet statutory requirements while minimizing the impact on school districts and charter schools.

LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed amendment were solicited from school districts through the offices of the district superintendents of each supervisory district in the State. Copies of the proposed amendment have been provided to each charter school for review and comment.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts and charter schools within 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.

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

The proposed rule is necessary to establish procedures for the conduct of charter school public hearings by school districts to solicit comments from the community in connection with the issuance, revision, or renewal of a charter pursuant to Education Law section 2857(1), and will not impose any additional reporting, recordkeeping or other compliance requirements on school districts or charter schools in rural areas beyond those inherent in the statute.

Consistent with the statute, proposed section 119.4 provides that within thirty days of initially receiving notice of the receipt of an application for the formation of a new charter school, of an application for the renewal of an existing charter school, or of a charter school's request to revise its existing charter, the school district in which the charter school is located shall hold a public hearing to solicit comments from the community in connection with the forgoing. Such hearing shall be held within the community potentially impacted by the proposed action or charter school. When a revision involves the relocation of a charter school to a different school district, the proposed new school district shall also hold a hearing within such thirty day period. The school district shall, no later than the business day next following the hearing, provide written confirmation to both the charter school's charter entity and the State Education Department that the hearing was held, along with the date and time of the hearing. In addition, such school district shall submit copies of any and all written records or comments generated from the hearing to the charter school's charter entity and the State Education Department within five business days of the hearing.

The proposed rule does not impose any additional professional services requirements on school districts or charter schools in rural areas.

COSTS:

The proposed rule is necessary to establish procedures for the conduct of charter school public hearings by school districts pursuant to Education Law section 2857(1), as amended by Chapter 57 of the Laws of 2007, and will not impose any additional costs on school districts or charter schools in rural areas beyond those inherent in the statute. Such costs would be associated with school districts' submission of copies of any and all written records or comments generated from the hearing to the charter school's charter entity and the State Education Department.

MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement Education Law section 2857(1), as amended by Chapter 57 of the Laws of 2007 by establishing procedures for the conduct of charter school public hearings by school districts to solicit comments from the community in connection with the issuance, revision, or renewal of a charter pursuant to Education Law section 2857(1). Consequently, the major provisions of the proposed rule are statutorily imposed and it is not feasible to establish differing requirements or to exempt school districts or charter schools from coverage by the rule. Furthermore, because this amendment implements statutory provisions that are applicable to school districts and charter schools across the State, it was not possible to provide for a lesser standard or an exemption for those located in rural areas. The proposed amendment has been carefully drafted to meet statutory requirements while minimizing the impact on school districts and charter schools.

RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from the Department's Rural Advisory Committee. In addition, copies of the proposed rule have been provided to each charter school for review and comment.

Job Impact Statement

The proposed rule applies to school districts and charter schools, and will establish procedures for the conduct of charter school public hearings by

school districts to solicit comments from the community in connection with the issuance, revision, or renewal of a charter pursuant to Education Law section 2857(1). The proposed rule will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the rule that it 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.

Higher Education Services Corporation

NOTICE OF ADOPTION

New York State Math and Science Teacher Incentive Program

I.D. No. ESC-21-07-00004-A

Filing No. 736

Filing date: July 18, 2007

Effective date: Aug. 8, 2007

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

Action taken: Addition of section 2201.10 to Title 8 NYCRR.

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

Subject: New York State Math and Science Teacher Incentive Program.

Purpose: To implement the New York State Math and Science Teacher Incentive Program.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. ESC-21-07-00004-EP, Issue of May 23, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, Associate Attorney, Higher Education Services Corporation, 99 Washington Ave., Rm. 1350, Albany, NY 12255, (518) 473-1581, e-mail: cfisher@hesc.com

Assessment of Public Comment

The agency received no public comment.

Insurance Department

EMERGENCY RULE MAKING

Rules Relating to Processing Claims

I.D. No. INS-32-07-00014-E

Filing No. 744

Filing date: July 24, 2007

Effective date: July 24, 2007

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

Action taken: Addition of Part 56 (Regulation 183) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305 and 4802 and art. 49

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

Specific reasons underlying the finding of necessity: Insurance Law and regulations require certain health insurance policies to provide coverage for surgical services. 11 NYCRR 52.16(c)(5) permits insurers to exclude coverage for surgery that is considered to be cosmetic. Articles 49 of the Insurance Law and Public Health Law, enacted after Section 52.16, provide for internal and external appeal when services are denied as not medically necessary.

It is the Insurance Department’s position that whenever surgery is a covered benefit under a policy, a determination that the surgery is cosmetic is a medical necessity determination subject to the utilization review and external review requirements of Title I and Title II of Article 49 of the Insurance Law or Public Health Law. It has come to the Department’s attention that insurers and health maintenance organizations (HMOs) have been inconsistent as to what they consider to be medically necessary surgery or cosmetic surgery and some insureds have not been provided with the right to utilization review and external appeal for denials of surgical services. If the appropriate appeal rights are not given, an insured may be unable to obtain medically necessary health care services, adversely affecting the health of the insured.

To establish uniformity, ensure that consumers are protected, and address concerns of health plans, a new part 56 is added to 11 NYCRR and the cosmetic surgery exclusion in Part 52.16(c)(5) is amended. These two regulations clarify that denials for the reason that services are considered cosmetic are subject to the utilization review and external appeal requirements of Article 49 of the Insurance Law or Public Health Law. Part 56 further provides that a request for coverage of surgery, other than a request for pre-authorization, that is solely identified by a code on a designated list, and is submitted without medical information, may be denied by a health plan without subjecting the request to Title I and Title II of Article 49 of the Insurance Law or Public Health Law if certain conditions are met.

The requirements established in these regulations are the result of a collaborative effort among the New York Health Plan Association, the New York State Conference of Blue Cross and Blue Shield Plans, the New York State Department of Health and the New York State Insurance Department. Health plans are aware of the requirements in these regulations and have advised the Insurance Department that they would like to begin implementation through revised subscriber contracts. The Insurance Department has already received and approved subscriber contracts from health plans that include the process outlined in Part 56 and the amended Part 52. Promulgating Part 56 and the amended Part 52 on an emergency basis will ensure that all subscriber contracts that are being filed and approved are consistent with regulatory requirements and will enable health plans to make all contract changes in one filing.

Moreover, these amendments will ensure that all health plans are following the same requirements and that access to utilization review and external appeal by insureds will not be dependent on the particular health insurance policy the insured may have. These amendments will further ensure that insureds will be able to obtain medically necessary surgical services so that the health of insureds is not compromised.

For the reasons stated above, the immediate adoption of this regulation was necessary for the preservation of the general welfare. On April 27, 2007, the Governor’s Office of Regulatory Reform signed off on the proposed regulation. The agency is moving forward with the process to adopt the regulation. This emergency filing is necessary to keep the coverage requirements in place until the final adoption becomes effective.

Subject: Rules relating to processing of claims.

Purpose: To clarify when plans may exclude coverage for cosmetic surgery.

Text of emergency rule: A new Part 56 of Title 11 NYCRR (Regulation No. 183) is adopted to read as follows:

Section 56.0 Preamble. Section 52.16(c)(5) of Part 52 of this Title (Regulation 62), permits insurers and health maintenance organizations (HMOs) that are required to provide coverage for surgical services, to exclude coverage of cosmetic surgery. Part 52 does not define cosmetic surgery, but does provide examples of two types of reconstructive surgeries that may never be considered cosmetic. Subsequent to the promulgation of Part 52, Title I and Title II of Article 49 of the Insurance Law and Public Health Law were enacted that require medical necessity denials to be subject to utilization review and external appeal. The Insurance Department has found inconsistencies among insurers and HMOs as to when denials of surgery are considered medical necessity denials and subject to utilization review and external appeal. Section 56.3 of this Part and an amended section 52.16(c)(5) of Part 52 of this Title clarify that, whenever surgery is a covered benefit under certain policies, a determination that the surgery is cosmetic is a medical necessity determination subject to the utilization review and external review requirements of Titles I and II of Article 49 of the Insurance Law and Public Health Law, except in certain cases when the claim or request for surgery is identified by one of the codes in subdivision (f) of section 56.3 of this Part and is submitted without medical information.

Section 56.1 Applicability. This Part shall be applicable to policies that provide hospital, surgical or medical expense coverage.

Section 56.2 Definitions. The following words or terms shall have the following meanings when used in this Part:

(a) Health care professional means an appropriately licensed, registered or certified health care professional pursuant to title eight of the education law or a health care professional comparably licensed, registered or certified by another state.

(b) Health care provider means a health care professional or a facility licensed pursuant to article 28, 36, 44 or 47 of the public health law or a facility licensed pursuant to article 19, 23, 31 or 32 of the mental hygiene law.

(c) Health plan means an insurer or health maintenance organization (HMO) that has issued a policy that provides hospital, surgical or medical expense coverage.

(d) Medical information means any medical data, written explanation from a health care professional, or medical record.

Section 56.3 Claim review requirements for surgical services.

(a) A claim or request for coverage of reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part, and reconstructive surgery because of congenital disease or anomaly of a covered dependent child that has resulted in a functional defect shall not be considered by a health plan to be cosmetic. Reconstructive surgery may however be reviewed for medical necessity subject to the requirements of Title I and Title II of Article 49 of the Insurance Law or Public Health Law.

(b) A claim or request for coverage of surgery other than for the surgical services described in subdivision (a) or (c) of this section that is considered by a health plan to be cosmetic shall be reviewed for medical necessity subject to the requirements of Title I and Title II of Article 49 of the Insurance Law or Public Health Law.

(c) A claim or request for coverage of surgery, other than a request for pre-authorization, that is solely identified by one of the codes in subdivision (f) of this section and is submitted to a health plan without any accompanying medical information, may be denied by a health plan as cosmetic without subjecting the request to the requirements of Title I and Title II of Article 49 of the Insurance Law or Public Health Law, provided that:

(1) notice of the denial includes a clear statement describing the basis for the denial;

(2) notice of the denial includes a statement that the insured has a right to a medical necessity review if the insured or the insured’s health care provider believes the claim or request involves issues of medical necessity and submits medical information;

(3) if a medical necessity review is requested and medical information is submitted, the health plan treats the request as a utilization review appeal pursuant to section 4904 of the Insurance Law or Public Health Law; and

(4) if the health plan denies coverage of the procedure after receipt of medical information, the health plan issues a final adverse determination in compliance with section 4904(c) of the Insurance Law and section 410.9(e) of Part 410 of this Title (Regulation 166) or section 4904(3) of the Public Health Law and 10 NYCRR 98-2.9(e), as applicable.

(d) If an initial claim or request for a procedure listed in subdivision (f) of this section is submitted to a health plan with accompanying medical information, the claim or request shall be reviewed in compliance with Title I and Title II of Article 49 of the Insurance Law or Public Health Law.

(e) If an initial claim or request for a procedure listed in subdivision (f) of this section is submitted to a health plan as a pre-authorization request without accompanying medical information, the necessary information shall be requested as required by section 4905(k) of the Insurance Law or section 4905(11) of the Public Health Law and the claim or request shall be reviewed in compliance with Title I and Title II of Article 49 of the Insurance Law or Public Health Law.

(f) Common Procedural Terminology (CPT code copyright) and Description

- 11200 Removal of skin tags, multiple fibrocutaneous tags, any area; up to and including 15 lesions*
- 11201 Removal of skin tags; each additional 10 lesions*
- 11950 Subcutaneous injection of filling material (eg, collagen); 1 cc or less*
- 11951 Subcutaneous injection of filling material (eg, collagen); 1.1 to 5.0 cc*
- 11952 Subcutaneous injection of filling material (eg, collagen); 5.1 to 10.0 cc*
- 11954 Subcutaneous injection of filling material (eg, collagen); over 10.0 cc*

- 15775 *Punch graft for hair transplant; 1 to 15 punch grafts*
 15776 *Punch graft for hair transplant; more than 15 punch grafts*
 15780 *Dermabrasion; total face (e.g. for acne scarring, fine wrinkling, rhytids, general keratosis)*
 15781 *Dermabrasion, segmental, face*
 15782 *Dermabrasion, regional, other than face*
 15783 *Dermabrasion, superficial, any site, (eg, tattoo removal)*
 15786 *Abrasion; single lesion (eg, keratosis, scar)*
 15787 *Abrasion; each additional four lesions or less*
 15788 *Chemical peel, facial; epidermal*
 15789 *Chemical peel, facial; dermal*
 15790 *Chemical peel; total face*
 15791 *Chemical peel; face, hand or elsewhere*
 15792 *Chemical peel, nonfacial; epidermal*
 15793 *Chemical peel, nonfacial; dermal*
 15810 *Salabrasion; 20 sq cm or less*
 15811 *Salabrasion; over 20 sq cm*
 15819 *Cervicoplasty*
 15820 *Blepharoplasty, lower eyelid;*
 15821 *Blepharoplasty, lower eyelid; with extensive herniated fat pad*
 15824 *Rhytidectomy; forehead*
 15825 *Rhytidectomy; neck with platysmal tightening (platysmal flap, P-flap)*
 15826 *Rhytidectomy; glabellar frown lines*
 15828 *Rhytidectomy; cheek, chin, and neck*
 15829 *Rhytidectomy; superficial musculoaponeurotic system (SMAS) flap*
 15832 *Excision, excessive skin and subcutaneous tissue (including lipectomy); thigh*
 15833 *Excision, excessive skin and subcutaneous tissue (including lipectomy); leg*
 15834 *Excision, excessive skin and subcutaneous tissue (including lipectomy); hip*
 15835 *Excision, excessive skin and subcutaneous tissue (including lipectomy); buttock*
 15836 *Excision, excessive skin and subcutaneous tissue (including lipectomy); arm*
 15837 *Excision, excessive skin and subcutaneous tissue (including lipectomy); forearm or hand*
 15838 *Excision, excessive skin and subcutaneous tissue (including lipectomy); submental fat pad*
 15839 *Excision, excessive skin and subcutaneous tissue (including lipectomy); other area*
 15876 *Suction assisted lipectomy; head and neck*
 15877 *Suction assisted lipectomy; trunk*
 15878 *Suction assisted lipectomy; upper extremity*
 15879 *Suction assisted lipectomy; lower extremity*
 17340 *Cryotherapy (CO2 slush, liquid N2) for acne*
 17360 *Chemical exfoliation for acne (eg, acne paste, acid)*
 17380 *Electrolysis epilation, each ½hour*
 19316 *Mastopexy*
 19355 *Correction of inverted nipples*
 21120 *Genioplasty; augmentation (autograft, allograft, prosthetic material)*
 30430 *Rhinoplasty, secondary; minor revision (small amount of nasal tip work)*
 36468 *Single or multiple injections of sclerosing solutions, spider veins (telangiectasia); limb or trunk*
 36469 *Single or multiple injections of sclerosing solutions, spider veins (telangiectasia); face*
 36470 *Injection of sclerosing solution; single vein*
 36471 *Injection of sclerosing solution; multiple veins, same leg*
 69090 *Ear piercing*
 69300 *Otoplasty, protruding ear, with or without size reduction*
 S0800 *Laser in situ keratomileusis*
 S0810 *Photorefractive keratectomy*
 S0812 *Phototherapeutic keratectomy*
 65760 *Keratomileusis*
 65765 *Keratophakia*
 65767 *Epikeratoplasty*
 65771 *Radial keratotomy*

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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 October 21, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Consolidated Regulatory Impact Statement

1. Statutory Authority: The Superintendent's authority for the addition of Part 56 to Title 11 of NYCRR (Regulation 183) and for the Thirty-fifth Amendment to Part 52 of Title 11 NYCRR (Regulation 62) is derived from Sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305 and 4802 and Article 49 of the Insurance Law.

Sections 201 and 301 authorize the Superintendent to effectuate any power granted to the Superintendent under the Insurance Law, and to prescribe forms or otherwise make regulations.

Section 1109 authorizes the Superintendent to promulgate regulations affecting HMOs and effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law.

Section 3201 authorizes the Superintendent to approve accident and health insurance policy forms for delivery or issuance for delivery in this state.

Sections 3216 and 3217 authorize the Superintendent to issue regulations to establish minimum standards for the form, content and sale of health insurance. Section 3221 sets forth standard health insurance policy provisions.

Section 4235 establishes requirements for group accident and health insurance.

Article 43 of the Insurance Law sets forth requirements for non-profit medical and dental indemnity corporations and non-profit health or hospital corporations, including requirements pertaining to minimum benefits of individual and small group contracts. Sections 4303, 4304 and 4305 set forth required benefits and standard provisions in group, blanket and group remittance contracts.

Section 4802 establishes the grievance procedures for all insurers which offer a managed care product.

Article 49 establishes the utilization review and external review requirements for all insurers subject to Article 32 or 43 of the Insurance Law or any organization licensed under Article 43 of the Insurance Law.

2. Legislative Objectives: The statutory sections mentioned above contain standard provisions for accident and health insurance coverage and set forth the Superintendent's power to promulgate regulations governing minimum standards for the form, content and sale of such coverage. The promulgation of Regulation 183 and the amendment to Section 52.16(c)(5) of Regulation 62 further the legislative goal of having meaningful health insurance coverage available to the insurance-buying public in this state while at the same time providing reasonable regulation to ensure consistency in the application of permissible exclusions in such coverage.

The cosmetic surgery exclusion set forth in Regulation 62 predates Article 49 of the Insurance Law and Article 49 of the Public Health Law, which provide for internal and external appeal of medical necessity denials. Subsequent to the promulgation of Article 49, the Insurance Department has found inconsistencies among health maintenance organizations (HMOs) and insurers as to what they consider to be medically necessary surgery and what they consider to be cosmetic. The Insurance Department and Health Department have advised health plans that cosmetic surgery denials must be subject to the utilization review and external review requirements. However, some health plans have questioned the Department's position in cases involving procedures usually considered to be cosmetic when medical information is not submitted.

By clarifying the requirements relating to the cosmetic surgery exclusion, the Superintendent is furthering the legislative intent set forth in Article 49 of the Insurance Law and Article 49 of the Public Health Law, which require health plans to conduct utilization reviews to determine if services are medically necessary, and then provide external appeal rights if services are denied. The amendment of Regulation 62, and the addition of new Regulation 183, is necessary to establish uniformity among health plans and ensure that cosmetic surgery denials are given the appropriate review.

3. Needs and Benefits: The Insurance Law and corresponding regulations require most insurers to provide coverage for surgical services. 11 NYCRR 52.16(c)(5) permits plans to exclude coverage for cosmetic surgery but provides an exception to the cosmetic surgery exclusion for reconstructive surgery. However, the reconstructive surgery exception is not the only type of surgery that would not be cosmetic. The amendment to Regulation 62 and the new Regulation 183 clarify that whenever surgery is a covered benefit, a determination that the surgery is cosmetic is a medical

necessity determination subject to the utilization review and external appeal requirements of Article 49 of the Insurance Law or Public Health Law. This amendment to Regulation 62 and the new Regulation 183 codifies existing Department policy that cosmetic denials generally are medical necessity denials subject to Article 49 of the Insurance Law. Health plans should currently be following the standard that this amendment and new regulation establish.

To address the concerns of health plans that certain procedures usually considered cosmetic would be subject to the utilization review and external review requirements when medical information is not submitted, Part 56 further provides that a request for coverage of surgery, other than a request for pre-authorization, that is solely identified by a code on a designated list, and is submitted without medical information, may be denied by a health plan without subjecting the request to Title I and Title II of Article 49 of the Insurance Law and Public Health Law. However, if a request for surgery identified by a code on the designated list is submitted with medical information, or as a preauthorization request, then the Article 49 utilization review process must be followed to adjudicate the claim. In addition, if the automatic denial process is used for the designated codes, the denial must explain that the insured may request a medical necessity review and submit medical information, in which case the plan must review as a utilization review appeal and provide external appeal rights.

The requirements established in these regulations, and the list of procedures set forth in Table 1 of the new Regulation 183, are the result of a collaborative effort among the New York Health Plan Association, the New York State Conference of Blue Cross and Blue Shield Plans, the New York State Department of Health and the New York State Insurance Department. Interested parties agreed that it is in the best interest of both health plans and consumers for there to be uniformity among the plans when making coverage decisions, and these regulations are intended to establish such uniformity. Representatives of insurers and HMOs also expressed concern about the cost of a clinical peer review when services usually considered to be cosmetic are reviewed retrospectively and medical information has not been submitted. The list of procedures in Regulation 183 that may be denied without such review addresses this concern, while still ensuring that consumer utilization review and external appeal rights are not compromised. Striving to minimize the costs of health insurance and protecting the interests of consumers who purchase health insurance are important functions of the Superintendent. These regulations accomplish both aims, and ensure that there is uniformity among health plans when making coverage determinations.

4. Costs: The regulations apply only to insurers and HMOs issuing insurance policies that exclude cosmetic surgery. Any costs imposed on regulated parties as a result of the regulations will be minimal, as they involve only clarification of existing optional insurance policy provisions. Actual costs to insurers and HMOs will be limited to the time that product compliance personnel will spend in implementing any accompanying changes to their claims procedure or making any filings.

The regulations may indirectly affect health care providers, since the regulations clarify that medical information must be submitted by providers or their patients for certain health care procedures usually considered to be cosmetic. However, current law permits insurers and HMOs to request medical information in order to make a claim determination.

The costs to the Insurance Department will be limited to the time spent by existing staff to review products submitted by insurers for compliance.

There should be no costs associated with these regulations to state or local government.

5. Local Government Mandates: The regulations impose no new programs, services, duties or responsibilities on any county, city, town, village, school district or fire district.

6. Paperwork: The regulations do not impose any additional paperwork requirements on insurers or HMOs. Insurers and HMOs are currently required by law to make form and utilization review report filings with the Department. HMOs and insurers are also currently permitted to request medical information from providers and consumers and therefore it is unlikely that any greater burden would be imposed on providers or consumers.

The regulations may indirectly affect health care providers since they clarify that medical information must be submitted by providers or their patients for certain health care procedures usually considered to be cosmetic. However, current law permits insurers and HMOs to request medical information in order to make a claim determination.

7. Duplication: The regulations do not duplicate standards of either the federal or other state governments. The regulations set standards applicable to health insurance coverage for New York State.

8. Alternatives: The regulations were developed through meetings with interested parties. Alternatives such as precluding plans from denying procedures when medical information is not submitted, or including an expanded list of procedures, were both discussed, but the Insurance Department and Health Department determined that listing procedures in the regulation is the most appropriate and effective means to meet the needs of health plans and protect consumers. The Department also considered whether the requirements established by these regulations could be established through guidelines, and determined that regulations would be needed to integrate the new requirements with existing requirements and ensure uniformity and consistency in application.

9. Federal Standards: The U.S. Department of Labor Claims Payment Regulation, 29 C.F.R. 2560.503 issued pursuant to the Employee Retirement Income Security Act (ERISA) creates federal standards for the treatment of medical necessity denials and the processing of such claims. However, the federal regulation does not include standards for surgical services. Therefore, these regulatory actions do not effect, modify, or duplicate any existing federal standards.

10. Compliance Schedule: Regulated parties should be able comply with the regulations immediately. Insurers and HMOs have been made aware of the requirements in the regulations through meetings and Department correspondence. In addition, the Insurance Department has always instructed insurers and HMOs that they must treat cosmetic surgery denials as medical necessity denials. The regulations merely clarify this instruction and provide an option for claims processing when medical information is not submitted.

Consolidated Regulatory Flexibility Analysis

1. Effect of the rule: These regulations will affect all health maintenance organizations (HMOs) and insurers licensed to do business in New York State. Based upon information provided by these companies in annual statements filed with the Insurance Department, HMOs and insurers licensed to do business in New York do not fall within the definition of small business found in Section 102(8) of the State Administrative Procedures Act because none of them are both independently owned and have under 100 employees. These regulations may indirectly affect health care providers since the regulations clarify that medical information must be submitted by providers or their patients for certain health care procedures usually considered to be cosmetic. These regulations do not apply to or affect local governments.

2. Compliance requirements: These regulations will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments. Health care providers and consumers requesting coverage of certain procedures usually considered to be cosmetic, other than for requests involving preauthorization, will need to submit medical information, if not previously submitted. However, current law permits insurers and HMOs to request information from providers and consumers in order to make coverage determinations.

3. Professional services: Small businesses or local governments will not need professional services to comply with the regulations.

4. Compliance costs: These regulations will not impose any compliance costs upon small businesses or local governments. The Insurance Law and Public Health Law currently permit health plans to request medical information from providers and their patients in order to make coverage determinations.

5. Economic and technological feasibility: Small businesses or local governments will not incur an economic or technological impact as a result of the regulations.

6. Minimizing adverse impact: These regulations apply to the insurance market throughout New York State. The same requirements will apply uniformly, and do not impose any adverse or disparate impact on HMOs, insurers, health care providers or consumers.

7. Small business and local government participation: These regulations are directed at HMOs and insurers licensed to do business in New York State, none of which fall within the definition of small business as found in Section 102(8) of the State Administrative Act. Notice of the proposal was previously published in the Insurance Department's Regulatory Agenda. This notice was intended to provide small businesses with the opportunity to participate in the rule making process, but no input was received. Interested parties were also consulted through direct meetings during the development of the proposed regulations.

Consolidated Rural Area Flexibility Analysis

1. Types and Estimated Number of Rural Areas: Insurance companies and health maintenance organizations (HMOs) to which these regulations apply do business in every county in this state, including rural areas as defined under State Administrative Procedure Act Section 102(13). Some

of the home offices of these companies lie within rural areas. These regulations may also indirectly affect health care providers, including providers located in rural areas; since the regulations clarify that medical information must be submitted by providers or their patients for certain health care procedures usually considered to be cosmetic.

2. Reporting, Recordkeeping and Other Compliance Requirements, and Professional Services: Insurance companies and HMOs may have to modify their claim processing procedures and/or make new filings to the Insurance Department to conform to the regulations. No professional services will be necessary to comply with the proposed rule. Health care providers and consumers requesting coverage of certain procedures usually considered to be cosmetic, other than for requests involving preauthorization, will need to submit medical information, if not previously submitted. However, current law permits insurers and HMOs to request information from providers and consumers in order to make coverage determinations.

3. Costs: The costs to regulated parties as a result of the regulations will be limited to the costs associated with the time that product compliance personnel will spend in implementing any modified claims procedures, or making any necessary filings.

4. Minimizing Adverse Impact: These regulations apply uniformly to entities that do business in both rural and nonrural areas of New York State. These regulations do not impose any additional burden on persons located in rural areas and the Insurance Department does not believe that the regulations will have an adverse impact on rural areas.

5. Rural Area Participation: Notice of the regulations was published in the Insurance Department's Regulatory Agenda. Although there was no specific effort to obtain rural area input during the development of the regulations, interested parties, including health plan representatives, were consulted through direct meetings during the development of the regulations.

Consolidated Job Impact Statement

This proposed addition of a new Part 56 and the Thirty-fifth Amendment to Part 52 of 11 NYCRR will not adversely impact job or employment opportunities in New York. It will have no impact as it merely involves a slight modification to existing health insurance policy provisions and the associated claims processing procedures.

EMERGENCY RULE MAKING

Minimum Standards for the Form, Content and Sale of Health Insurance

I.D. No. INS-32-07-00015-E

Filing No. 745

Filing date: July 24, 2007

Effective date: July 24, 2007

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

Action taken: Amendment of section 52.16(c)(5) (Regulation 62) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305 and 4802 and art. 49

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

Specific reasons underlying the finding of necessity: Insurance Law and regulations require certain health insurance policies to provide coverage for surgical services. 11 NYCRR 52.16(c)(5) permits insurers to exclude coverage for surgery that is considered to be cosmetic. Articles 49 of the Insurance Law and Public Health Law, enacted after Section 52.16, provide for internal and external appeal when services are denied as not medically necessary.

It is the Insurance Department's position that whenever surgery is a covered benefit under a policy, a determination that the surgery is cosmetic is a medical necessity determination subject to the utilization review and external review requirements of Title I and Title II of Article 49 of the Insurance Law or Public Health Law. It has come to the Department's attention that insurers and health maintenance organizations (HMOs) have been inconsistent as to what they consider to be medically necessary surgery or cosmetic surgery and some insureds have not been provided with the right to utilization review and external appeal for denials of surgical services. If the appropriate appeal rights are not given, an insured may be unable to obtain medically necessary health care services, adversely affecting the health of the insured.

To establish uniformity, ensure that consumers are protected, and address concerns of health plans, a new part 56 is added to 11 NYCRR and the cosmetic surgery exclusion in Part 52.16(c)(5) is amended. These two regulations clarify that denials for the reason that services are considered cosmetic are subject to the utilization review and external appeal requirements of Article 49 of the Insurance Law or Public Health Law. Part 56 further provides that a request for coverage of surgery, other than a request for pre-authorization, that is solely identified by a code on a designated list, and is submitted without medical information, may be denied by a health plan without subjecting the request to Title I and Title II of Article 49 of the Insurance Law or Public Health Law if certain conditions are met.

The requirements established in these regulations are the result of a collaborative effort among the New York Health Plan Association, the New York State Conference of Blue Cross and Blue Shield Plans, the New York State Department of Health and the New York State Insurance Department. Health plans are aware of the requirements in these regulations and have advised the Insurance Department that they would like to begin implementation through revised subscriber contracts. The Insurance Department has already received and approved subscriber contracts from health plans that include the process outlined in Part 56 and the amended Part 52. Promulgating Part 56 and the amended Part 52 on an emergency basis will ensure that all subscriber contracts that are being filed and approved are consistent with regulatory requirements and will enable health plans to make all contract changes in one filing.

Moreover, these amendments will ensure that all health plans are following the same requirements and that access to utilization review and external appeal by insureds will not be dependent on the particular health insurance policy the insured may have. These amendments will further ensure that insureds will be able to obtain medically necessary surgical services so that the health of insureds is not compromised.

For the reasons stated above, the immediate adoption of this regulation was necessary for the preservation of the general welfare. On April 27, 2007, the Governor's Office of Regulatory Reform signed off on the proposed regulation. The agency is moving forward with the process to adopt the regulation. This emergency filing is necessary to keep the coverage requirements in place until the final adoption becomes effective.

Subject: Minimum standards for the form, content and sale of health insurance.

Purpose: To clarify when plans may exclude coverage for cosmetic surgery.

Text of emergency rule: Paragraph (5) of subdivision (c) of Section 52.16 of Part 52 of Title 11 of the Official Compilation of Codes, Rules and Regulations is amended to read as follows:

(5) cosmetic surgery, except that cosmetic surgery shall not include reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part, and reconstructive surgery because of congenital disease or anomaly of a covered dependent child which has resulted in a functional defect. *However, if the policy provides hospital, surgical or medical expense coverage, including a policy issued by a health maintenance organization, then coverage and determinations with respect to cosmetic surgery must be provided pursuant to Part 56 of this Title (Regulation 183);*

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 October 21, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of emergency rule making, I.D. No. INS-32-07-00014-E, Issue of August 8, 2007.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of emergency rule making, I.D. No. INS-32-07-00014-E, Issue of August 8, 2007.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of emergency rule making, I.D. No. INS-32-07-00014-E, Issue of August 8, 2007.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of emergency rule making, I.D. No. INS-32-07-00014-E, Issue of August 8, 2007.

NOTICE OF ADOPTION

Homeowners Insurance Disclosure Information and Other Notices

I.D. No. INS-21-07-00001-A

Filing No. 740

Filing date: July 23, 2007

Effective date: Aug. 8, 2007

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

Action taken: Amendment of Part 74 (Regulation 159) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 3425, 3445 and 5403

Subject: Homeowners insurance disclosure information and other notices.

Purpose: To set forth the minimum notification requirements pertaining to the notices required by sections 3425(e) and 5403(d).

Text or summary was published in the notice of proposed rule making, I.D. No. INS-21-07-00001-P, Issue of May 23, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Assessment of Public Comment

The agency received no public comment.

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

Training Allowance Subsidy

I.D. No. INS-32-07-00002-P

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

Proposed action: Addition of Part 12 (Regulation 50) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301 and 4228

Subject: Rules limiting the amount of training allowance subsidy an insurer can pay an agent.

Purpose: To update the limits in Insurance Law sections 4228(e)(3)(C) through 4228(e)(3)(E) to reflect inflation from the January 1, 1998 effective date of section 4228 to the present.

Text of proposed rule: A new Part 12 is added to read as follows:

§ 12.1 Applicability.

The provisions of this section shall apply to all domestic life insurance companies and to all foreign and alien life insurance companies doing business in this state, but not the alien branches of such companies or such companies' subsidiaries not licensed in this state to do an insurance business, nor to fraternal benefit societies. The provisions shall apply only to the types of policies as specified in Insurance Law Section 4228(a).

§ 12.2 Maximum Training Allowance Subsidies.

Insurance Law Section 4228(e)(3)(G) provides that the superintendent shall periodically adjust the cumulative maximum training allowance subsidy limits to agents set forth in sections 4228(e)(3)(C) through (E) for agents with respect to the types of policies specified in Insurance Law Section 4228(a). Accordingly, the amounts as specified in section 4228(e)(3)(C) through (E) are adjusted as follows:

(a) Subparagraph (e)(3)(C): an agent may receive a training allowance subsidy, provided:

(1) the agent has earned less than \$26,000 from the sale of policies and contracts cumulatively during the three years prior to such agent's appointment; or

(2) less than 25 percent of the agent's earned income has been received from the sale of policies and contracts during each of the three years prior to appointment.

(b) Subparagraph (e)(3)(D): an agent may not receive a training allowance subsidy, on a cumulative basis:

(1) for an agent in the first year of the subsidies, the greater of \$37,000 and 60 percent of the first year commission limit;

(2) for an agent in the second year of the subsidies, the greater of \$58,000 and 60 percent of the first year commission limit in the first year and 40 percent of the first year commission limit in the second year;

(3) for an agent in the third year of such subsidies, the greater of \$71,000 and 60 percent of the first year commission limit in the first year and 40 percent of the first year commission limit in the second year, and 20 percent of the first year commission limit for the third year; and

(4) for an agent in the fourth year of such subsidies, the greater of \$78,000 and 60 percent of the first year commission limit in the first year and 40 percent of the first year commission limit in the second year, 20 percent of the first year commission limit in the third year, and 10 percent of the first year commission limit in the fourth year.

(c) Subparagraph (e)(3)(E): if the agent has earned at least \$86,000 of income during either of the two calendar years immediately preceding commencement of receipt of training allowance subsidies, a company may pay additional training allowance subsidies of \$1,300 to the agent during each of the first two years of this agent's receipt of training allowance subsidies for every \$2,600 of the earned income in excess of \$86,000, provided that the cumulative training allowance subsidy does not exceed \$59,000 in the agent's first year of receipt of training allowance subsidy and provided further that the agent receives not greater than \$78,000 in total training allowance subsidies.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Data, views or arguments may be submitted to: James MacDonald, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5331, e-mail: jmacdona@ins.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority: The superintendent's authority for the promulgation of 11 NYCRR 12 (Regulation No. 50) is derived from sections 201, 301, and 4228 of the Insurance Law.

Sections 201 and 301 of the Insurance Law authorize the superintendent to prescribe regulations accomplishing, among other concerns, interpretation of the provisions of the Insurance Law, as well as effectuating any power given to him under the provisions of the Insurance Law to prescribe forms or otherwise to make regulations.

Section 4228 of the Insurance Law contains limits on the amount of training allowance subsidies and other compensation an insurer may pay its agents. Insurance Law section 4228(e)(3)(G) provides that the superintendent shall periodically adjust the cumulative maximum training allowance subsidy limits to agents set forth in sections 4228(e)(3)(C) through (E).

2. Legislative objectives: Insurance Law sections 4228(e)(3)(C) through (E) describe the cumulative maximum training allowance subsidy limits an insurer may pay its agents. Section 4228 recognizes that the dollar amount of these training allowance limits contained in sections 4228(e)(3)(C) through (E) would eventually become insufficient due to inflation. Therefore, section 4228(e)(3)(G) provides that the superintendent shall periodically adjust these cumulative maximum training allowance subsidy limits.

3. Needs and benefits: More than nine years have passed since the January 1, 1998 effective date of Insurance Law Section 4228. Because of inflation since this date the section 4228(e)(3)(C) through (E) cumulative maximum training allowance subsidy limits on the amount an insurer can pay its agents have become insufficient. This regulation is necessary to permit an increase in these limits that reflects overall inflationary increases since January 1, 1998.

4. Costs: Costs to life insurers authorized to do business in New York State will increase moderately, if at all. The regulation increases the amount of training allowance subsidies an insurer may pay. An insurer that now pays subsidies under the lower limits contained in sections 4228(e)(3)(C) through (E) is not required to make any change in its training allowance program and does not have to make any new filing with the Insurance Department. An insurer wishing to take advantage of the higher limits allowed under the regulation may do this without having to undergo the time and cost involved in filing with the superintendent a special plan under section 4228(e)(3)(H). Insurers that do not wish to increase training allowance subsidies will have no increase in cost.

Costs of the regulation to the Insurance Department should be minimal (staff time to explain the training allowance limit revisions to insurers and agents) and there are no anticipated costs to other government agencies or local governments.

While there is a possibility that costs to insureds may increase, it is anticipated that any increase will be limited because the higher permitted training allowances will result in insurers being able to hire better agents, who will sell more business. This should result in the per policy administrative costs declining. The expectation is that this decline in administrative costs will outweigh the increase in costs due to the higher training allowance payments.

5. Local government mandates: The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: The regulation imposes no new reporting requirements.

7. Duplication: The regulation does not duplicate any existing law or regulation.

8. Alternatives: One significant alternative considered was to adjust the cumulative maximum training allowance subsidy limits to agents for an insurance company upon the company's request to the department, as section 4228(e)(3)(H) permits the superintendent to do. The department considered informing insurers on the department's website of their ability to request this adjustment in their training allowance program limits. Over the course of several months, the department discussed these alternatives with the Life Insurance Council of New York (LICONY) and industry representatives. This proposal provides a life insurer with the most flexibility in increasing its training allowance subsidies up to the revised higher limits without the necessity of submitting a plan to the department containing dollar limits different from those contained in section 4228(e)(3)(H).

9. Federal standards: There are no federal standards in this subject area.

10. Compliance schedule: The regulation, when adopted, will be effective immediately. Since this proposal lessens the restrictions on paying agent training allowance subsidies, the promulgation of this amendment will not adversely impact any agent training allowance program now in effect.

Regulatory Flexibility Analysis

1. Small businesses:

The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all life insurers authorized to do business in New York State, none of which fall within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized life insurers and believes that none of them fall within the definition of "small business", because there are none which are both independently owned and have less than one hundred employees. Furthermore no life insurance agent affected by this rule who meets the definition of a "small business" will undergo any additional reporting, recordkeeping or other compliance requirements. Any such reporting, recordkeeping or other compliance requirements are borne by the insurer who makes the training allowance payments. The only effect on the agent is to receive an increased level of payments.

2. Local governments:

The regulation does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurance companies covered by the regulation do business in every county in this state, including rural areas as defined under SAPA 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: This amendment does not change the reporting, recordkeeping and compliance requirements that have been in effect since the original adoption of Insurance Law section 4228 in January of 1998.

3. Costs: Costs to life insurers authorized to do business in New York State will increase moderately, if at all. The majority of the restrictions governing the payment of agent training allowance subsidies have been in effect since the original adoption of Insurance Law section 4228 in January of 1998. This proposal increases some of the dollar limits on the amount of training allowance subsidies that may be paid and therefore should allow insurers to comply with the limits without undergoing the additional cost of filing a plan for higher limits with the Insurance Department. Insurers are permitted, but not required, to increase their training allowance subsidy

limits. Insurers that do not wish to increase training allowance subsidies will have no increase in cost.

4. Minimizing adverse impact: The regulation does not impose any adverse impact on rural areas.

5. Rural area participation: Prior to proposing this amendment, the Department met with and had conversations with LICONY, an organization that represents the insurers and has members in rural areas. There were no specific comments regarding rural areas made by this group. In addition, since the amendment lessens restrictions on the amount of training allowance subsidies life insurers may pay, no adverse impact on life insurers in rural areas is anticipated.

Job Impact Statement

Nature of impact: The Insurance Department finds that this rule will either have a positive impact or no impact on jobs and employment opportunities. This regulation allows insurers to increase limits on training allowance subsidies. As a result, employment as a life insurance agent may become more desirable.

Categories and number affected: No categories of jobs or number of jobs will be affected.

Regions of adverse impact: This rule applies to all life insurers authorized to do business in New York State. There would be no region in New York that would experience an adverse impact on jobs and employment opportunities.

Minimizing adverse impact: No measures would need to be taken by the Department to minimize adverse impacts.

Self-employment opportunities: This rule would not have a measurable impact on self-employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Service Quality Assurance Program by Niagara Mohawk Power Corporation

I.D. No. PSC-16-04-00009-A

Filing date: July 19, 2007

Effective date: July 19, 2007

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

Action taken: The commission on July 18, 2007, adopted an order approving the terms and conditions of a stipulation by the parties that satisfies Niagara Mohawk Power Corporation's (Niagara Mohawk or the company) petition for modification of customer service targets contained in the company's Service Quality Assurance Program.

Statutory authority: Public Service Law, section 66

Subject: Niagara Mohawk's Service Quality Assurance Program.

Purpose: To approve a parties stipulation that addresses certain performance indicators and targets of the company's Service Quality Assurance Program.

Substance of final rule: The Public Service Commission adopted an order approving the terms and conditions of a Stipulation by the Parties that satisfies Niagara Mohawk Power Corporation's (Niagara Mohawk or the Company) petition for modification of customer service targets contained in the Company's Service Quality Assurance Program, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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. (01-M-0075SA21)

NOTICE OF ADOPTION

Authorization to Defer Actuarial Experience Pension Settlement for Fiscal Year 2004 by Niagara Mohawk Power Corporation**I.D. No.** PSC-35-04-00019-A**Filing date:** July 19, 2007**Effective date:** July 19, 2007

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

Action taken: The commission on July 18, 2007, adopted an order approving the terms and conditions of a parties stipulation addressing Niagara Mohawk Power Corporation's petition for authorization to defer actuarial experience pension settlement for fiscal year 2004.

Statutory authority: Public Service Law, section 66

Subject: To defer losses from the pension settlement.

Purpose: To resolve ratemaking of the pension settlement loss.

Substance of final rule: The Public Service Commission adopted an order approving the terms and conditions of a Parties Stipulation addressing Niagara Mohawk Power Corporation's petition for authorization to defer actuarial experience pension settlement for fiscal year 2004, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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.

(04-M-0938SA1)

NOTICE OF ADOPTION

Major Rate Filing by Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York**I.D. No.** PSC-01-07-00027-A**Filing date:** July 18, 2007**Effective date:** July 18, 2007

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

Action taken: The commission, on July 18, 2007, adopted in part the terms and conditions of a joint proposal by 13 signatories, authorizing an interim gas energy efficiency program for KeySpan Energy Delivery New York.

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

Subject: Major rate filing.

Purpose: To approve gas energy efficiency programs.

Substance of final rule: The Public Service Commission adopted in part the terms of a May 31, 2007 Joint Proposal filed by the Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York and 12 other active parties. The decision authorizes an interim gas energy efficiency program and the deferral of program costs and lost revenues, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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.

(06-G-1185SA1)

NOTICE OF ADOPTION

Major Rate Filing by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island**I.D. No.** PSC-01-07-00028-A**Filing date:** July 18, 2007**Effective date:** July 18, 2007

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

Action taken: The commission, on July 18, 2007, adopted in part the terms and conditions of a joint proposal by 13 signatories, authorizing an interim gas energy efficiency program for KeySpan Energy Delivery Long Island.

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

Subject: Major rate filing.

Purpose: To approve gas energy efficiency programs.

Substance of final rule: The Public Service Commission adopted in part the terms of a May 31, 2007 Joint Proposal filed by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island and 12 other active parties. The decision authorizes an interim gas energy efficiency program and the deferral of program costs and lost revenues, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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.

(06-G-1186SA1)

NOTICE OF ADOPTION

Pension Settlement by Niagara Mohawk Power Corporation**I.D. No.** PSC-09-07-00011-A**Filing date:** July 19, 2007**Effective date:** July 19, 2007

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

Action taken: The commission, on July 18, 2007, adopted an order approving the terms and conditions of a Parties stipulation addressing Niagara Mohawk Power Corporation's petition for authorization to defer actuarial experience pension settlement for fiscal year 2007.

Statutory authority: Public Service Law, section 66

Subject: Pension settlement.

Purpose: To resolve ratemaking of the pension settlement loss.

Substance of final rule: The Public Service Commission adopted an order approving the terms and conditions of a Parties Stipulation addressing Niagara Mohawk Power Corporation's petition for authorization to defer actuarial experience pension settlement for fiscal year 2007, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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.

(07-M-0173SA1)

NOTICE OF ADOPTION

Northeast Power Coordinating Council's Criteria and Regional Reliability Plan**I.D. No.** PSC-13-07-00008-A**Filing date:** July 23, 2007**Effective date:** July 23, 2007

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

Action taken: The commission, on July 18, 2007, adopted the second modifications to New York State reliability rules, standards contained in the portions of the criteria and the regional reliability plan of the Northeast Power Coordinating Council (NPCC), that are more stringent than the national standards developed by the North American Electric Reliability Corporation (NERC) and are proposed for enforcement by the Federal Energy Regulatory Commission (FERC).

Statutory authority: Public Service Law, sections 4(1), 5(2), 65(1), 66(1) and (2)

Subject: Adoption of the portions of NPCC's criteria and regional reliability plan that are more stringent than the NERC national standards, and are proposed for enforcement by FERC.

Purpose: To adopt the portions of NPCC's criteria and regional reliability plan that are more stringent than the NERC national standards and are proposed for enforcement by FERC.

Substance of final rule: The Commission adopted the second modifications to the Reliability Rules of the New York State Reliability Council (Version 18), as well as portions of the Criteria and the Regional Reliability Plan of the Northeast Power Coordinating Council, that are more stringent than the national standards developed by the North American Electric Reliability Corporation, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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. (05-E-1180SA4)

NOTICE OF ADOPTION

NYPA Economic Development Power by New York State Electric and Gas Corporation, et al.**I.D. No.** PSC-16-07-00021-A**Filing date:** July 20, 2007**Effective date:** July 20, 2007

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

Action taken: The commission, on July 18, 2007, adopted an order approving the joint proposal of New York State Electric and Gas Corporation (NYSEG), staff of the Department of Public Service, New York State Power Authority, (NYPA), multiple intervenors, and public utility law project on new allocations of NYPA economic development power for delivery by NYSEG.

Statutory authority: Public Service Law, sections 5, 65(1) and 66(1)

Subject: Joint proposal on new allocations of economic development power for delivery by NYSEG.

Purpose: To approve the joint proposal on new allocations of economic development power for delivery by NYSEG.

Substance of final rule: The Public Service Commission adopted an order approving the joint proposal of New York State Electric and Gas Corporation (NYSEG), Staff of the Department of Public Service, New York State Power Authority, (NYPA), Multiple Intervenors, and Public Utility Law Project on new allocations of NYPA economic development power for delivery by NYSEG, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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. (05-E-1222SA6)

NOTICE OF ADOPTION

Stipulation of Parties by Niagara Mohawk Power Corporation**I.D. No.** PSC-17-07-00013-A**Filing date:** July 19, 2007**Effective date:** July 19, 2007

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

Action taken: The commission, on July 18, 2007, adopted an order approving a stipulation by the parties, filed by Niagara Mohawk Power Corporation concerning the audit of the deferral account and various other ratemaking and accounting issues.

Statutory authority: Public Service Law, section 66

Subject: Stipulation of the parties which resolves issues raised in a deferral audit and resolution of other accounting and ratemaking issues.

Purpose: To implement various accounting procedures and adjustment to the deferral account.

Substance of final rule: The Public Service Commission adopted an order approving a Stipulation by the Parties, filed by Niagara Mohawk Power Corporation concerning the audit of the deferral account and various other ratemaking and accounting issues, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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. (01-M-0075SA32)

NOTICE OF ADOPTION

Rider I—Experimental Rate Program for Multiple Dwellings**I.D. No.** PSC-18-07-00012-A**Filing date:** July 18, 2007**Effective date:** July 18, 2007

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

Action taken: The commission, on July 18, 2007, adopted an order approving with modifications Consolidated Edison Company of New York, Inc.'s request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service P.S.C. No. 9.

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

Subject: Rider I—Experimental Rate Program for multiple dwellings.

Purpose: To approve a new Rider I—Experimental Rate Program for multiple dwellings.

Substance of final rule: The Public Service Commission adopted an order approving, Consolidated Edison Company of New York, Inc.'s (Con Edison) tariff amendments with further tariff revisions and modifications to Rider I—Experimental Rate Program for Multiple Dwellings, and directed Con Edison to file further revisions to modify the language in its General Information tariff regarding the Monthly Adjustment Clause components to become effective on not less than one day's notice on August 1, 2007, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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. (07-E-0455SA1)

NOTICE OF ADOPTION

Inter-Carrier Telephone Service Quality Standards and Metrics by the Carrier Working Group

I.D. No. PSC-22-07-00011-A

Filing date: July 20, 2007

Effective date: July 20, 2007

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

Action taken: The commission, on July 18, 2007, adopted an order for modifications to the existing inter-carrier service quality guidelines and standards by the Carrier Working Group.

Statutory authority: Public Service Law, section 94(2)

Subject: Inter-carrier telephone service quality standards and metrics.

Purpose: To approve the modifications to the existing inter-carrier service quality guidelines.

Substance of final rule: The Commission adopted an order approving modifications to the existing Inter-Carrier Service Quality Guidelines consisting of administrative changes and revisions to the OR-6-01 performance metric and standards by the Carrier Working Group, subject to the terms set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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. (97-C-0139SA29)

NOTICE OF ADOPTION

Electronic Tariff Filing by Corlear Bay Property Owners Association, Inc.

I.D. No. PSC-22-07-00019-A

Filing date: July 18, 2007

Effective date: July 18, 2007

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

Action taken: The commission, on July 18, 2007, adopted an order approving Corlear Bay Property Owners Association, Inc.'s request to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 1—Water to become effective Aug. 1, 2007.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1) and 89-c(10)

Subject: Electronic tariff filing.

Purpose: To approve an electronic tariff schedule, P.S.C. No. 1—Water for the Corlear Bay Property Owners Association, Inc.

Substance of final rule: The Commission adopted an order approving Corlear Bay Property Owners Association, Inc.'s request to convert its tariff schedule, P.S.C. No. 1—Water to a new electronic format effective August 1, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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. (07-W-0544SA1)

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

Interconnection Agreement between Windstream New York, Inc. and Sprint Communications Company L.P.

I.D. No. PSC-32-07-00004-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Windstream New York, Inc. and Sprint Communications Company L.P. for approval of an interconnection agreement executed on July 12, 2007.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of networks for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Windstream New York, Inc. and Sprint Communications Company L.P. have reached a negotiated agreement whereby Windstream New York, Inc. and Sprint Communications Company L.P. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until July 12, 2008, or as extended.

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.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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. (07-C-0851SA1)

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

Buildout Primary Service Area and Line Extension Policies for the Town of Urbana by Empire Video Services Corporation

I.D. No. PSC-32-07-00005-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition from Empire Video Services Corporation for a waiver of sections 895.1, 895.5(a), (b) and (c) of the commission's rules regarding buildout, primary service area and line extension policies for the Town of Urbana (Steuben County).

Statutory authority: Public Service Law, section 222(1) and (3)

Subject: Waiver of sections 895.1 and 895.5(a), (b) and (c) of the commission's rules for Empire Video Services Corporation.

Purpose: To allow Empire Video Services Corporation, a subsidiary of Empire Telephone Corporation, to construct their cable television system within their telephone company's footprint, which will be their cable franchise area.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition to waive sections 895.1, 895.5(a), 895.5(b) and 895.5(c) from Empire Video Services Corporation regarding buildout, primary service area and line extension policies for the Town of Urbana (Steuben County).

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.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(07-V-0848SA1)

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

Franchising Process between the Town of French Creek and Time Warner Entertainment-Advance/Newhouse Partnership

I.D. No. PSC-32-07-00006-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition from the Town of French Creek (Chautauqua County) for a waiver of sections 894.1 through 894.4(b)(2) of the commission's rules to expedite the franchising process between the Town of French Creek and Time Warner Entertainment-Advance/Newhouse Partnership.

Statutory authority: Public Service Law, section 222

Subject: Waiver of 16 NYCRR, sections 894.1 through 894.4(b)(2).

Purpose: To allow the Town of French Creek (Chautauqua County) to expedite the franchising process with Time Warner Entertainment-Advance/Newhouse Partnership.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Town of French Creek (Chautauqua County) for a waiver of Sections 894.1 through 894.4(b)(2) of the Commission's rules to expedite the franchising process between the Town of French Creek and Time Warner Entertainment-Advance/Newhouse Partnership.

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.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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.

(07-V-0504SA1)

Racing and Wagering Board

EMERGENCY RULE MAKING

Internet and Telephone Account Wagering on Horseracing

I.D. No. RWB-32-07-00003-E

Filing No. 739

Filing date: July 23, 2007

Effective date: July 23, 2007

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

Action taken: Addition of Part 5300 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 222, 301, 401, 518, 520, 1002 and 1012

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

Specific reasons underlying the finding of necessity: These amendments are necessary to detect and deter unlawful financial activity in off-track betting over the internet and telephone. These amendments give regulatory force and effect to the statutory amendments that permit the use of the Internet in account wagering which went into effect on January 22, 2007, and are contained in chapter 314 of the Laws of 2006 as codified in section 1012 of the RPWBL. Specifically, the amendments are necessary to provide guidelines and safeguards that allow for the use of state-of-the-art communication equipment in account wagering while preserving the integrity of pari-mutuel wagering in New York State, thereby ensuring substantial revenue for state and local governments and strengthening and furthering the racing, breeding and pari-mutuel wagering industry in New York State. The 2002 Breeders' Cup Ultra Pick 6 scandal, which involved the use of telephone account wagering in the fraudulent placing of bets and threatened to undermine public confidence in off-track betting, demonstrated the need for heightened scrutiny of account wagering. These rules are designed to detect and deter such unlawful activity which potentially threatens government revenue derived from off-track betting.

Subject: Internet and telephone account wagering on horseracing.

Purpose: To ensure the integrity of pari-mutuel wagering by adopting licensing and regulatory standards for internet and telephone account wagering. This rule would establish reporting, recordkeeping, operational and application requirements for race track operators and off-track betting corporations within New York State that offer internet and telephone account wagering.

Substance of emergency rule: 5300.1 Definitions and general provisions.

Contains definitions of various words and terms, when used in this chapter including:

Account, Account holder, Account wager, Account wagering, Account wagering center, Account activity, Authorized pari-mutuel wagering entity, Board, Internet, Official, Stored value instrument, Totalisator system, Voucher, and Wagering device.

5300.2 Account Wagering, General

Allows authorized pari-mutuel wagering entities (hereinafter "entity") to offer account wagering with prior board approval, restricting accounts to wagering purposes only; and determines which entities account wagers are deemed to be on track wagers and which are to be deemed off-track;

5300.3 Approval of Account Wagering

Provides that entities authorized to conduct account wagering shall have a Board approved written plan of operation, including at least a proposed system of accepting wagers, internal controls, system security details, and account wagering rules.

5300.4 Establishment of an Account

Sets forth minimum criteria for establishment of accounts, allowable purposes, information to be provided, who may open an account, standards for verification of identity, notification standards, information allowed to be collected.

5300.5 Bearer Accounts

Provides standards for the use of bearer accounts evidenced by a card with a PIN number for customers without collecting identity information.

5300.6 Official Address

Provides that the entity may use the address listed on the account wagering application for listed purposes, until the entity is informed by the account holder of a change in address.

5300.7 Changes to Account Information

Requires the entity to provide a method for the account-wagering holder to make official changes to his/her account information.

5300.8 Right to Refuse an Account

Provides for exclusion of anyone from opening an account based on its business judgment, maintenance of documentation of exclusions, and mandatory exclusion certain persons.

5300.9 Access to Account Information

Provides for the keeping of account wagering information confidential and for access to account information to the New York State Racing and Wagering Board for inspection and audit.

5300.10 Segregation of Funds

Requires the entity to deposit account holder's money within 72 hours of receipt in a segregated account.

5300.11 Conduct of Wagering

Provides rules for acceptance of wagers from established account holders via the telephone, internet, in-person or other means; Requires an approved plan of operation; Requires use of a totalisator system that satisfies Board requirements and is approved by the Board and the New York State Department of Taxation and Finance.

5300.12 Record of Wager; Pari-Mutuel tickets

This section deems all wagers placed through the account wagering system pari-mutuel tickets subject to all rules and laws governing pari-mutuel tickets.

5300.13 Withdrawals and other Debits to Accounts

Sets forth standards for withdrawals from accounts, including identity, means, record keeping and time requirements.

5300.14 Cancellation of Wagers

Sets rule for when a wager becomes final.

5300.15 Credits to Accounts

States requirements for making and crediting deposits and winning payoffs, effect of IRS requirements, and other credits.

5300.16 Account Statements

Sets requirements for frequency, means of delivery and content of account statements.

5300.17 Record Keeping

Sets forth record keeping requirements for entities, including details and time required to be kept, and how account liabilities are to be shown on books and records.

5300.18 Account Wagering Center

Requirements for places where account wagering system is administered and records are maintained.

5300.19 Confidentiality of Accounts

Requirement for keeping accounts confidential.

5300.20 Closing of Accounts

Sets requirements for closing of accounts at request of account holders.

5300.21 Dormant Accounts

States procedure for disposal of dormant accounts.

5300.22 Surcharge

States rule for suspension of surcharge on accounts.

5300.23 Vouchers

States rule for use of vouchers.

5300.24 Reports to board

Sets forth time and content requirements for reports on handle, number of accounts or other reports.

5300.25 Yearly Audit

Contains minimum frequency requirements for audits and reports to Board.

5300.26 Disputes/Complaints

Sets forth requirements for handling customer disputes including documentation and audit requirements.

5300.27 Cooperation with officials.

Sets forth requirement for entity to cooperate with Board officials upon request.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire October 20, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, e-mail: info@racing.state.ny.us

Regulatory Impact Statement

(a) **STATUTORY AUTHORITY:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 104, 222, 301, 401, 518, 520, 1002 and 1012. Subdivision 1 of section 101 of the Racing, Pari-Mutuel Wagering and Breeding Law (RPWBL) vests the Racing and Wagering Board (the Board) with general jurisdiction over all horse racing and all pari-mutuel wagering activities in New York State. Section 222 authorizes the conduct of pari-mutuel betting on horse races for the purpose of deriving a reasonable revenue for the support of government and to promote agriculture and breeding of horses in New York State. Subdivision 1 of section 301 grants the Board the authority to supervise generally all harness race meetings in New York State at which pari-mutuel betting is conducted and the authority to adopt rules accordingly. Subdivision 1 of section 401 grants the Board the power to supervise generally all quarterhorse race meetings in the state at which pari-mutuel betting is conducted. Section 518 authorizes off-track pari-mutuel betting so long as it is conducted under the administration of the Board.

Subdivision 1 of section 520 grants general jurisdiction to the Board over the operation of all off-track pari-mutuel betting facilities within the state, and directs the Board to issue rules and regulations regarding off-track pari-mutuel betting activity. Subdivision 1 of section 1002 grants the Board general jurisdiction and rulemaking power over the simulcasting of horse races within the state. Subdivision 4 of section 1012 requires that the maintenance and operation of telephone accounts for wagers placed on licensed pari-mutuel racing shall be subject to rules and regulations of the New York State Racing and Wagering Board. Subdivision 4-a of section 1012 was added by Chapter 314 of the Laws of 2006 to expand authorized telephone account wagering to include wired or wireless communications, including the internet.

(b) **LEGISLATIVE OBJECTIVES:** These amendments give regulatory force and effect to the statutory amendments contained in Chapter 314 of the Laws of 2006 as codified in Section 1012 of the RPWBL. Specifically, the amendments provide the necessary definitions, guidelines and safeguards that allow for the use of state-of-the-art communication equipment in account wagering while preserving the integrity of pari-mutuel wagering in New York State, thereby ensuring substantial revenue for state and local governments and strengthening and furthering the racing, breeding and pari-mutuel wagering industry in New York State.

(c) **NEEDS AND BENEFITS:** The New York State and the Racing and Wagering Board needs to ensure that the hundreds of millions of dollars that may potentially be wagered by telephone and the Internet in any given year can be accounted for using uniform and reliable methods. These regulatory amendments are necessary to implement the statutory provisions of Chapter 314 of the Laws of 2006, which becomes effective January 22, 2007 and amends Section 1012 of the Racing, Pari-Mutuel Wagering and Breeding Law (RPWBL) by expanding the authorized method of placing account wagers to include "all those wagers which utilize any wired or wireless communication device, including but not limited to wireline telephones, wireless telephones, wireless telephones, and the internet." This rule is necessary to ensure the integrity of Internet and telephone account wagering in New York State. While Chapter 314 authorized in general terms the use of certain electronic devices in pari-mutuel wagering activities, this rule establishes the specific guidelines necessary for practical implementation of the statutory amendments. Telephone account wagering has been available in New York State for approximately 30 years, but there have been no comprehensive Board rules for account wagering. This will establish such rules. The New York State Legislature has recognized the potential of Internet account wagering in bolstering New York horse racing, and these rules will ensure that the use of the Internet in pari-mutuel wagering will be conducted in an open and honest manner.

(d) **COSTS:**

(i) The costs for the implementation of, and continuing compliance with, the rule to regulated persons will be negligible. Racetrack operators and off-track betting corporations already make telephone account wagering available and can comply with this rule by using existing accounting equipment and personnel. Such entities also have their own web sites and web server networks.

(ii) There would be no new costs for the implementation of, and continued administration of, the rule to the New York State Racing and Wagering Board, and the state and local governments. The Board and the Department of Taxation and Finance currently monitor telephone account wagering, and can continue to use current resources to administer this rule. The addition of internet wagering as a method of account wagering will not impose any new costs given the inherent accountability qualities of In-

ternet servers and software systems. There would be no new costs to local governments because they do not regulate pari-mutuel wagering.

(iii) The information regarding costs was determined by Board staff. It made this determination based upon practical knowledge of the existing telephone account wagering systems, which it currently supervises pursuant to its general powers under the RPWBL.

(e) PAPERWORK: This rule does not impose any specific form requirement, but does include reporting requirements.

Authorized pari-mutuel wagering entities will be required to maintain for three years documentation of all persons excluded from opening an internet wagering account. Entities will also be required to maintain documentation of customer disputes and complaints for three years. All such documents must be made available to the Racing and Wagering Board upon request.

Authorized pari-mutuel wagering entities will be required to submit a written plan of operations for approval by the Racing and Wagering Board.

Authorized pari-mutuel wagering entities will be required to furnish monthly account statements to their customers.

Authorized pari-mutuel entities will be required submit annual reports detailing handle information and account activity from the previous calendar year. Entities will also be required to conduct annual audits of the account wagering system data input and account updates.

(f) LOCAL GOVERNMENT MANDATES: There are no local government mandates. Pari-mutuel wagering activities in New York State are exclusively regulated by the New York State Racing and Wagering Board.

(g) DUPLICATION: Because the New York State Racing and Wagering Board has exclusive regulatory authority over pari-mutuel wagering activity, there are no other state or federal rules that duplicate, overlap or conflict with this rule. This rule is intended to give force and effect to Chapter 314 of the Laws of 2006. This rule is consistent with the provisions of the federal Unlawful Internet Gambling Enforcement Act of 2006, which amends Chapter 53 of Title 31, United States Code.

(h) ALTERNATIVE APPROACHES: Several alternatives were considered. Board staff considered the Advance Deposit Wagering Rules of the Association of Racing Commissioners International and the telephone account wagering practices currently used in New York State. Board staff also reviewed and considered the account wagering rules of other jurisdictions, including Maryland, Louisiana, Massachusetts, Idaho, South Dakota, Washington, California and New Jersey. All of these similar rules and practices are relatively uniform.

In drafting this rule, the Board solicited and considered public comment from all entities engaged in pari-mutuel wagering in the State of New York, including thoroughbred and harness track operators, off-track betting corporations, and pari-mutuel wagering totalisator companies. There was general support for the Board's approach to accountability and reporting. The Board did revise certain aspects of the rule based upon public comments, but ultimately retained the overall regulatory approach as originally proposed.

Board staff considered the need for general age proof requirements in the rule and determined that none were necessary. Paragraph 1 of subdivision (a) of section 5300.4 requires that an account holder "shall be a natural person eighteen (18) years of age or older." This requirement is consistent with section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law, which states that "No association or corporation which is licensed or franchised by the board shall permit any person who is actually and apparently under eighteen years of age to bet on a horse race conducted by it nor shall such person be permitted to bet at an establishment of a regional corporation conducting off-track betting." The association, corporation or off-track regional corporation is responsible for ensuring that no person – including persons who hold bearer accounts or wish to wager under a bearer account – is under the age of eighteen if they wish to place a bet. Section 5300(a)(1) simply reiterates the section 104 restriction so as to provide clear language and guidance to regulated parties. No additional rules were included in regard to general age proof requirements because Board staff has determined that Section 104 is self-executing and does not require additional rules in order to effectively enforce its provisions. The Board expects licensees to apply the same age proof requirements for section 5300.4(a)(1) as it does for section 104 of RPWBL.

(i) FEDERAL STANDARDS: There are no federal standards which specifically govern these pari-mutuel wagering activities. The Unlawful Internet Gambling Act of 2006 states that "unlawful Internet gambling" shall not include any activity that is allowed under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.).

(j) COMPLIANCE SCHEDULE: These rules will become effective upon the date of publication in the State Register subsequent to final

adoption by the Board. It is anticipated that regulated entities can achieve compliance on the date of publication of this rule.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment addresses the limited issue of operational and administrative aspects of Internet and telephone account wagering. This rule would affect race track operators and off-track betting corporations throughout New York State, all of who currently offer telephone account wagering. This rule is consistent with current practices employed by such entities, as well as certain disclosure and operational plan requirements of the Racing and Wagering Board. This rule is intended to modify the Board's rules to properly regulate the expansion of pari-mutuel wagering into the realm of the Internet and telephone wagering as authorized by the Legislature in 2006. It does not limit job opportunities. In fact, the increased revenue from pari-mutuel wagering over the Internet may help preserve and expand economic opportunities in the New York State horse racing industry by capturing revenue that is wagered over the Internet on horseracing in other states and countries. Establishing Internet and telephone account wagering standards does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8) because race track operators and off-track betting corporations are not small businesses. Nor does this rule affect employment. The proposal will not impose an adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry because the race track operators and off-track betting corporations are able to use the current telephone account wagering and Internet server technology that they currently possess.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Licensing and Standards for Totalisator Companies

I.D. No. RWB-32-07-00013-P

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

Proposed action: Addition of Part 5100 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 227, 301, 305, 401, 405, 520 and 1002

Subject: Establishment of licensing and standards for totalisator companies involved in pari-mutuel activities offered in the State of New York, particularly as they relate to accountability, operations and reporting.

Purpose: To ensure the integrity of pari-mutuel wagering by adopting licensing and regulatory standards for totalisator companies. This rule would require that such companies be licensed and operate under established procedures, reporting requirements, and equipment requirements. Totalisator companies are businesses that are hired by licensed race tracks to compute odds and payouts for pari-mutuel wagering activities. These "tote" companies have become an indispensable element of modern day pari-mutuel wagering activities. Before off-track betting and simulcasting, wagering pools used to be limited to only on-track wagers and were relatively easy to regulate given their centralized location. Today, tote companies are hired by racetracks to calculate the voluminous wagering pools and odds from wagers placed at off-track betting and simulcast sites. These tote companies utilize sophisticated software and computers to calculate odds and prizes based upon bets received from a multitude of locations, often calculating such odds and payouts to mathematically complex wagers involving multiple variations to multiple race, multiple horse wagers. In 2005, tote companies in New York State handled \$4.4 billion from in-state and out-of-state venues.

Substance of proposed rule (Full text is posted at the following State website: www.racing.state.ny.us): Subchapter B of Chapter II of Subtitle T of Title 9 of the New York Code of Rules and Regulations is renumbered as Subchapter C, and new Subchapter B is added to read as follows:

Subchapter B

Totalisator Systems

- 5100.1 Definitions, including the definition of a "totalisator system" as a "computer system that registers and computes the wagering and payoffs in pari-mutuel wagering."
5100.2 Requires authorized pari-mutuel wagering entities to utilize a Board-approved totalisator system.

- 5100.3 Requires mutuel managers of totalisator companies to produce certain records upon request by the board.
- 5100.4 Prescribes notification procedures in the even of a tote system failure.
- 5100.5 Requires a storage plan for magnetic media of a tote system.
- 5100.6 Requires a board-issued license to provide totalisator services.
- 5100.7 Requires a board-issued license to provide simulcast services.
- 5100.8 Reserved.
- 5100.9 Requires tote companies to provide certain information to the public regarding pari-mutuel wagering and wagering pools.
- 5100.10 Requires pari-mutuel wagering entities to post accurate wagering information.
- 5099.11 Requires board-approved plans for posting race results of live and simulcast race results.
- 5099.12 Requires certain information on printed pari-mutuel tickets, and recordkeeping.
- 5099.13 Requires certain information on printed vouchers, except special vouchers.
- 5099.14 Establishes April 1 as the annual expiration date for pari-mutuel tickets.
- 5100.15 Prohibits pari-mutuel wagering entities from cashing pari-mutuel tickets under certain circumstances.
- 5100.16 Establishes procedure for accepting a claim for payment for certain pari-mutuel tickets that are not redeemed.
- 5100.17 Requires pari-mutuel entities to properly store cashed tickets and vouchers.
- 5100.18 Requires pari-mutuel entities to deface or otherwise mark tickets and vouchers that have been cashed.
- 5100.19 Defines an "outstanding pari-mutuel ticket" and prescribes procedures for accepting and processing such tickets.
- 5100.20 Requires totalisator systems to have restrictions on ticket and voucher cancellations.
- 5100.21 Requires pari-mutuel entities to maintain teller's records and requires such records be stored for three years.
- 5100.22 States the regulatory purpose for adopting facility and equipment standards.
- 5100.23 Establishes facility requirements that house totalisator systems, including utility, fire alarm and communication standards.
- 5100.24 Establishes hardware requirements for totalisator systems, including cash/sell systems, schematic charts, peripherals, stop wagering devices, tote boards, uninterruptable power supplies, remote access and wagering devices.
- 5100.25 Establishes software requirements for totalisator systems.
- 5100.26 Established general management requirements, such as written procedure manuals for tote companies.
- 5100.27 Establishes personnel requirements regarding staffing, training, and responsibilities.
- 5100.28 Reserved.
- 5100.29 Prescribes merger and calculation of common pools at network computing center and prohibits racetracks from accepting tote-to-tote-to-tote network wagers.
- 5100.30 Expressly permits any type of data transmission protocol in device-to-toe network; Establishes permissible transmission procedure in event remote site failure.
- 5100.31 Establishes general requirements for reporting and log keeping of totalisator operations. Requires that tote companies retain certain records for three years.
- 5100.32 Requires tote companies to print out pre-race reports, and requires certain information in such reports regarding system initialization, configuration parameters, race information, odds report, and wagering device report.
- 5100.33 Requires tote companies to be able to print out race-by-race reports, and requires certain information in such reports regarding scratches, betting, calculating price, probable payout, scan report for multi-leg pools, race summary, and daily summary.
- 5100.34 Requires tote companies to be able to print out at the end of the day a balance report, a wagering summary report, a system balance report, a money room balance report and an IRS report.
- 5100.35 Requires that tote companies produce, within 72 hours of a request by the Board, a special report which may require information on odds progression, ticket history, terminal history, outstanding uncashed tickets, outstanding tickets cashed, manually cashed tickets, cancelled tickets, network balance, tell inquiry, wagering, account history, inter-track wagering, ticket history and terminal history.
- 5100.36 Reserved.
- 5100.37 Requires tote companies to maintain the following printed logs: teller/machine history log, ticket history log, user terminal log, system error log, account history log, and off-line log.

Text of proposed rule and any required statements and analyses may be obtained from: Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, e-mail: info@racing.state.ny.us

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:** Racing, Pari-Mutuel Wagering and Breeding Law Sections 101, 227, 301, 305, 401, 405, 520, and 1002. Section 101 vests the Board with general jurisdiction over all horse racing and all pari-mutuel wagering activities in New York State. Section 227 grants the Board the authority to make rules regarding the conduct of pari-mutuel wagering activities associated with thoroughbred horse racing events. Section 301 grants the Board the authority to supervise generally all harness race meetings in New York State at which pari-mutuel betting is conducted and the authority to adopt rules accordingly. Section 305 grants the Board the authority to make rules regarding the conduct of pari-mutuel wagering activities associated with harness horse racing events. Section 401 grants the Board the authority to supervise generally all quarterhorse race meetings in New York State at which pari-mutuel betting is conducted and the authority to adopt rules accordingly. Section 405 grants the Board the authority to make rules regarding the conduct of pari-mutuel wagering activities associated with quarter horse racing events. Section 520 grants the Board general jurisdiction over the operation of off-track betting facilities within the state and the authority to adopt rules accordingly. Section 1002 grants the Board general jurisdiction over the simulcasting of horse races within the state and the authority to adopt rules accordingly.

2. **LEGISLATIVE OBJECTIVES:** This proposed amendment advances the legislative objective of regulating the conduct of pari-mutuel wagering activity in a manner designed to maintain the integrity of racing while generating a reasonable revenue for the support of government.

3. **NEEDS AND BENEFITS.** This rule is needed to ensure the integrity of pari-mutuel wagering by adopting licensing and regulatory standards for totalisator companies. In 2005, totalisator companies in New York State handled \$4.4 billion from in-state and out-of-state venues. Before off-track betting and simulcasting, wagering pools used to be limited to only on-track wagers and were relatively easy to regulate given their centralized location. Today, "tote" companies are hired by racetracks to calculate the voluminous wagering pools and odds from wagers placed at off-track betting, in-state and out-of-state simulcast sites. These tote companies utilize sophisticated software and computers to calculate odds and prizes based upon bets received from a multitude of locations, often calculating such odds and payouts to mathematically complex wagers involving multiple variations to multiple race, multiple horse wagers. These "tote" companies have become an indispensable element of modern day pari-mutuel wagering activities. Nevertheless, such companies are currently not required to be licensed.

The need for heightened scrutiny of totalisator standards and wagering procedures was thrust into the national spotlight in 2002 when three individuals were convicted for their role in what has come to be known as the Breeders' Cup Pick Six scandal. One of these individuals was an employee at a tote company where the data for the Breeders' Cup Pick Six pool was processed. With the aid of his confederates, they were able to access and manipulate electronic data to make it appear that one of the men had correctly selected six winners in the Breeders' Cup races, thereby earning a \$3 million dollar payout. In reality, one of the culprits accessed the totalisator system from his job, electronically changed the selections in his friend's ticket, and sought to redeem the wager at a New York State-based off-track betting corporation where one of the culprits maintained a telephone wagering account. In satisfaction of a plea bargain requirement, one of the defendants disclosed that their unlawful activities extended

beyond the immediate Pick Six scandal, and even included the redemptions of uncashed tickets through automated tellers. In the end, one thing was clear: Tote system standards were either non-existent or woefully outpaced by modern technology.

This rule is necessary to ensure that tote companies are licensed and accountable under a standard regulatory scheme. The most important aspect of this rule is that it will require independent monitoring of electronic wagering. Such independent monitoring is routinely found in the regulation of video lottery terminals and casinos, but surprisingly not in pari-mutuel wagering. This independent monitoring will allow the Board to identify wagering patterns or anomalies that may be indicative of criminal activity, such as money laundering or fraud. Given the significant role that tote companies play in the pari-mutuel wagering industry, it is necessary that the Board license these companies. Other industries have realized that with the growth of computers in every aspect of our lives, computer crimes are a growing threat. Naturally, horse racing is not immune to these threats and should take appropriate steps to detect and deter such computer crimes. This rule will ensure that tote companies incorporate necessary recordkeeping and reporting procedures that ensure that the board can review the activities of the tote company to ensure that all of its operations are transparent and in accordance with proper accounting and equipment standards. As is apparent from the nature of the rule, this rule is intended to ensure the integrity of the pari-mutuel wagering process regardless of whether the wager is placed at a race track or at an off-track betting or simulcast location.

4. COSTS

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule. There will be four types of costs for regulated parties: license application fees, annual audit costs, electronic monitoring costs and background investigation costs.

The application fees under Sections 5100.6 and 5100.7 will be \$500.

There are currently three authorized totalizator system providers in New York State: AMTOTE (which serves New York City OTB and Buffalo Raceway,) United Tote (which serves the New York Racing Association, Capital OTB in association with Finger Lakes Race Track, and Western Regional OTB) and Scientific Games (which serves Catskill OTB, Nassau OTB, Suffolk OTB, Yonkers Raceway and Monticello Raceway.) The Board obtained costs information directly from these three tote companies. The Board was unable to obtain information for Vernon Downs and Tioga harness raceways because both venues are currently unlicensed for pari-mutuel activities. Nevertheless, the two venues are actively planning to re-open as harness race tracks.

In order to protect the proprietary aspects of this information, no direct attribution for the source of the information is made in this regulatory impact statement.

The totalizator systems in New York State operate from a main computer in each region, which is known as a "hub." The hub serves the various sites throughout the region, which are remote locations where customers wager on races. Scientific Games, United Tote and AMTOTE all have two hubs in New York State.

There are three types of costs for regulated parties associated with this rulemaking related to auditing, electronic monitoring systems and background checks.

Under the rule, annual audits of the totes system will be conducted. Currently, the Board requires annual audits of tote companies as a condition of licensing. The audits shall follow SAS-70 "Statement on Auditing Standards" as established by the American Institute of Certified Public Accountants. The cost of these annual audits currently range from \$70,000 to \$120,000. The cost of the annual audits are directly related to number of areas that each company serves. The more areas that a company serves, the higher the annual audit costs. The approximate cost of an annual audit per area for each tote company is \$40,000 to \$45,000 per year.

The rule will also require an electronic monitoring system, which will allow for real-time auditing of tote systems, allow companies and regulators to check payouts to winners, verify prize amounts, verify handle and help calculate taxes and fees. Two of the three tote companies licensed in New York State currently use electronic monitoring systems.

There are two types of costs associated with electronic monitoring systems: initial costs and maintenance costs. Initial costs range from \$20,000 to \$50,000 per hub. There may also be an additional hardware cost of \$3,000. Maintenance costs range from \$10,000 to \$36,000 per year. The reason that some maintenance costs may be as low as \$10,000 per year is because the tote company operates other facilities in other states, and therefore may enjoy overall maintenance savings.

The third type of cost to regulated parties will be the background investigations for license applicants as required under Section 5100.6 The New York State Racing and Wagering Board is unable to determine the specific costs of such background investigations based upon the subjective circumstances of each applicant.

The scope of the investigations will be to determine general character and financial fitness of the applicant company. These background investigations will vary in time and cost based on several variables, such as completeness of the financial records submitted by the applicant with the application and the complexity of the business organization itself.

The Board will employ a reimbursement fee similar to the current cost systems by utilized by both the New York State Lottery in conducting video lottery terminal license background investigations and the Racing and Wagering Board in conducting license background investigations for employees at Indian gaming casinos. The costs to the applicant will be determined on a pro-rata basis based upon the number of staff required to review and investigate. For example, if the application only requires a senior accountant to review the application and conduct an electronic background check to verify the application information, then the background investigation cost will be the number of hours that the senior accountant spent on the case at the hourly rate at which the senior accountant is usually compensated. If the application is complicated and requires more staff to review and verify the application, then the background investigation costs will increase by the number of hours performed by the additional staff at the respective rate of compensation for each staff member. Obviously, the more thorough the documentation submitted by the applicant, the lower the costs will be to the applicant.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. Local governments would bear no costs because the regulation of tote systems is exclusively regulated by the New York State Racing and Wagering Board. This rule would not impose costs upon the New York State Racing and Wagering Board because licensing and auditing would be conducted under the current regulatory framework. The cost of background checks will be covered by the licensee applicants.

(c) The information related to costs was obtained by the New York State Racing and Wagering Board through direct inquiries to the three totalizator companies currently operating in New York State, the New Jersey Division of Gaming Enforcement, and the New York State Lottery. The costs included in this statement are actual costs. Analysis of these costs are referenced in the respective costs sections.

5. PAPERWORK: This rule will require the actual submission or availability of various forms of paperwork, including license applications, wagering tickets with specific information, vouchers, reports, teller's records, schematic charts related to totalisator equipment, written procedures for totalisator system programming, training and qualification documents for totalisator personnel, pre-race reports, race-by-race reports, end-of-day reports, special reports, and logs related to daily pari-mutuel wagering activity. Tote companies will be required to apply for a totalisator license on an application form prescribed by the Racing and Wagering Board, and will include a copy of a written contract; list of all officers directors and shareholders; a list of all totalisator personnel assigned to New York pari-mutuel activities; an affidavit of compliance, compliance policies and procedures, and any other information that the Board may require in the application. Tote companies will also be required to annually submit a Type II Statement on Auditing Standards as prescribed by the American Institute of Certified Public Accountants.

The rule will also require authorized pari-mutuel wagering entities to publish Board-approved wagering explanations in the official race program and post such wagering explanations in conspicuous places.

The rule will also require authorized pari-mutuel wagering entities to submit the board a plan for providing live and simulcast race results to the wagering public.

6. LOCAL GOVERNMENT MANDATES: Since the New York State Racing & Wagering Board is solely responsible for the regulations of pari-mutuel wagering activities in the State of New York, there is no program, service, duty or responsibility imposed by the rule upon any county, city, town, village, school district, fire district or other special district.

7. DUPLICATION: There are no relevant rules or legal requirements of the state and federal governments that duplicate, overlap or conflict with the rule.

8. ALTERNATIVE APPROACHES: This rule is the result of years of meetings with tote companies that operate in New York. Ever since the earliest days of drafting this rule, the Board met and communicated with representatives of the tote companies to learn about how the systems

operate and how best to ensure the integrity of those individual systems. No alternative approach was considered because of the nature of constructive rulemaking process employed by Board staff in the drafting of this rule. This rule is based upon established accounting principles and record-keeping procedures and any alternatives would compromise the integrity of such principles and procedures.

9. **FEDERAL STANDARDS:** There are no federal standards for pari-mutuel wagering. The New York State Racing and Wagering Board and, to a limited fiscal extent, the Department of Taxation of Finance are solely responsible for regulating pari-mutuel wagering in New York State.

10. **COMPLIANCE SCHEDULE:** This rule will be effective 180 days after publication in the *State Register* as a Notice of Adoption. The licensing cycle will be on a calendar year basis.

Regulatory Flexibility Analysis

This rule will regulate activities by totalisator companies. The three tote companies that operate in New York State do not qualify as either a small business or a local government as defined in Section 202-b of the State Administrative Procedure Act.

AmTote is headquartered in Hunt Valley, Maryland and has 400 employees in the United States and foreign countries. United Tote has headquarters in Glen Park, Pennsylvania and has 300 employees. Scientific Games has numerous offices, notably in Georgia, New York City and Connecticut. According to a spokeswoman in the Scientific Games Georgia offices, SciGames employs more than 100 employees, although she was unable to state its total number of employees.

Rural Area Flexibility Analysis

(a) This rule will apply to any rural areas where a licensed pari-mutuel wagering facility is located, including race tracks, off-track wagering offices where totalisator system hubs and off-track betting facilities are located. These locations include the following counties: Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Essex, Franklin, Fulton, Genesee, Greene, Herkimer, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Putnam, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schuyler, Seneca, Steuben, Tioga, Ulster, Warren, Washington, and Wayne. Racetracks are located in Genesee, Ontario, Oneida, Saratoga, and Sullivan counties. Totalisator hubs are located in the OTB offices of Schenectady and Genesee counties. All other counties listed have or are otherwise authorized for hosting off-track betting facilities.

(b) The rule will require various types of reporting and recordkeeping for tracks, OTBs and simulcast entities that conduct pari-mutuel wagering. These pari-mutuel wagering entities must maintain Teller's Records showing all tickets or vouchers cashed, refunded or cancelled. They must maintain a visitor's sign in log for the Totalisator Room. The totalisator company must use a remote access server that records keystrokes for all users. The totalisator systems must be able to produce hard copy reports and logs and the totalizator company must maintain these reports and logs on storage devices for at least three years after the end of the calendar year in which they were produced. Totalisator companies must be able to provide a written log or report within 48 hours of the request. Totalisator operators must be able to produce system initialization reports, configuration parameter reports, race information reports, odds report and a wagering device report. This rule requires tote companies to be able to print out race-by-race reports, and requires certain information in such reports regarding scratches, betting, calculating price, probable payout, scan report for multi-leg pools, race summary, and daily summary. The rule also requires tote companies to be able to print out at the end of the day a balance report, a wagering summary report, a system balance report, a money room balance report and an IRS report. This rule also requires that tote companies produce, within 72 hours of a request by the Board, a special report which may require information on odds progression, ticket history, terminal history, outstanding uncashed tickets, outstanding tickets cashed, manually cashed tickets, cancelled tickets, network balance, tell inquiry, wagering, account history, inter-track wagering, ticket history and terminal history.

This rule will require electronic monitoring equipment and annual audits of totalisator companies.

(c) There will be four types of costs for regulated parties: license application fees, annual audit costs, electronic monitoring costs and background investigation costs.

The application fees under Sections 5100.6 and 5100.7 will be \$500.

There are currently three licensed totalizator system providers in New York State: AMTOTE (which serves New York City OTB and Buffalo Raceway,) United Tote (which serves the New York Racing Association, Capital OTB in association with Finger Lakes Race Track, and Western

Regional OTB) and Scientific Games (which serves Catskill OTB, Nassau OTB, Suffolk OTB, Yonkers Raceway and Monticello Raceway.) The Board obtained costs information directly from these three tote companies. The Board was unable to obtain information for Vernon Downs and Tioga harness raceways because both venues are currently unlicensed for pari-mutuel activities. Nevertheless, the two venues are actively planning to re-open as harness race tracks.

In order to protect the proprietary aspects of this information, no direct attribution for the source of the information is made in this regulatory impact statement.

The totalizator systems in New York State operate from a main computer in each region, which is known as a "hub." The hub serves the various sites throughout the region, which are remote locations where customers wager on races. Scientific Games, United Tote and AMTOTE all have two hubs in New York State.

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(d) This rulemaking will minimize impact upon rural areas by placing compliance duties on totalisator companies and pari-mutuel wagering entities, which – although they may offer services in rural areas via electronic data transmission – have the ability to meet the sophisticated recordkeeping requirements of this rulemaking. In fact, the recordkeeping and reporting requirements are structured to closely conform to those required for customary accounting and billing that currently exist between totalisator companies and their local pari-mutuel wagering clients. While off-track betting corporations, race tracks and simulcast facilities may be located in

rural areas, they have employed totalisator companies as agents for decades and have experience in meeting such business records requirements. This rulemaking was narrowly crafted to focus on reporting, recordkeeping and the professional qualifications of such entities, and as such, no alternative approaches were considered. This rule is intended to create public oversight of those operational aspects that currently exist but are not open to regulatory review. This rule places no burdens on local governments in rural areas, no does it create a burden for private sector entities other than those licensed as pari-mutuel wagering entities or doing business as totalisator companies. The objective of this rule is to achieve transparency in the conduct of pari-mutuel wagering, thereby regulating the conduct of pari-mutuel wagering activity in a manner designed to maintain the integrity of racing while generating a reasonable revenue for the support of government.

(e) The Racing and Wagering Board has solicited comment from the totalisator companies that currently offer their services in New York State.

Job Impact Statement

This rule will neither create nor adversely impact jobs or employment opportunities. The rule will, among other reporting and recordkeeping requirements, require totalisator companies to install and operate electronic monitoring systems. These systems may be installed by the companies themselves using existing personnel, or they may elect to hire outside contractors. In either case, as is apparent from its nature and purpose, this rule will not have a substantial adverse impact on jobs employment opportunities in New York State.

Department of Transportation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rates and Charges at Republic Airport

I.D. No. TRN-32-07-00001-P

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

Proposed action: Amendment of Part 78 of Title 17 NYCRR.

Statutory authority: Transportation Law, sections 400 and 402

Subject: Rates and charges at Republic Airport.

Purpose: To revise the fees paid for use of Republic Airport by individuals and businesses.

Text of proposed rule: Sections 78.49, 78.50, 78.51, and 78.52 of Title 17 of the Official Compilation of Codes, Rules, and Regulations of the State of New York are repealed and Section 78.49 is added as follows:

RATES AND CHARGES

78.49 Rates and charges effective upon adoption of the rule.

a. **LANDING FEE** - \$0.50 per 1,000 pounds of aircraft certified maximum takeoff weight for the first 12,500 pounds. \$1.00 for each 1,000 pounds above 12,500 pounds up to 70,000 pounds. Then \$2.00 for each 1,000 pounds above 70,000 pounds. The minimum landing fee is \$2.50.

b. **TERMINAL USE FEE** – either (by choice of the carrier)

1. \$150 per aircraft operation with an arrival and departure constituting separate operations.

2. \$2.00 per seat based on the total seats in the aircraft.

c. **NON-LEASED TICKET COUNTER USE FEE** - \$25.00 per use.

d. **AIRCRAFT RAMP PARKING FEE** – After direction by airport operator to remove the aircraft, \$25.00 for the first two hours and \$10.00 per hour thereafter.

e. **TIE-DOWN FEES** - \$125.00 per month for single engine aircraft and \$150.00 per month for multi-engine aircraft. Beginning April 1, 2008, \$140.00 per month for single engine aircraft and \$170.00 per month for multi-engine aircraft.

f. **FUEL FLOWAGE FEE** - \$0.07 per gallon for each gallon of jet fuel sold at the airport and \$0.05 per gallon for each gallon of aviation fuel sold at the airport.

g. **AIRCRAFT OVERNIGHT RAMP PARKING FEE** - \$180.00 per month.

h. **AIRSHIP MOORING FEE** - \$150.00 per day.

i. **LAND USE FEES** - \$200.00 per acre per day.

- j. **FILM/COMMERCIAL USAGE FEE** –
 - \$1,650.00 per day for taxiways
 - \$750.00 per hour for runways
 - \$1,450.00 per day for the terminal building
 - \$1,600.00 per day for the ramp
 - \$1,200.00 per day for non-operational areas.
- k. **AIRCRAFT REMOVAL FROM RUNWAY OR TAXIWAY FEE** - \$375.00 for single engine aircraft and \$750.00 for multi-engine aircraft.
- l. **MEETING ROOM USAGE FEE** - \$200.00 per day. \$60.00 per day for non-profit or public organizations.
- m. **COMMERCIAL OPERATING PERMIT FEE** - \$200.00 per year.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Geiger, Department of Transportation, 7150 Republic Airport, Rm. 216, East Farmingdale, NY 11735-3930, (631) 752-7707

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 400 of the Transportation Law provides for the Commissioner of Transportation to establish and collect rates and charges as deemed necessary or desirable. Specifically Transportation Law section 400(3)(c) give the Commissioner authority to establish, levy and collect such fares, tolls, rentals, rates, charges and other fees as may be necessary for the use and operation of Republic Airport.

2. **Legislative objectives:** Republic Airport was transferred from the Metropolitan Transportation Authority to the Department of Transportation in 1982 by Chapter 370 of the Laws of 1982 which adopted a new Transportation Law Article 15, Air Transportation Facilities and Services at Stewart and Republic Airports. Specifically, section 400(3)(c) was created to “establish, levy and collect such fares, tolls, rentals, rates, charges and other fees as the commissioner deems necessary, convenient or desirable . . .” Further, it was the intent of the Legislature that the operation of Republic Airport be self-supporting. This intent requires the airport to periodically update its rates and charges to account for changes in the consumer price index over time.

3. **Needs and benefits:** The Airports operating budget must function on a self-sufficient basis. The operation expenditures are not subsidized in any manner. All operation expenses are directly funded through the various user fees collected. Rates and charges at the airport have not been updated since 1992. Since then, operating expenses have steadily increased each year. Republic Airport operation is experiencing a deficit that is approaching several hundred thousand dollars each year. The proposed fee and rate increases will alleviate this deficit and allow Republic Airport to continue to provide services for its customers. Updating the rates and charges at the airport will result in an increase in revenue of approximately \$390,000; this will permit the airport to meet its annual operating costs.

4. **Costs:** The increase in the rates and charges at the airport is expected to generate about \$390,000 in extra revenue.

a. Use of Republic Airport can be broken into two groups: private individuals operating small aircraft and corporate clients usually operating jet aircraft. Private individual’s costs would be realized primarily in their tie-downs fees. The average increase would be about \$40 per month or \$480 per year. However, the increase in landing fees would not affect the smaller private aircraft individuals. Therefore, the pilot operating a small, single engine plane would not see an increase in landing fees.

b. The larger the corporate aircrafts clients would realize an increase in their landing fees. Aircraft exceeding 20,000 pounds would be subject to the majority of the landing fee increase. These are generally larger corporate clients. See chart below.

c. There would be no cost to the Department of Transportation, New York State, or any local government. Official flights do not pay landing fees.

Landing Fee Group	# of landings		current fee	current income	new fee	new income
	1/1/2005 to 12/31/2005	current				
0-5000 lbs	54,050	\$2.50	\$135,125.00	\$2.50	\$135,125.00	
5001-6250	2,346	\$2.50	\$5,865.00	\$2.81	\$6,598.13	
6251-12500	3,904	\$3.70	\$14,444.80	\$4.63	\$18,056.00	
12501-20000	4,125	\$6.50	\$26,812.50	\$10.00	\$41,250.00	
20001-40000	3,628	\$12.00	\$43,536.00	\$23.75	\$86,165.00	
40001-70000	1,341	\$22.00	\$29,502.00	\$48.75	\$65,373.75	
70001-100000	1,145	\$34.00	\$38,930.00	\$93.75	\$107,343.75	

100001-up	84	\$58.00	\$4,872.00	\$213.75	\$17,955.00
total	70,623		\$299,087.30		\$477,866.63

5. Local government mandates: There is no imposition of any mandates upon local governments by the rule amendment.

6. Paperwork: There is no additional reporting or paperwork requirements as a result of the rule change.

7. Duplication: There are no duplicative, overlapping or conflicting rules or legal requirements, either under federal or state law.

8. Alternatives: The only other alternative that was considered was to leave the rates and charges as they exist now. This would only exacerbate the deficit that the airport operates under as inflation continues to increase the costs to operate the airport. That alternative was not chosen.

9. Federal standards: There are no applicable federal government standards implicated as a result of the rule change.

10. Compliance schedule: Immediate upon adoption.

Regulatory Flexibility Analysis

1. Effect of rule: No local government will be affected by this rule as no local government operates through Republic Airport. Most of the corporate flights through Republic Airport are by larger companies doing business on Long Island and the proposed rule will not significantly effect their operation. There are small firms that do business at the airport, but the additional costs will be passed on to their passengers. Since the rates currently charged at the airport are lower than comparable facilities in the New York metropolitan area, there should be little to no loss of business.

2. Compliance requirements: There is no reporting, recordkeeping, or other acts required to be undertaken as a result of this rule.

3. Professional services: There are no professional services required to comply with this rule.

4. Compliance costs: There are no capital costs to comply with this rule. There are no annual costs for local governments to comply with this rule since no local government operates through Republic Airport. The annual costs for this rule are estimated at \$390,000. The majority of these costs will be borne by larger businesses. Small business will pay a fraction of this cost and the cost will depend on the number of flights the small business do at Republic Airport.

5. Economic and technological feasibility: There are no technological requirements of this rule. Economically, the proposed rule is feasible for small businesses as the business jet market has been growing at Republic Airport at a seven to ten percent annual rate.

6. Minimizing adverse impact: The rule will have no adverse economic impact on small businesses or local governments. Local governments do not operate through Republic Airport. Small businesses will pay a percentage of the \$390,000 in revenue increase that will be seen at the airport, but this is a small fraction of the cost of these companies doing business.

7. Small business and local government participation: Local government is not impacted by the proposed rule. However, the Town of Babylon has been notified of the proposed rule and was offered the opportunity to comment on the proposal. Before this rule was submitted for approval, meetings were held at Republic Airport giving tenants and operators at the airport an opportunity to provide input to the costs being proposed. This input was used to establish the rates and charges proposed by this rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: This rule will not apply to rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services: There are no reporting, recordkeeping, or professional services required by this rule.

3. Costs: This rule will not affect rural areas.

4. Minimizing adverse impacts: Since this rule does not affect rural areas, there are no adverse impacts to minimize.

5. Rural area participation: There are no public or private interests from rural areas to participate in this rule making process.

Job Impact Statement

1. Nature of impact: There should be no job impacts as a result of this rule. The primary increase in cost due to this rule is to the business jet market. This is a rapidly growing section of the aviation industry as seen by the increase in jet traffic at Republic Airport over the past five years. Furthermore, the rates charged at Republic Airport are lower than those of airports in the New York metropolitan area. Therefore, the fact that this is a rapidly expanding market and the rates at Republic Airport are so low means that the affects of this rule are negligible.

2. Categories and numbers affected: There should be no jobs or employment opportunities affected by this rule.

3. Regions of adverse impact: No region of the state should have an impact from this rule.

4. Minimizing adverse impact: Since there should be no job impacts as a result of this rule, there are no adverse impacts to minimize.

5. Self-employment opportunities: The operators of aircraft that will pay the significant amount of the increase are all corporations and therefore the rule will not affect self-employment opportunities.