

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.

Office of Children and Family Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

National Criminal History Record Checks Through the FBI

I.D. No. CFS-27-07-00003-P

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

Proposed action: Amendment of Parts 421 and 443 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 378-a(2); L. 2006, ch. 668, section 3

Subject: National criminal history record checks through the FBI of prospective foster or adoptive parents and persons over the age of 18 residing in the homes of such individuals.

Purpose: To implement the requirements of chapter 668 of the Laws of 2006 that amended section 378-a (2) of the SSL to require a national criminal history record check through the FBI of all persons applying for certification or approval as foster or adoptive parents and all other persons over the age of 18 who reside in the homes of such applicants. The amendment to section 378-a (2) of the SSL is effective on January 11, 2007.

The regulations also implement the requirements of the Federal Adam Walsh Child Protection Act of 2006 (P.L. 109-248) that require states to

conduct a national criminal history record check on all persons applying for certification or approval as foster or adoptive parents, irrespective of whether Federal Title IV-E funding is being sought for the placement of a foster child in the home of such a person. Compliance with the Federal act is required for New York to have a compliant Title IV-E State Plan and to satisfy Federal safety requirements for individual foster care placements.

Substance of proposed rule (Full text is posted at the following State website: www.ocfs.state.ny.us): Section 421.11 (First Contact With Prospective Adoptive Parents)

The regulations require authorized agencies that operate an adoption program to inform a person applying to be an approved adoptive parent of the requirement that the applicant and each person over the age of 18 who resides in the home of the applicant be fingerprinted for the purpose of conducting a national criminal history record check through the Federal Bureau of Investigation (FBI).

In addition, the regulations require that a voluntary authorized agency must notify a person applying for approval as an adoptive parent that the applicant and each person over the age of 18 who resides in the home of the applicant will be asked to sign a consent for the release to the voluntary authorized agency of crime specific information provided to the Office of Children and Family Services (OCFS) by the FBI. The voluntary authorized agency must also advise the applicant that the refusal to sign the consent is a basis, in and of itself, to deny the person's application.

Section 421.15 (Adoption Study Process)

The regulations require authorized agencies that operate an adoption program to inform the applicant at the initial appointment or meeting with the authorized agency that a national criminal history record check through the FBI must be performed before the conclusion of the applicant's home study.

Section 421.19 (Foster Parents)

The regulations require voluntary authorized agencies to inform a person who is currently a certified or approved foster parent and who applies to such agency for approval as an adoptive parent that the applicant and each person over the age of 18 who resides in the home of the applicant will be asked to sign a consent for the release of crime specific information received by OCFS from the FBI and that the refusal to provide such a consent is a basis, in and of itself, for denial of the person's application.

The regulations require authorized agencies that operate an adoption program to perform a national criminal history record check through the FBI of a foster parent seeking approval as an adoptive parent and each person over the age of 18 who resides in the home of such person.

Section 421.27 (Criminal History Record Review)

The regulations require that authorized agencies perform a national criminal history record check through the FBI for each person seeking approval as an adoptive parent and each person over the age of 18 who resides in the home of the applicant. The regulations set forth the process for collecting and processing fingerprints for the national criminal history record check and the standards for the review and dissemination to authorized agencies of criminal history record information received by OCFS from the FBI.

The regulations provide that a voluntary authorized agency must deny an application when the applicant or other person over the age of 18 who resides in the home of the applicant has a criminal conviction or open charge reported to OCFS by the FBI for a crime committed outside of New York State and such person thereafter refuses to consent to disclosure of the specific crime or crimes when requested to do so by the voluntary authorized agency.

In addition, the regulations provide that if an application for approval is denied, the authorized agency must include within its notice of denial a description of the record review process available through the FBI.

Section 443.2 (Authorized Agency Operating Requirements)

The regulations require authorized agencies that operate a foster boarding home program to inform a person applying for certification or approval as a foster parent of the requirement that the applicant and each person over the age of 18 who resides in the home of the applicant must be fingerprinted for the purpose of conducting a national criminal history record check through the FBI.

The regulations require that each applicant for certification or approval as a foster parent and each person over the age of 18 who resides in the home of the applicant must submit completed fingerprint cards for a national criminal history check performed by the FBI.

In addition, the regulations provide that if an application for certification or approval is denied, the authorized agency must include within its notice of denial a description of the record review process available through of the FBI.

The regulations clarify that the records maintained by the authorized agency must include such criminal history responses from OCFS to reflect that both FBI and DCJS checks have been completed.

Section 443.7 (Agency Procedures for Certification or Approval of Potential Emergency Foster Homes and Emergency Relative Foster Homes)

The regulations provide that when a foster child is placed in a foster home that is certified or approved on an emergency basis that the authorized agency placing the child must secure fingerprints from the foster parent and each person over the age of 18 who resides in the home of the foster parent for the purpose of conducting a national criminal history record check through the FBI.

Section 443.8 (Criminal History Record Review)

The regulations require that authorized agencies perform a national criminal history record check through the FBI for each person applying for certification or approval as a foster parent and each person over the age of 18 who resides in the home of the applicant. The regulations set forth the process for collecting and processing fingerprints for the national criminal history record check and the standards for the review and dissemination to authorized agencies of criminal record information received by OCFS from the FBI.

The regulations require that when a person applies for certification or approval to a voluntary authorized agency that the voluntary authorized agency must notify the applicant that the applicant and each person over the age of 18 who resides in the home of the applicant will be asked to sign a consent for the release of crime specific information provided to OCFS by the FBI and that the voluntary authorized agency must advise the applicant that the refusal to sign the consent is a basis, in and of itself, to deny the person's application.

The regulations provide that a voluntary authorized agency must deny an application when the applicant or other person over the age of 18 who resides in the home of the applicant has a criminal conviction or open charge reported to OCFS by the FBI for a crime committed outside of New York State and such person thereafter refuses to consent to disclosure of the specific crime or crimes when requested to consent by the authorized agency.

Section 443.10 (Annual Renewal of Certified and Approved Foster Homes)

The regulations require that an authorized agency that operates a foster boarding home program must, at the time of renewal of the certification or approval of a foster home, conduct a national criminal history record check through the FBI of any person over the age of 18 who currently resides in such foster home, other than the foster parent, who has not previously had a national criminal record check completed pursuant to 18 NYCRR Part 443.

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

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

Section 378-a(2) of the SSL requires criminal history record checks be made on foster and adoptive parent applicants and other persons over the age of 18 who reside with such applicants.

2. Legislative objectives:

The regulations implement the requirements of Chapter 668 of the Laws of 2006 that amended section 378-a(2) of the SSL to require a national criminal history record check through the Federal Bureau of Investigation (FBI) for all persons applying for certification or approval as foster or adoptive parents and all other persons over the age of 18 who reside in the home of the applicants.

The regulations also implement the requirements of the federal Adam Walsh Child Protection Act of 2006 (P. L. 109-248) that requires states to conduct a national criminal history record check on all persons applying for certification or approval as foster or adoptive parents, irrespective of whether or not the social services district seeks federal Title IV-E funding for the placement. Compliance with the federal act is required for the state to have a compliant Title IV-E State Plan and to satisfy federal safety requirements for individual foster care placements.

The requirements for a national criminal history record check set forth in the regulations are in addition to the existing provisions in section 378-a(2) of the SSL that require a New York State criminal history record check to be conducted through the New York State Division of Criminal Justice Services (DCJS). In addition, the applicant must provide a sworn statement attesting to any criminal convictions of any applicable family member in New York State or any other jurisdiction.

By enacting Chapter 668 of the Laws of 2006, the legislature sought to enhance the scope of the criminal background checks performed by social services districts and voluntary authorized agencies by requiring that fingerprints also be checked through the FBI, thus allowing officials to corroborate information and gain a more accurate picture about any crimes committed nationally, including arrests and/or convictions.

3. Needs and benefits:

Both federal and state lawmakers enacted new laws requiring national criminal background checks to determine the complete criminal history of applicants to be foster or adoptive parents and adults who reside in their households. It is important that foster and adoptive parents not be fully certified or approved without taking into account all applicable criminal records, and where such records are found, doing a safety assessment as prescribed by OCFS. These new requirements should afford a safer environment for foster children placed in foster homes or for the purpose of adoption.

4. Costs:

The Federal and State statutory provisions requiring national criminal history background checks, which are being implemented through these regulations, will result in increased costs to the State. Based on the current statistics for conducting State criminal history background checks, it is projected that 17,000 persons will be subject to the new required national criminal history records checks during the first year of implementation. Based on that projection, OCFS estimates that the total costs associated with the national criminal history database check process during the first year of implementation will be approximately \$875,000. The estimate includes \$408,000 to cover the \$24 fee that must be paid to the FBI for processing each set of fingerprints, as well as \$467,000 for the costs to enhance OCFS' criminal history review administrative and legal units and the OCFS criminal history computer system to process the national criminal history database checks.

It is anticipated that approximately \$188,125 in Federal reimbursement under Title IV-E of the Federal Social Security Act will be available for the annual costs of conducting the national criminal history record checks. The remaining cost of \$686,875 will be State share.

5. Local government mandates:

The regulations require social services districts and voluntary authorized agencies that certify or approve foster and/or adoptive parents, to include as part of the licensing process conducting national criminal history background checks through the FBI in order to compile a complete criminal record on applicants and other adults residing in their household and take any such record into account by performing the OCFS prescribed safety assessment, prior to fully certifying or approving the home.

6. Paperwork:

Social services districts and voluntary authorized agencies will need to review all results of the national criminal background checks as they currently must review the results of the state criminal background checks. Where a criminal record exists, safety assessments must be documented. Pertinent information must be recorded on the State's SACWIS system, CONNECTIONS.

7. Duplication:

The regulations do not duplicate other State requirements.

8. Alternatives:

There are no alternatives to imposing these regulations, as they are required by both State and Federal statutes.

9. Federal standards:

The aforementioned Adam Walsh Child Protection Act of 2006, contains comparable standards and requirements to Chapter 668 of the Laws of 2006.

10. Compliance schedule:

Compliance with the regulations must begin upon the effective date of Chapter 668 of the Laws of 2006, January 11, 2007.

Regulatory Flexibility Analysis

1. Effect of Rule:

Social services districts will be affected by the regulations. There are 58 social services districts and the St. Regis Mohawk Tribe which is authorized by section 371(10)(b) of the Social Services Law to provide child welfare services pursuant to its State/Tribal Agreement with the Office of Children and Family Services (OCFS). Most voluntary foster care and adoption agencies also will be affected by the regulations. There are approximately 68 voluntary agencies operating foster care programs that include foster boarding home programs. There are 119 voluntary agencies authorized that operate adoption programs, including 19 agencies located out-of-state and approved to do adoptions in New York State pursuant to Article 13 of the Not-For-Profit Corporation Law.

2. Compliance Requirements:

The regulations require social services districts and voluntary authorized agencies that certify or approve foster and/or adoptive parents, to include as part of the licensing process conducting national criminal history background checks through the Federal Bureau of Investigation (FBI) in order to compile a complete criminal record on applicants and other adults residing in their household and take any such record into account by performing the OCFS prescribed safety assessment, prior to fully certifying or approving the home.

3. Professional Requirements:

The regulations would not require social services districts or voluntary agencies to hire additional staff in order to implement them. Existing staff will be able to procedurally accommodate the minimal changes on the business process these regulations entail.

4. Compliance Costs:

The Federal and State statutory provisions requiring national criminal history background checks, which are being implemented through these regulations, will result in increased costs to the State. Based on the current statistics for conducting State criminal history background checks, it is projected that 17,000 persons will be subject to the new required national criminal history records checks during the first year of implementation. Based on that projection, OCFS estimates that the total costs associated with the national criminal history database check process during the first year of implementation will be approximately \$875,000. The estimate includes \$408,000 to cover the \$24 fee that must be paid to the FBI for processing each set of fingerprints, as well as \$467,000 for the costs to enhance OCFS' criminal history review administrative and legal units and the OCFS criminal history computer system to process the national criminal history database checks.

It is anticipated that approximately \$188,125 in Federal reimbursement under Title IV-E of the Federal Social Security Act will be available for the annual costs of conducting the national criminal history record checks. The remaining cost of \$686,875 will be State share.

5. Economic and Technological Feasibility:

The regulations will not impose additional economic or technological burdens on social services districts or voluntary authorized agencies.

6. Minimizing Adverse Impact:

OCFS will use card scan, which will enable social services districts and voluntary authorized agencies to continue to submit a single fingerprint card per person. Card scan allows OCFS to electronically send fingerprint cards to the Division of Criminal Justice Services (DCJS). DCJS then electronically sends the fingerprint cards to the FBI. This process reduces the timeframe for the receipt of results from weeks to days, consequently allowing for more timely approval or certification decisions.

7. Small Business and Local Government Participation:

The timeframes prescribed by the State and Federal legislation precluded the participation of small businesses and local governments in the development of these regulations. They were filed on an emergency basis in order to meet the State and Federal timeframes; those affected will now

have an opportunity to comment upon publication of this Notice of Proposed Rule Making in the *State Register*.

Rural Area Flexibility Analysis

1. Effect on Rural Areas:

The regulations will affect the 44 social services districts that are in rural areas and the St. Regis Mohawk Tribe, which is authorized by section 371(10)(b) of the Social Services Law to provide child welfare services pursuant to its State/Tribal Agreement with the Office of Children and Family Services (OCFS). Those voluntary authorized agencies in rural areas contracting with social services districts to provide foster care and adoption services also will be affected by the proposed regulations. Currently, there are approximately 85 such agencies.

2. Compliance Requirements:

The regulations require social services districts and voluntary authorized agencies that certify or approve foster and/or adoptive parents, to include as part of the licensing process conducting national criminal history background checks through the Federal Bureau of Investigation (FBI) in order to compile a complete criminal record on applicants and other adults residing in their household and take any such record into account by performing the OCFS prescribed safety assessment, prior to fully certifying or approving the home.

3. Professional Services:

The regulations do not require social services districts or voluntary authorized agencies to hire additional staff in order to implement them. Existing staff will be able to procedurally accommodate the minimal changes to the business process these regulations entail.

4. Compliance Costs:

The Federal and State statutory provisions requiring national criminal history background checks, which are being implemented through these regulations, will result in increased costs to the State. Based on the current statistics for conducting State criminal history background checks, it is projected that 17,000 persons will be subject to the new required national criminal history records checks during the first year of implementation. Based on that projection, OCFS estimates that the total costs associated with the national criminal history database check process during the first year of implementation will be approximately \$875,000. The estimate includes \$408,000 to cover the \$24 fee that must be paid to the FBI for processing each set of fingerprints, as well as \$467,000 for the costs to enhance OCFS' criminal history review administrative and legal units and the OCFS criminal history computer system to process the national criminal history database checks.

It is anticipated that approximately \$188,125 in Federal reimbursement under Title IV-E of the Federal Social Security Act will be available for the annual costs of conducting the national criminal history record checks. The remaining cost of \$686,875 will be State share.

5. Minimizing Adverse Impact:

OCFS will utilize card scan which will enable social services districts and voluntary authorized agencies to continue to submit a single fingerprint card per person. Card scan allows OCFS to electronically send fingerprint cards to the Division of Criminal Justice Services (DCJS). DCJS in turn electronically sends then to the FBI. This process reduces the timeframe for the receipt of results from weeks to days, consequently allowing for more timely licensing decisions.

6. Small Business Participation:

The timeframes prescribed by the State and Federal legislation precluded the participation of small businesses in the development of these regulations. They were filed on an emergency basis in order to meet the State and federal timeframes; those affected will now have an opportunity to comment upon publication of this Notice of Proposed Rule Making in the *State Register*.

Job Impact Statement

A full job statement has not been prepared for the proposed regulation implementing portions of the Federal Adam Walsh Child Protection Act of 2006 and Chapter 668 of the Laws of 2006. The regulations will not have a substantial adverse impact on jobs or employment opportunities and in fact will not result in the loss of any jobs. This finding is based upon the fact that the regulations prescribe small additional duties for child welfare staff.

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

Home Studies for Adoptive and Foster Placements for Out-of-State Children and Inter-County Placements

I.D. No. CFS-27-07-00004-P

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

Proposed action: Amendment of Parts 357, 421, 428, 430, 441, and 443 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 374-a and 378-(5)

Subject: Home studies for adoptive and foster placements for out-of-state children and for inter-county placements; child abuse and maltreatment screening for prospective adoptive and foster parents.

Purpose: To implement the requirements of the Federal Safe and Timely Interstate Placement of Foster Children Act of 2006 (Public Law 109-239) which establishes timeframes for the completion and submission of home studies of prospective foster or adoptive parents who are being considered as potential resources for foster children from other states and for the frequency of casework visits of foster children placed outside of New York State and provisions of the Federal Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248) which requires that whenever a person applies for certification or approval as a foster or adoptive parent, or any other person over the age of 18 who resides in the home of such applicant resided in another state or states in the five years preceding the application for certification or approval, be screened for request child abuse and maltreatment information maintained by the previous state(s) of residence. Both laws took effect on October 1, 2006.

Substance of proposed rule (Full text is posted at the following State website: www.ocfs.state.ny.us): Section 357.3 (Access to Medical and Education Records)

The amendment provides for access to education and medical information at no cost to a foster child who is discharged to his or her own care.

Part 421 (Standards of Practice for Adoption Services) The amendment clarifies who may adopt a child.

The amendment requires authorized agencies to seek child protective services information from other states regarding a person applying for approval as an adoptive parent and any other person who resides with the applicant where such applicant or other person resided in the other state within 5 years of the application for approval. The amendment establishes timeframes for the completion of home studies for a person seeking to be approved as an adoptive parent to receive a child from another state or social services district. The amendment also sets forth who may perform such home studies. The amendment clarifies that a social services district or a voluntary authorized agency may not delay or deny an application or the conducting of a home study of a person seeking to adopt a child in the custody of another authorized agency.

Sections 428.3, 428.5 and 428.6 (Standards for Uniform Case Recording)

The amendment addresses case recording requirements for foster children placed outside of New York State and reflects the change in standards for the frequency of casework visits with such children. The amendment clarifies that when reunification with the parent is not the child's permanency planning goal, the social services district or the voluntary authorized agency must document the reasonable efforts made to finalize the child's permanency plan, including the identification of both in-state and out-of-state placement options. The amendment provides that when concurrently planning for the permanency of a child in foster care, the social services district or the voluntary authorized agency must document the description of the alternative plan to achieve permanency for the child which must include identification of appropriate in-state and out-of-state placements, if the child can not be safely returned home to his or her parents.

Section 430.11 (Appropriateness of Placement)

The amendment increases the frequency of caseworker visits of foster children placed outside of New York State from every 12 months to every six months. The amendment also expands the entities that may conduct such visits to include a private agency under contract with either the authorized agency in New York or the state in which the foster child is placed.

Section 430.12 (Diligence of Effort)

The amendment clarifies that if the child's permanency planning goal is adoption or placement in a permanent home other than that of the child's parent, the social services district or the voluntary authorized agency must document the reasonable efforts made to place the child in-state or out-of-state in a timely and orderly manner.

Section 441.22 (Health and Medical Services)

The amendment provides for access to health information at no cost to a foster child who is discharged to his or her own care. Part 443 (Certification, Approval and Supervision of Foster Boarding Homes) The amendment requires authorized agencies to seek child protective services information

from other states regarding a person applying for certification or approval as a foster parent and any other person who resides with the applicant where the applicant or other person resided in another state within 5 years of the application for certification or approval. The amendment establishes timeframes for the completion of home studies for a person seeking to be certified or approved as a foster parent to receive a child from another state or social services district. The amendment also sets forth who may perform such home studies. The amendment clarifies that a social services district or a voluntary authorized agency may not delay or deny an application or the conducting of a home study of a person seeking to care for a foster child in the custody of another authorized agency. The amendment allows an emergency certified or approved foster parent to remain in the status of an emergency certified or an emergency approved foster parent pending the completion of the Statewide Central Register of Child Abuse and Maltreatment data-base check required by section 424-a of the Social Services Law.

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

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

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

Section 372-b(3) of the SSL requires OCFS to promulgate regulations to maintain enlightened adoption policies and to establish standards and criteria for adoption practices.

Section 374-a of the SSL sets forth the standards and procedures relating to the Interstate Compact on the Placement of Children (ICPC) that involve the placement of children from one state to another for the purpose of foster care or adoption.

Section 378(5) of the SSL authorizes OCFS to establish and amend regulations governing the issuance and revocation of a certificate to board foster children and to prescribe standards for the care of foster children.

Section 471(a) of the Social Security Act provides that in order for a state to be eligible for federal Title IV-E funding for foster care and adoptions assistance, the state must have a State Plan approved by the federal Department of Health and Human Services which reflects the standards set forth in such section.

2. Legislative objectives:

The regulations implement the requirements of the federal Safe and Timely Interstate Placement of Foster Children Act of 2006 (Interstate Placement Act) that took effect on October 1, 2006. The Interstate Placement Act establishes timeframes for the completion and submission of home studies of prospective foster or adoptive parents who are being considered as potential resources for foster children from other states. The regulations impose standards on the content and timeframes for the completion of such home studies.

The regulations also implement federal requirements for the dissemination of the foster child's health and education records at no cost when the child is being discharged from care. Furthermore, the regulations implement federal requirements relating to the documentation of reasonable efforts to finalize a child's permanency plan, including consideration of both in-state and out-of-state placement options.

In addition, the regulations implement federal requirements relating to case recording requirements for foster children placed outside of New York and the frequency of casework visits with such children. The frequency of such visits is increased from every 12 months to every six months. The regulations also add the option that such visits may be made by a private agency under contract with either the authorized agency in New York with custody of the child or the state in which the foster child is placed.

The regulations implement the requirements of the federal Adam Walsh Child Protection Act of 2006 (Walsh Protection Act), parts of which also took effect on October 1, 2006. The Walsh Protection Act requires that whenever a person applies for certification or approval as a foster or adoptive parent, or any other person over the age of 18 who resides in the

home of such applicant resided in another state or states in the five years preceding the application for certification or approval, the licensing or approving agency must request child abuse and maltreatment information maintained by the previous state(s) of residence.

3. Needs and benefits:

The regulations will enhance permanency for foster children by expediting the home study process and by requiring agencies to consider all viable placement options where a child may not return home. Currently, the ICPC does not set forth any timeframes for the conducting of home studies of persons seeking to be foster parents or adoptive parents of foster children. Regarding the consideration of out-of-state options for children in foster care, current regulatory standards do not expressly refer to out-of-state placement options.

The regulations establish that upon receipt of a referral, the social services district may conduct such home study directly or may use a voluntary authorized agency under contract with such district or a voluntary authorized agency under contract with the OCFS to conduct the home study, and that if the latter option is selected, the costs of the home study will be charged back to the district in which the prospective foster or adoptive parent(s) reside.

The regulations codify the policies regarding the time frames for completion of a home study and which entity is permitted to do a home study to apply to New York State inter-county placements, when an inter-county placement is sought for a foster child for the purposes of foster care in another county or to make an adoptive placement in another county.

The regulations will also enhance the safety and permanency of foster children placed outside of New York by increasing the frequency of caseworker visits of the child in the home or facility in which the child is placed.

The regulations will enhance the health and well-being of former foster children by providing them with relevant available health and education information where the child is discharged to his or her own care.

The regulations will also enhance the safety of foster and adoptive children by broadening the scope of screening prospective foster and adoptive parents and other adults residing in the home of the prospective foster or adoptive parents. It is possible that such persons may have a child abuse or maltreatment history in their prior state of residence. Such information is highly relevant to whether a foster or adoptive child may be safely cared for in such home. The regulations are necessary to satisfy federal Title IV-E State Plan requirements that impact the availability of federal funding for foster care and adoption assistance. Furthermore, the regulations allow an emergency certified or approved foster parent to remain in that status pending completion of the Statewide Central Register of Child Abuse and Maltreatment data-base check required by section 424-a of the SSL. A similar provision currently exists for the completion of the criminal history record check.

4. Costs:

Local social services districts or voluntary authorized agency under contract with social services districts are already required to complete a home study; therefore, this does not represent an additional workload. It is unknown if social services districts or voluntary authorized agency under contract with social services districts are currently completing the home study within 60 days (or 75 days in certain circumstances) of the receipt of the request. Therefore, to facilitate compliance with the timeframes, OCFS will issue a request for applications in order to make available the services of one or more voluntary agencies to conduct the home study.

Minimal costs are expected related to the requirements to check with the appropriate child welfare agency in any state where the applicant(s) or other persons over the age of 18 in the household resided within the previous five years for any child abuse or maltreatment history in such states. It is expected that this activity will be completed through routine correspondence to such state(s).

The regulations also increase the frequency of caseworker visits and reports for foster children placed outside of New York State from every 12 months to every six months. In general, such visits and reports are already requested and conducted within these timeframes, and in many cases are done more frequently. To facilitate this activity, the regulations expand the entities that may conduct such visits to include a private agency under contract with either the authorized agency in New York or the state in which the foster child is placed. In accordance with the ICPC, such reports and visits often are done by the state where the child is placed and are typically completed within these timeframes. As a result, it is anticipated that there will be no significant cost impact on local social services districts for this activity.

There is no additional cost anticipated for the dissemination of health and education records when the child is being discharged from foster care since this activity is the current practice.

There is no cost related to any of the documentation requirements contained in these regulations since this information will be recorded in the CONNECTIONS where this functionality already exists or is under development.

5. Local government mandates:

When the ICPC office of OCFS receives a request from another state seeking to place a foster child from the other state with a person in New York State as a foster or adoptive parent, the social services district or voluntary authorized agency under contract with the social services district is required to commence and complete a home study within 60 days of the receipt of such request. An additional 15 days to complete the home study is allowed for circumstances outside of the control of the social services district or voluntary authorized agency if a timely request for such documentation was made by the district or agency.

Currently, social services districts and voluntary authorized agencies are required pursuant to 18 NYCRR 357.3 to provide a foster child with the child's comprehensive health history when the foster child is discharged to his or her own care. The regulations clarify that this history must be provided at no cost and include the child's current health providers. The regulations also require the provision of the child's education record at the time of the child's discharge to his or her own care, also at no cost to the child.

Social services districts are currently required to assess the appropriateness of placement of children in foster care pursuant to 18 NYCRR 430.11. Each foster child must have periodic assessments performed to address the issue of permanency. The regulations require the social services district to expressly document the consideration of out-of-state placement options if the child will not be returned to his or her parent.

Current law and regulations in section 424-a of the SSL and 18 NYCRR Parts 421 and 443 require data base checks of New York's Statewide Central Register of Child Abuse and Maltreatment for all persons applying for certification or approval as foster or adoptive parents and for any other persons over the age of 18 who reside in the home of such applicants. The regulations expand the requirements to check with the appropriate child welfare agency in any state where the applicant(s) or other persons over the age of 18 in the household resided within the previous five years for any child abuse or maltreatment history in such states.

6. Paperwork:

The regulations require the specific documentation of the consideration of out-of-state placement as an option for foster children who do not have the permanency goal of return to the parent. Such documentation will be recorded in the CONNECTIONS system.

Documentation relating to home studies for the certification or approval of a foster or adoptive parent will be maintained in the state's CONNECTIONS system. This reflects current standards. Documentation of health information is already mandated by OCFS regulations 18 NYCRR 357.3 and 441.22. Documentation of educational information is already mandated by OCFS regulation 18 NYCRR 428.5.

The regulations require the documentation of requests to appropriate child welfare agencies in the prior state(s) of residence (5 years preceding the date of the application for certification or approval) of prospective foster or adoptive parents and/or any other persons over the age of 18 who resides in the home of the applicant and the results of such requests. As is currently required for in-State inquiries made pursuant to section 424-a of the SSL, if the agency decides to certify or approve an applicant where there is a history of abuse or maltreatment, the agency must document the basis for making such decision.

7. Duplication:

The regulations do not duplicate other State requirements.

8. Alternatives:

These regulations are necessary to comply with federal statutory mandates. Therefore, there are no alternatives to these regulations.

9. Federal standards:

The regulations are required to implement the federal Safe and Timely Interstate Placement of Foster Children Act of 2006 and the federal Adam Walsh Child Protection Act of 2006 and to maintain compliance with federal Title IV-E State Plan requirements.

10. Compliance schedule:

Compliance with the regulations must begin immediately upon final adoption of these regulations.

Regulatory Flexibility Analysis

1. Effect of Rule:

Social services districts will be affected by the regulations. There are 58 social services districts and the St. Regis Mohawk Tribe which is authorized by section 371(10)(b) of the Social Services Law to provide child welfare services pursuant to its State/Tribal Agreement with the Office of Children and Family Services (OCFS). Most voluntary foster care and adoption agencies also will be affected by portions of the regulations. There are approximately 114 voluntary agencies operating foster care programs. Of those, 68 such agencies operate foster boarding home programs. There are 119 voluntary agencies authorized that operate adoption programs, including 19 agencies located out-of-state and approved to do adoptions in New York State pursuant to Article 13 of the Not-For-Profit Corporation Law.

2. Compliance Requirements:

When the Interstate Compact on the Placement of Children (ICPC) office of OCFS receives a request from another state seeking to place a foster child from the other state with a person in New York State as a foster or adoptive parent, the social services district or voluntary authorized agency under contract with the social services district or under contract with OCFS is required to commence and complete a home study within 60 days of the receipt of such request. An additional 15 days to complete the home study is allowed for circumstances outside of the control of the social services district or voluntary authorized agency if a timely request for such documentation was made by the district or agency.

Currently, social services districts and voluntary authorized agencies are required pursuant to 18 NYCRR 357.3 to provide a foster child with his or her comprehensive health history when the foster child is discharged to his or her own care. The regulations clarify that this history must include the child's current health providers and clarify that there is no cost to the child for these records. The regulations also require the provision of the child's education record at the time of the child's discharge to his or her own care, also at no cost to the child.

Social services districts are currently required to assess the appropriateness of placement of children in foster care pursuant to 18 NYCRR 430.11. Each foster child must have periodic assessments performed to address the issue of permanency, including whether the child will be returned home or to another placement resource (see section 409-e of the SSL and 18 NYCRR Part 428). The regulations require the social services district to expressly document the consideration of out of state placement options if the child will not be returned to his or her parent.

When a foster child is placed outside of New York State, the child must be visited periodically by a caseworker pursuant to 18 NYCRR 430.11(c)(2)(ix) and the visits must be recorded in the child's case record. The regulations increase the frequency of such visits from every 12 months to every six months. The regulations also authorize that such visits may be conducted by a private agency under contract with either the authorized agency in New York with custody of the child or the state in which the foster child is placed.

Current law and regulations in section 424-a of the SSL and 18 NYCRR Parts 421 and 443 require data base checks of New York's Statewide Central Register of Child Abuse and Maltreatment for all persons applying for certification or approval as foster or adoptive parents and for any other persons over the age of 18 who reside in the home of such applicants, irrespective of how long such persons resided in New York State. The regulations expand the requirements to check with the appropriate child welfare agency in any state where the applicant(s) or other persons over the age of 18 in the household resided within the previous five years for any child abuse or maltreatment history in such states. Furthermore, the regulations allow an emergency certified or approved foster parent to remain in that status pending completion of the Statewide Central Register of Child Abuse and Maltreatment data-base check required by section 424-a of the SSL. A similar provision currently exists for the completion of the criminal history record check.

3. Professional Requirements:

The regulations would not require social services districts or voluntary authorized agencies to hire additional staff in order to implement them. Current training programs will be enhanced to emphasize the casework support that these amendments bring. In addition, OCFS will issue a request for applications in order to make available the services of one or more voluntary authorized agencies to conduct home studies for out-of-state placements or inter-county placements, in accordance with these regulations.

4. Compliance Costs:

Local social services districts or voluntary authorized agency under contract with social services districts are already required to complete a

home study; therefore, this does not represent an additional workload. It is unknown if social services districts or voluntary authorized agency under contract with social services districts are currently completing the home study within 60 days (or 75 days in certain circumstances) of the receipt of the request. Therefore, to facilitate compliance with the timeframes, OCFS will issue a request for applications in order to make available the services of one or more voluntary agencies to conduct the home study.

Minimal costs are expected related to the requirements to check with the appropriate child welfare agency in any state where the applicant(s) or other persons over the age of 18 in the household resided within the previous five years for any child abuse or maltreatment history in such states. It is expected that this activity will be completed through routine correspondence to such state(s).

The regulations also increase the frequency of caseworker visits and reports for foster children placed outside of New York State from every 12 months to every six months. In general, such visits and reports are already requested and conducted within these timeframes, and in many cases are done more frequently. To facilitate this activity, the regulations expand the entities that may conduct such visits to include a private agency under contract with either the authorized agency in New York or the state in which the foster child is placed. In accordance with the ICPC, such reports and visits often are done by the state where the child is placed and are typically completed within these timeframes. As a result, it is anticipated that there will be no significant cost impact on local social services districts for this activity.

There is no additional cost anticipated for the dissemination of health and education records when the child is being discharged from foster care since this activity is the current practice.

There is no cost related to any of the documentation requirements contained in these regulations since this information will be recorded in the CONNECTIONS where this functionality already exists or is under development.

5. Economic and Technological Feasibility:

The regulations will not impose additional economic or technological burdens on social services districts or voluntary authorized agencies.

6. Minimizing Adverse Impact:

The aforementioned request for applications will be issued by OCFS in order to provide an additional resource to the field for the purpose of conducting home studies in accordance with these regulations, including meeting the new timeframes prescribed by the Federal law.

7. Small Business and Local Government Participation:

The timeframes prescribed by the Federal legislation precluded the participation of small businesses in the development of these regulations. They were filed on an emergency basis in order to meet the federal timeframes; those affected will now have an opportunity to comment upon publication of this Notice of Proposed Rule Making in the *State Register*.

Rural Area Flexibility Analysis

1. Effect on Rural Areas:

The regulations will affect the 44 social services districts that are in rural areas and the St. Regis Mohawk Tribe, which is authorized by section 371(10)(b) of the Social Services Law to provide child welfare services pursuant to its State/Tribal Agreement with the Office of Children and Family Services (OCFS). Those voluntary authorized agencies in rural areas contracting with social services districts to provide foster care and adoption services also will be affected by the proposed regulations. Currently, there are approximately 85 such agencies.

2. Compliance Requirements:

When the Interstate Compact on the Placement of Children (ICPC) office of OCFS receives a request from another state seeking to place a foster child from the other state with a person in New York State as a foster or adoptive parent, the social services district or voluntary authorized agency under contract with the social services district or under contract with OCFS is required to commence and complete a home study within 60 days of the receipt of such request. An additional 15 days to complete the home study is allowed for circumstances outside of the control of the social services district or voluntary authorized agency if a timely request for such documentation was made by the district or agency.

Currently, social services districts and voluntary authorized agencies are required pursuant to 18 NYCRR 357.3 to provide a foster child with his or her comprehensive health history when the foster child is discharged to his or her own care. The regulations clarify that this history must include the child's current health providers and clarify that there is no cost to the child for these records. The regulations also require the provision of the child's education record at the time of the child's discharge to his or her own care, also at no cost to the child.

Social services districts are currently required to assess the appropriateness of placement of children in foster care pursuant to 18 NYCRR 430.11. Each foster child must have periodic assessments performed to address the issue of permanency, including whether the child will be returned home or to another placement resource (see section 409-e of the SSL and 18 NYCRR Part 428). The regulations require the social services district to expressly document the consideration of out-of-state placement options if the child will not be returned to his or her parent.

When a foster child is placed outside of New York State, the child must be visited periodically by a caseworker pursuant to 18 NYCRR 430.11(c)(2)(ix) and the visits must be recorded in the child's case record. The regulations increase the frequency of such visits from every 12 months to every six months. The regulations also authorize that the caseworker visit may be performed by a private agency under contract with either the authorized agency in New York with custody of the child or the state in which the foster child is placed.

Current law and regulations in section 424-a of the SSL and 18 NYCRR Parts 421 and 443 require data base checks of New York's Statewide Central Register of Child Abuse and Maltreatment for all persons applying for certification or approval as foster or adoptive parents and for any other persons over the age of 18 who reside in the home of such applicants, irrespective of how long such persons resided in New York State. The regulations expand the requirements to check with the appropriate child welfare agency in any state where the applicant(s) or other persons over the age of 18 in the household resided within the previous five years for any child abuse or maltreatment history in such states. Furthermore, the regulations allow an emergency certified or approved foster parent to remain in that status pending completion of the Statewide Central Register of Child Abuse and Maltreatment data-base check required by section 424-a of the SSL. A similar provision currently exists for the completion of the criminal history record check.

3. Professional Services:

The regulations would not require social services districts or voluntary authorized agencies to hire additional staff in order to implement them. Current training programs will be enhanced to emphasize the casework support that these amendments bring. In addition, OCFS will issue a request for applications in order to make available the services of one or more voluntary agencies to conduct home studies for out-of-state placements or inter-county placements, in accordance with these regulations.

4. Compliance Costs:

Local social services districts or voluntary authorized agency under contract with social services districts are already required to complete a home study; therefore, this does not represent an additional workload. It is unknown if social services districts or voluntary authorized agency under contract with social services districts are currently completing the home study within 60 days (or 75 days in certain circumstances) of the receipt of the request. Therefore, to facilitate compliance with the timeframes, OCFS will issue a request for applications in order to make available the services of one or more voluntary agencies to conduct the home study.

Minimal costs are expected related to the requirements to check with the appropriate child welfare agency in any state where the applicant(s) or other persons over the age of 18 in the household resided within the previous five years for any child abuse or maltreatment history in such states. It is expected that this activity will be completed through routine correspondence to such state(s).

The regulations also increase the frequency of caseworker visits and reports for foster children placed outside of New York State from every 12 months to every six months. In general, such visits and reports are already requested and conducted within these timeframes, and in many cases are done more frequently. To facilitate this activity, the regulations expand the entities that may conduct such visits to include a private agency under contract with either the authorized agency in New York or the state in which the foster child is placed. In accordance with the ICPC, such reports and visits often are done by the state where the child is placed and are typically completed within these timeframes. As a result, it is anticipated that there will be no significant cost impact on local social services districts for this activity.

There is no additional cost anticipated for the dissemination of health and education records when the child is being discharged from foster care since this activity is the current practice.

There is no cost related to any of the documentation requirements contained in these regulations since this information will be recorded in the CONNECTIONS where this functionality already exists or is under development.

5. Minimizing Adverse Impact:

The aforementioned request for applications will be issued by OCFS in order to provide an additional resource to the field for the purpose of conducting home studies in accordance with these regulations, including meeting the new timeframes prescribed by the Federal law.

6. Small Business Participation:

The timeframes prescribed by the Federal legislation precluded the participation of small businesses in the development of these regulations. They were filed on an emergency basis in order to meet the Federal timeframes; those affected will now have an opportunity to comment upon publication of this Notice of Proposed Rule Making in the State Register.

Job Impact Statement

A full job statement has not been prepared for the regulations implementing the Federal Safe and Timely Interstate Placement of Foster Children Act of 2006, and portions of the Federal Adam Walsh Child Protection Act of 2006. The regulations would not have a substantial adverse impact on jobs or employment opportunities and in fact would not result in the loss of any jobs. This finding is based upon the fact that the regulations prescribe additional duties for child welfare staff. In addition, these regulations allow for a potential increase in jobs based upon the contracting authority granted by these regulations, if the social services district so chooses to contract for certain activities.

State Consumer Protection Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

U.S. Consumer Product Safety Commission's Handbook for Public Playground Safety

I.D. No. CPR-27-07-00006-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 4605 to Title 21 NYCRR.

Statutory authority: General Business Law, section 399-dd

Subject: U.S. Consumer Product Safety Commission's Handbook for Public Playground Safety.

Purpose: To create rules pursuant to the statutory requirements of General Business Law, section 399-dd

Text of proposed rule: *Part 4605 Design, Installation, Inspection and Maintenance of Playground Equipment (Statutory Authority; General Business Law § 399-dd)*

§ 4605.1 Definitions

(a) *Construct means the building of a new playground or the building or replacement of major types of playground equipment within a preexisting playground or the modification of major types of playground equipment within a preexisting playground. This definition shall not include routine maintenance on playground equipment.*

(b) *Playground means equipment, related structures, surfacing, fencing, signs, internal pathways, land forms and vegetation for the use of six or more children. For purposes of this part, playground does not include areas on one, two or three family residential properties or areas intended to serve as athletic fields or athletic courts.*

§ 4605.2 Incorporation by Reference

The guidelines of the U.S. Consumer Product Safety Commission Handbook for Public Playground Safety are hereby incorporated by reference in this Part and have been filed in the Office of the Secretary of State of the State of New York, the publication so being filed being the booklet entitled: Handbook for Public Playground Safety, Publication No. 325, 2003. These guidelines incorporated by reference may be examined at the New York State Consumer Protection Board, 5 Empire State Plaza, Suite 2101, Albany, New York 12223 and the New York State Consumer Protection Board website at www.nysconsumer.gov, at the law libraries of the New York State Supreme Court, the Legislative Library and the New York State Department of Parks, Recreation and Historic Preservation.

Text of proposed rule and any required statements and analyses may be obtained from: Lisa R. Harris, Consumer Protection Board, Five

Empire State Plaza, Suite 2101, Albany, NY 12223, (518) 474-3514, e-mail: lisa.harris@consumer.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:

Subdivision 1(d) of section 553 of the Executive Law, powers and duties of the Consumer Protection Board (The Board) and the executive director, grants general rulemaking authority to The Board to implement other powers and duties by regulation and otherwise as prescribed by any provision of law. Section 399-dd of the General Business Law mandates that The Board in consultation with the Office of Parks, Recreation and Historic Preservation promulgate rules and regulations for the design, installation, inspection and maintenance of playground equipment. The proposed rule simply incorporates by reference the U.S. Consumer Product Safety Commission Handbook for Public Playground Safety (CPSC Handbook).

2. LEGISLATIVE OBJECTIVES:

The legislative memorandum in support of General Business Law section 399-dd directs promulgation of this proposal. This memorandum indicates that the legislative objective of General Business Law section 399-dd is to address the hope of parents and guardians that playgrounds where their children meet friends, play and exercise are among the safest places their children can spend time. Further, that memorandum underscored that the U.S. Consumer Products Safety Commission (CPSC) and the American Society for Testing Materials (ASTM) has developed playground equipment guidelines and standards. While establishing rules and regulations for the construction of new playgrounds or playground equipment is no guarantee that accidents will not occur, they may greatly reduce the severity of such accidents.

Recognizing that the replacement of playground equipment or change in design by a date certain would be cost prohibitive, this legislation instead only requires that new playgrounds, or new installation, construction, or replacement of major types of playground equipment conform to any requirements promulgated pursuant to the enactment of this legislation. This approach allows playground owners to efficiently comply with the CPSC Handbook and establishes consistency and uniformity of standards.

3. NEEDS AND BENEFITS:

The purpose of the proposed rules is to achieve the statutory objectives of General Business Law section 399-dd, which requires The Board, in consultation with the Office of Parks, Recreation and Historic Preservation to promulgate rules that will ensure playgrounds and playground equipment will substantially comply with the guidelines published in the CPSC Handbook thereby decreasing the number of serious injuries and deaths related to unsafe playground conditions. The Board and the Office of Parks, Recreation and Historic Preservation did collaborate as required by the statute and discussed alternative approaches to this proposal, including, developing new categories for major types of equipment and consulting with the Office of Children and Families. Rather than adopt a portion of the CPSC Handbook guidelines or the standard of "substantially comply" with the guidelines, The Board incorporated by reference the entire CPSC Handbook to better serve consumers, businesses and government. This action creates a consistent uniform standard for playground safety with which many consumers, businesses and governments are already familiar. The New York State Education Department Playground Installation Reference Guide #C.4 & #C.5 requires that school playgrounds conform to the CPSC Handbook.¹

Research conducted by the CPSC and reported by the National Program for Public Playground Safety indicates that approximately 45% of playground injuries occur on school playgrounds and 31% occur in public parks.² Further, the National Safety Council and the New York Public Interest Research Group (NYPIRG) reported that more than approximately 200,000 children per year visit hospital rooms as a result of playground injuries.³ NYPIRG noted that more playground injuries could be prevented if playgrounds were designed with a greater emphasis on safety.⁴

Accordingly, incorporating by reference the entire CPSC Handbook is the best way to comply with the intent of General Business Law section 399-dd and enable playground owners to become familiar with nationally recognized playground safety standards which will encourage necessary and effective compliance.

4. COSTS:

(a) Costs to State Government: The Board will develop and distribute informational material to aid with education and compliance with these

new rules. This information will also be available on The Board's website. The cost to The Board is estimated at approximately five thousand (\$5,000) dollars. However, the cost of the development and distribution of this material is outweighed by the benefit of supporting compliance. In the event of alleged non-compliance, the Office of the New York State Attorney General may incur costs related to investigation and enforcement.

(b) Costs to private regulated parties: These rules may impose some costs on businesses that install or construct new playground equipment or replace major types of playground equipment on existing playgrounds in order to comply with General Business Law section 399-dd and provide safer playgrounds for children. However, because costs incurred will vary depending upon plans related to specific construction or modification of individual playgrounds, The Board is unable to project potential cost impacts. The Board will carefully consider all oral and written comments received as a result of these proposed regulations.

(c) Costs to local governments: These rules may impose costs on local governments that install or construct new playground equipment or replace major types of playground equipment on existing playgrounds. The Association of Towns, New York State Conference of Mayors and the New York State Association of Counties were all consulted with respect to this proposal. The Conference of Mayors confirmed that most of the playgrounds under their jurisdiction were currently in compliance with the CPSC Handbook for insurance purposes. The Association of Towns and the New York State Association of Counties offered no comment on compliance costs.

According to the Department of Education's Playground Installation Reference Guide #C.4 and #C.5, schools engaging in playground installations are already required to include with their plans a certification that the design meets or exceeds the requirements of the CPSC Handbook. Costs to other local government entities are dependent upon the specific plan related to construction or modification of particular playgrounds. Therefore, The Board has no methodology upon which to project costs. The Board will carefully consider all oral and written comments received as a result of these proposed regulations.

5. LOCAL GOVERNMENT MANDATES:

The local government mandate to substantially comply with the CPSC Handbook is a result of General Business Law section 399-dd and not these rules.

6. PAPERWORK:

No new paperwork requirements are anticipated for compliance with this proposal. However, parties in alleged non-compliance would have the opportunity to submit within five days a written response to the notice of a proceeding by the Attorney General. There are no reporting requirements to The Board in the proposed regulations. However, The Board may respond in writing to any inquires regarding these rules.

7. DUPLICATION:

The proposed regulation will not duplicate, overlap or conflict with any known State or federal regulatory requirements. The proposal will incorporate by reference the CPSC Handbook and create consistency with respect to playground safety standards throughout New York State.

8. ALTERNATIVES:

The Board is mandated by General Business Law section 399-dd to promulgate regulations that substantially comply with the guidelines set forth in the CPSC Handbook. During rule development, The Board considered developing standards similar to, but not identical with, the CPSC Handbook guidelines. For example, The Board considered developing new categories for major types of equipment; requiring resilient surfacing under equipment at ground level; requiring a state inspection and approval prior to the use of any newly constructed or installed playground equipment subject to these requirements; setting a specific time frame for compliance; and designing a system for playground owners to annually report the condition of their facilities and affirm compliance. The Board will carefully consider all comments received as a result of these proposed regulations.

9. FEDERAL STANDARDS:

The proposed amendments do not conflict with any federal standards. The CPSC guidelines are based on ASTM standards. The CPSC is an independent federal regulatory agency charged with addressing unreasonable risks of death and injury associated with over 15,000 types of consumer products. One way that the CPSC staff does this is to work with industry and other interested parties to develop voluntary product safety standards. The ASTM is the largest voluntary standards development organization in the world. The CPSC has adopted the ASTM standards for playgrounds in its promulgation of the CPSC Handbook.

10. COMPLIANCE SCHEDULE:

The provisions of the General Business Law are effective July 1, 2007. This proposal is required by the General Business Law and does not impose additional requirements on regulated parties. Therefore, no compliance schedule is feasible and the proposed amendments will become effective upon the adoption and publication in the *State Register*.

¹ www.emsc.nysed.gov/facplan/articles/C04_playground_installations_referen.html

² <http://www.playgroundsafety.org/research/index.htm>

³ <http://www.nsc.org/library/facts/plgrdgen.htm>

⁴ <http://www.nypirg.org/Consumer/playground06/>

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The proposed regulations will require local governments to comply with GBL § 399-dd. The regulations will have an effect on small businesses which are defined as employing 100 or less individuals (SAPA § 102(8)), that install or construct playground equipment in an area set aside for play of six or more children which is not intended for use as an athletic playing field or athletic court, or that installs or constructs any play equipment, surfacing, fencing, signs, internal pathways, internal land form, vegetation and related structures.

2. COMPLIANCE REQUIREMENTS:

Section 399-dd of the General Business Law, requires The Board, in consultation with the Office of Parks, Recreation and Historic Preservation, to promulgate rules that will ensure playgrounds and playground equipment will substantially comply with guidelines published in the U.S. Consumer Product Safety Commission Handbook for Public Playground Safety (CPSC Handbook) thereby decreasing the number of serious injuries and deaths related to unsafe playground conditions. Compliance with the proposed rule by small businesses and local governments that own playgrounds is required.

3. PROFESSIONAL SERVICES:

The Board believes that affected small businesses may choose to retain professional architects, engineers, general contractors or professional installers to help them comply with the CPSC Handbook guidelines. In the event of alleged non-compliance with the proposed regulations, small businesses or local governments may incur legal expenses in connection with investigation and enforcement actions.

4. COMPLIANCE COSTS:

These rules may impose costs on small businesses and local governments that install or construct new playground equipment or replace major types of playground equipment on an existing playground. The amount of costs will depend upon a variety of factors including, the degree of disrepair of the playground equipment; the size and type of the project; the number of playgrounds being repaired or installed; and equipment specific to a particular playground. Therefore, The Board is unable to provide a projected cost. The cost of non-compliance would be a fine of up to One Thousand and 00/100 (\$1,000.00) Dollars for each violation and not to exceed a penalty of Ten Thousand and 00/100 (\$10,000.00) Dollars if the violation is knowing and willful.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

With the exception of potential costs for small businesses and local governments, The Board has not identified any economic or technological barriers to compliance with provisions of this proposal.

6. MINIMIZING ADVERSE IMPACT:

The adverse impact has been minimized in the proposed rule by incorporating by reference a national standard that is familiar to many small businesses, schools and local governments. Compliance with federal guidelines that are nationally recognized, allows for continuity and one designated resource to which business and local governments can refer. Recognizing that the replacement of playground equipment or change in design by a date certain would be cost prohibitive to small businesses and local governments the legislation and this proposal require only new playgrounds, or new installation, construction or replacement of existing playground equipment to conform to the guidelines published in the CPSC Handbook. This approach would sensibly transition all of New York State's playgrounds to equipment that meets the latest and nationally recognized safety standards.

The Board also outreached to the Association of Towns, New York State Conference of Mayors and the New York State Association of Counties with respect to this proposal. The Conference of Mayors confirmed that most of the playgrounds under their jurisdiction were currently in compliance with the CPSC Handbook for insurance purposes. The Association of Towns and the New York State Association of Counties offered no comment on the proposed rule.

Additionally, flexibility is provided for in the enabling legislation and this proposal by exempting play areas located on one, two or three-family residential property and athletic fields and courts, some of which may be owned by small businesses or local governments.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Association of Towns, New York State Conference of Mayors and the New York State Association of Counties were all consulted with respect to this proposal. The Conference of Mayors confirmed that most of the playgrounds under their jurisdiction were currently in compliance with the CPSC Handbook for insurance purposes. The Association of Towns and the New York State Association of Counties offered no comment on compliance costs.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

Regulated businesses covered by the proposed regulations do business in every county in the State, including rural areas as defined in Section 102(10) of the State Administrative Procedure Act.

2. REPORTING, RECORDKEEPING OR OTHER COMPLIANCE REQUIREMENTS:

The proposed regulations impose no new reporting requirements or record keeping compliance. General Business Law Section 399-dd requires compliance with the CPSC Handbook regarding the construction of new playground equipment or the replacement of major types of playground equipment on an existing playgrounds in rural areas of the state.

3. COSTS:

(a) Costs to State Government in Rural Areas: The Board will develop and distribute informational material to aid with education and compliance with these new rules. This information will also be available on The Board's website. This cost to The Board is estimated at approximately five thousand (\$5,000) dollars. However, the cost of the development and distribution of this material is outweighed by the benefit of supporting compliance. In the event of alleged non-compliance, the New York State Office of the Attorney General may incur costs related to investigation and enforcement. The CPB outreached to the New York State Office of Parks and Recreation and Historic Preservation, the Department of Environmental conservation and the Office of Children and Family Services to determine cost impact and have received no response.

(b) Costs to private regulated parties in Rural Areas: These rules may impose costs on businesses that install or construct new playground equipment or replace major types of playground equipment on an existing playground in rural areas. However, because costs incurred will vary depending upon plans related to specific construction, modification of individual playgrounds and other factors, The Board is unable to provide projected costs. The Board will carefully consider all oral and written comments received as a result of these proposed regulations.

(c) Costs to Local Governments in Rural Areas: These rules may impose costs on local governments that install or construct new playground equipment or replace major types of playground equipment on an existing playground in rural areas of the state. Costs to local government entities in rural areas are dependent upon the specific plan related to construction or modification of particular playgrounds. Therefore, the Board has no methodology upon which to base projected costs. The Board will carefully consider all oral and written comments received as a result of these proposed regulations.

4. MINIMIZING ADVERSE IMPACT:

Recognizing that the replacement of playground equipment or change in design by a date certain would be cost prohibitive to entities in rural areas, the legislation and this proposal require only new playgrounds, or new installation, construction or replacement of existing playground equipment to conform to guidelines published in the U.S. Consumer Product Safety Commission's Handbook for Public Playground Safety. This approach would sensibly transition all of New York State's playgrounds in rural areas to equipment that meets the latest and nationally recognized safety standards.

5. RURAL AREA PARTICIPATION:

The Board will develop and distribute informational material to aid with education and compliance with these new rules. This information will also be available on The Board's website. The Board will carefully consider any comments filed in response to this notice, and make changes to the extent necessary to reflect any impacts on rural areas.

Job Impact Statement

The proposed regulations should not have a substantial adverse impact defined as a decrease of 100 jobs (SAPA § 201-a (6)(c)). The Board estimates that as businesses and local governments go forward with new

and improved playground construction they should be able to comply with the proposed rules at a minimal increase in cost. As it is evident from the nature of these amendments that they would not have an adverse impact on the number of 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.

State Commission of Correction

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Possession of Medication by Inmates

I.D. No. CMC-27-07-00015-EP

Filing No. 610

Filing date: June 19, 2007

Effective date: June 19, 2007

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

Action taken: Addition of section 7010.3(c) to Title 9 NYCRR.

Statutory authority: Correction Law, section 45(6) and (15)

Finding of necessity for emergency rule: Preservation of public health.

Specific reasons underlying the finding of necessity: Current regulations prohibit a county jail inmate's possession of any supply of medicine or medication. Such prohibition proves problematic for inmates in need of prescribed emergent medications such as nitroglycerine and asthma and other respiratory inhalants, particularly in the night hours while confined in a cell with reduced officer presence. This regulatory addition allows inmates to possess such prescribed medication for emergent use.

Subject: Possession of medication by inmates.

Purpose: To allow inmates to possess prescribed emergent medications such as nitroglycerine and asthma and other respiratory inhalants.

Text of emergency/proposed rule: A new subdivision (c) of section 7010.3 is added to read as follows:

(c) Notwithstanding the requirements of subdivision (a) of this section, any inmate prescribed either nitroglycerine or an asthma or other respiratory inhalant shall be issued and allowed to keep on his person a sufficient quantity of such medicine or medication.

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 16, 2007.

Text of rule and any required statements and analyses may be obtained from: Brian M. Callahan, Senior Attorney, Commission of Correction, 80 Wolf Rd., 4th Fl., Albany, NY 12205, (518) 485-2346, e-mail: Brian.Callahan@scoc.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:

Subdivision (6) of section 45 of the Correction Law authorizes the Commission of Correction to promulgate rules and regulations establishing minimum standards for the care, custody, correction, treatment, supervision, discipline, and other correctional programs for all persons confined in correctional facilities in New York State.

2.) Legislative objectives:

By vesting the Commission with this rulemaking authority, the Legislature intended the Commission to set minimum standards regarding various aspects of inmate care in local correctional facilities, including the allowable provision of health care and treatment.

3.) Needs and benefits:

Current regulations prohibit a county jail inmate's possession of any supply of medicine or medication. Such prohibition proves problematic for inmates in need of prescribed emergent medications such as nitroglycerine and asthma and other respiratory inhalants, particularly in the night hours while confined in a cell with reduced officer presence. This regulatory addition allows inmates to possess such prescribed medication for emergent use.

4.) Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: None. The only new requirement for county correctional facilities will be to allow inmates to possess prescribed emergent medications such as nitroglycerine and asthma and other respiratory inhalers.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The regulation does not apply to state agencies or governmental bodies. As set forth above in subdivision (a), there will be no additional costs to local governments.

c. This statement detailing the projected costs of the rule is based upon the Commission's oversight and experience relative to the operation and function of a county correctional facility.

5.) Local government mandates:

The regulation imposes a duty on county correctional facilities to allow inmates to possess prescribed emergent medications such as nitroglycerine and asthma and other respiratory inhalers.

6.) Paperwork:

This rule does not require any additional paperwork on regulated parties.

7.) Duplication:

This rule does not duplicate any existing State or Federal requirement.

8.) Alternatives:

The alternative, the current regulation prohibiting inmate possession of any supply of medicine or medication, was explored by the Commission. This alternative was rejected upon the Commission's finding, as set forth above, that such prohibition proved problematic for inmates in need of prescribed emergent medications such as nitroglycerine and asthma and other respiratory inhalants, particularly in the night hours while confined in a cell with reduced officer presence.

9.) Federal standards:

There are no applicable minimum standards of the federal government.

10.) Compliance schedule:

Each county correctional facility is expected to be able to achieve compliance with the proposed rule immediately.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required pursuant to subdivision three of section 202-b of the State Administrative Procedure Act because the rule does not impose an adverse economic impact on small businesses or local governments. The proposed rule seeks only to allow an inmate's possession of the emergency medications nitroglycerine and asthma and other respiratory inhalers. Accordingly, it will not have an adverse impact on small businesses or local governments, nor impose any additional reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required pursuant to subdivision four of section 202-bb of the State Administrative Procedure Act because the rule does not impose an adverse impact on rural areas. The proposed rule seeks only to allow an inmate's possession of the emergency medications nitroglycerine and asthma and other respiratory inhalers. Accordingly, it will not impose an adverse economic impact on rural areas, nor impose any additional recordkeeping, reporting, or other compliance requirements on private or public entities in rural areas.

Job Impact Statement

A job impact statement is not required pursuant to subdivision two of section 201-a of the State Administrative Procedure Act because the rule will not have a substantial adverse impact on jobs and employment opportunities, as apparent from its nature and purpose. The proposed rule seeks only to allow an inmate's possession of the emergency medications nitroglycerine and asthma and other respiratory inhalers. As such, there will be no impact on jobs and employment opportunities.

Delaware River Basin Commission

INFORMATION NOTICE

NOTICE OF PROPOSED RULE MAKING AND PUBLIC HEARING

The Delaware River Basin Commission ("DRBC" or "Commission") is a federal interstate compact agency charged with managing the water resources of the basin without regard to political boundaries. Its commissioners are the governors of the four basin states – New Jersey, New York, Pennsylvania and Delaware – and a federal representative appointed by the President of the United States. The Commission is not subject to the requirements of the New York State Administrative Procedure Act. This notice is published by the Commission for informational purposes.

Revised Proposed Amendments to the Comprehensive Plan and Water Code Relating to a Flexible Flow Management Plan for Operation of the New York City Delaware Basin Reservoirs

Summary: The Commission will hold a public hearing and accept written comment on a revised proposal to amend the agency's Comprehensive Plan and Water Code to establish a Flexible Flow Management Program (FFMP) for the New York City Delaware Basin Reservoirs ("City Delaware Reservoirs") for multiple objectives, including, among others, (a) providing safe and reliable supplies of water, (b) managing discharges, (c) assisting in mitigating floods, (d) providing flows in the tailwaters to help sustain cold water fisheries, and (e) providing flows to help protect ecological health, support withdrawal and non-withdrawal uses and repel salinity. The current reservoir releases program, established by Resolution No. 2004-3, and the current spill mitigation program, established by Resolution No. 2006-18, both were due to expire on May 31, 2007. By Resolution No. 2007-7 on May 10, 2007, the Commission extended these programs through September 30, 2007 in light of this ongoing rulemaking process. The Commission will also accept comment on alternative reservoir management strategies that may be adopted in the event that the decree parties do not unanimously consent to the proposed FFMP or the Commission does not promulgate regulations embodying the FFMP. The alternative reservoir releases options to be considered are (1) extending the current reservoir releases program or (2) reinstating a previous reservoir releases program. In evaluating these options, the Commission will also consider a seasonal spill mitigation program or an annual spill mitigation program for the three reservoirs and an amelioration program for the potential effects on the tailwaters fishery of the Lake Wallenpaupack drought operating plan adopted by Resolution No. 2002-33. The releases program adopted in the event that the proposed FFMP is not approved would continue in effect until any expiration date contained in the program adopted or unless and until replaced by another program that has been approved by the Commission. If approved by the Commission, the FFMP will supersede Docket D-77-20 CP (Revised) until the FFMP's expiration on May 31, 2010 or further renewal date, and all other versions of Docket D-77-20 CP shall be rescinded or expire. A comprehensive reassessment of safe yield and operations of selected basin reservoirs will be undertaken during the first three years that the FFMP is in effect.

Any alternative program addressing issues regarding which the public has not been provided notice through the present rulemaking may require a further notice and comment rulemaking process. In accordance with Section 3.3 of the Delaware River Basin Compact, any program affecting the diversions, compensating releases, rights, conditions, and obligations of the 1954 Supreme Court Decree in the matter of *New Jersey v. New York*, 347 U.S. 995, 74 S. Ct. 842 also requires the unanimous consent of the decree parties, which include the states of Delaware, New Jersey and New York, the Commonwealth of Pennsylvania, and the City of New York.

Background: The flow management objectives considered by the Supreme Court Decree of 1954 were narrower than the diverse objectives that have emerged in the decades since. Today, the finite waters of the Delaware and the limited storage available in the basin are being managed for multiple purposes, including among others water supply and drought mitigation, flood mitigation, habitat protection in the tailwaters fishery, the mainstem and the estuary and salinity repulsion. In accordance with the Delaware River Basin Compact, a statute concurrently enacted in 1961 by the United States and the four basin states – Delaware, New Jersey, New York and Pennsylvania – the Delaware River Basin Commission may modify diversions, releases, rights, conditions and obligations established by the decree, provided that the decree parties unanimously consent to such modifications. The Commission and decree parties have made use of

this authority to provide flexibility to respond to fluctuating hydrologic conditions and evolving priorities throughout the Commission's history.

Unlike the experimental programs instituted by the Commission in the past, the FFMP is intended to provide a comprehensive framework for addressing multiple flow management objectives, including, in addition to water supply, drought mitigation and protection of the tailwaters fishery, a diverse array of habitat protection needs in the mainstem, estuary and bay, assistance in mitigating the impacts of flooding, recreational goals and salinity repulsion. Some of the flow needs identified by the parties have not yet been defined sufficiently for the development of detailed plans. These include protection of the dwarf wedgemussel, a federal and state-listed endangered species present in the mainstem, oyster production in Delaware Bay, and protection of warm-water and migratory fisheries in the lower basin. Incremental and periodic adjustments are expected to be made to the FFMP for these purposes, based upon ongoing monitoring, scientific investigation, and periodic re-evaluation of program elements.

A central feature of the reservoir release programs implemented to date for management of the tailwaters fishery has been the use of reservoir storage "banks" employed for narrowly defined purposes under specific hydrologic and temperature conditions and at specified times of the year. These are applied in conjunction with a set of fixed seasonal flow targets. The system requires complex daily flow and temperature modeling as a component of determining the releases, and as a result, the program is difficult and costly to administer. The current approach also lacks the seasonal fluctuations characteristic of a natural flow regime. The FFMP would largely eliminate the use of banks and would base releases instead on reservoir storage levels, resulting in larger releases when water is abundant and smaller releases when storage is at or below normal. The result would more closely approximate a natural flow regime. In addition, the FFMP would provide for more gradual transitions (or "ramping") from higher to lower releases and vice versa than the current regime. The FFMP would include a discharge (spill) mitigation component similar to but enhancing the temporary programs implemented in the past. The storage represented by snowpack water content would continue to be considered.

The decree parties have considered the broad range of public comments that were received on the FFMP that was published in February and have proposed several revisions in response to those comments. The discharge mitigation provisions of the release program would be enhanced by increasing the rate of releases and modifying the release triggering curves by extending the period during which releases are triggered at the 75 percent storage level and expanding the period of time during the year covered by the program. These releases would also serve to provide more water than did the previous FFMP proposal for fisheries protection during the spring and early summer. A Temporary Release Quantity would be established for a 3-year period, supported by the Excess Release Quantity specified in the decree, and making release water available to meet Montague and Trenton flow objectives under certain conditions. The maximum New Jersey diversion authorized in the decree, which was reduced during drought operations by the Good Faith Agreement of the decree parties and the Commission's Water Code would be partially restored by the revised FFMP, resulting in continuation of New Jersey's 100 mgd diversion during normal and drought watch operations; and diversions of 85 mgd during drought warning and drought emergency operations. The Montague flow objective would be detached from the Good Faith Agreement's salt front vernier during drought emergency operations.

Hydrologic modeling and habitat assessments are being undertaken to evaluate the sustainable benefits of the FFMP for the tailwaters fishery and for discharge mitigation. In addition, an evaluation is being made of the potential benefits and costs of increasing storage in one or more of the City Delaware Reservoirs that may improve the capacity of the system to meet the full range of flow objectives.

If a decision of DRBC commissioners on details of the FFMP with the unanimous consent of the decree parties cannot be reached at the Commission meeting on September 26, 2007, the parties intend to continue to work at refining and improving the FFMP. Under such circumstances, for an interim period, the parties will consider extending the current fisheries management program or reinstating a previous regime. In either case, a discharge mitigation plan and an amelioration program for the potential effects of the Lake Wallenpaupack drought operating plan will also be considered.

The revised proposed FFMP in its entirety and the proposed regulations embodying the FFMP will be posted on the website of the Delaware River Basin Commission, www.drbc.net, on or before Monday, July 16, 2007.

Dates: Two public hearings on the revised FFMP proposal will be conducted at 2:30 p.m. and 6:30 p.m. respectively on Tuesday, August 14, 2007 at the office building of the Delaware River Basin Commission in West Trenton, NJ. Written comments will be accepted through Wednesday, August 15, 2007. To allow sufficient time for consideration of written comments, comments must be received, not merely postmarked, by that date. In addition, three informational meetings will be held on the revised proposal. The first informational meeting will take place during a meeting of the Commission's Regulated Flow Advisory Committee (RFAC), which will be held at 10:00 a.m. on June 27, 2007 at the PPL Lake Wallenpaupack Environmental Learning Center in Hawley, PA. The second will take place during the morning conference session of the Commission's regularly scheduled meeting at 10:15 a.m. on Wednesday, July 18, 2007 at the DRBC office building in West Trenton, NJ. The third informational meeting will take place at 1:00 p.m. on Tuesday, August 14, 2007, immediately prior to the first public hearing on the proposal, scheduled for that date at the Delaware River Basin Commission office building in West Trenton, NJ.

Addresses: Directions to the Commission's office building, located at 25 State Police Drive in West Trenton, NJ, are available on the DRBC website at www.drbc.net. Please do not rely upon MapQuest or other Internet mapping services for driving directions, as they may not provide accurate directions to the DRBC. Directions to the Lake Wallenpaupack Environmental Learning Center are available at <http://www.pplweb.com/lake+wallenpaupack/contacts+and+directions/get+directions.htm> and will be posted on the DRBC website, www.drbc.net on or before July 16, 2007. Written comments must include the name, address and affiliation of the commenter. Comments may be submitted by email to paula.schmitt@drbc.state.nj.us; by U.S. Mail to: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; and by fax to Attn: Commission Secretary at 609-883-9522. In all cases, the subject line should include the phrase, "FFMP Comment".

Previously Submitted Comments: All written comments submitted to the Commission during the prior comment period, or presented orally or in writing to the Commission at its prior scheduled public hearings, with regard to the form of the FFMP posted on the Commission's website in February, 2007, will be included in the administrative record for this rulemaking and need not be resubmitted.

Further Information, Contact: The text of the proposed FFMP in its entirety and the proposed regulations embodying the FFMP will be posted on the website of the Delaware River Basin Commission, www.drbc.net, on or before July 16, 2007 and will remain posted through September 26, 2007. Please contact Pamela M. Bush, Esquire, Commission Secretary and Asst. General Counsel at 609-883-9500 ext. 203 with questions about the proposed rule change or the rulemaking process.

Education Department

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Special Education Programs and Services

I.D. No. EDU-12-07-00004-RP

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

Revised action: Amendment of sections 100.2, 120.6, 200.1-200.9, 200.13, 200.14, 200.16, 200.22, 201.2-201.11 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 3208(1-5), 3209(7), 3214(3), 3602-c(2), 3713(1) and (2), 4002(1-3), 4308(3), 4355(3), 4401(1-11), 4402(1-7), 4403(3), 4404(1-5), 4404-a(1-7), and 4410(13)

Subject: Special education programs and services.

Purpose: To conform the Commissioner's Regulations to the Individuals with Disabilities Education Act (IDEA) (20 USC 1400 *et seq.*), as amended by Public Law 108-446, and the final amendments to 34 CFR Part 300; to ensure consistency in procedural safeguards; to promote timely evaluations and services; and to facilitate services in the least restrictive environment for students with disabilities.

Substance of revised rule: The Commissioner of Education proposes to amend sections 100.2(ii), 102.6(a), 200.1, 200.2, 200.3, 200.4, 200.5, 200.6, 200.7, 200.8, 200.9, 200.13, 200.14, 200.16, 201.2, 201.3, 201.4, 201.5, 201.6, 201.7, 201.8, 201.9, 201.10, and 201.11 of the Commissioner's Regulations, effective October 4, 2007, relating to the provision of special education to students with disabilities. The following is a summary of the substance of the proposed amendments.

Section 100.2(ii), as added, establishes minimal requirements for using a response to intervention process to determine if a student responds to scientific research-based intervention.

Section 120.6(a), as amended, incorporates by reference the Federal definition of highly qualified special education teachers.

Section 200.1, as amended, revises definitions of parent, related services, school health services and supplementary aids and services; adds the definition of interpreting services consistent with the Federal definition; makes technical amendments to definitions of consultant teacher services and transition services; and corrects cross citations relating to definitions of full-day preschool program, guardian ad litem, preschool program, student with a disability and twelve-month special service and/or program.

Section 200.2, as amended, makes technical changes and corrects cross citations and incorporations by reference relating to board of education written policies and procedures, responsibilities of boards of cooperative education services, and maintenance of impartial hearing officer (IHO) lists; requires consent for release of information about nonpublic school students with disabilities; adds examples of nonacademic and extracurricular programs; requires districts to take action to ensure timely evaluation and placement of preschool students; adds that districts may use a response to intervention process to remediate a student's performance prior to referral for special education; and requires districts to publicly report on revisions to inappropriate policies, procedures or practices that resulted in a significant disproportionality by race/ethnicity in the suspension, identification, classification and/or placement of students with disabilities.

Section 200.3, as amended, corrects a cross citation relating to subcommittee membership; and conforms State regulations relating to the role of a regular education teacher on the committee on special education (CSE) to federal regulations.

Section 200.4, as amended, makes technical amendments and corrects cross citations relating to evaluation procedures, recommended special education programs and services and written notice upon graduation or aging out; conforms State regulations to federal requirements relating to: parental consent, individual evaluations and reevaluations, evaluation procedures, eligibility determinations, CSE recommendations, individualized education program (IEP) contents, and students who transfer districts; requires all IEPs developed on or after January 1, 2009 be on a form prescribed by the Commissioner of Education; and adds additional procedures for identifying students with learning disabilities.

Section 200.5, as amended, corrects cross citations relating to other required notifications, consent for release of information, and impartial hearing timelines; corrects incorporations by reference relating to parent participation in CSE meetings and confidentiality of personally identifiable data; makes a technical change relating to surrogate parent; conforms State due process requirements to federal requirements relating to prior written notice, consent, notice of meetings, procedural safeguards notice, independent educational evaluations, mediation, due process complaint notification requirements, impartial hearings, resolution process, State complaint procedures, pendency, and surrogate parents; adds, effective January 1, 2009, that prior written notice (notice of recommendation) and meeting notices be on forms prescribed by the Commissioner of Education; adds steps the district must take to ensure parents participate in the resolution meetings; adds that the terms of a settlement agreement may be read into the record as an agreement between the parties only and the agreement would be enforceable in State or Federal court; and adds that not more than one 30-day extension at a time may be granted to an impartial hearing.

Section 200.6, as amended, makes certain technical changes relating to the continuum of services; corrects a cross citation and timeline for providing services to students with disabilities in approved private schools; adds that the CSE may recommend that a student who needs both resource room services and consultant teacher services may receive a combination of such services for not less than three hours each week; and adds "integrated co-teaching services" option to the continuum of services and specifies that when a district provides integrated co-teaching services, the number of students with disabilities cannot, effective July 1, 2008, exceed 12 students.

Section 200.7(b), as amended, conforms State regulations relating to school conduct and discipline at private schools and State-operated and State-supported schools to federal regulations.

Section 200.8(c), as amended, corrects a cross citation relating to the submission of claims for preschool students with disabilities.

Section 200.9(f), as amended, corrects a cross citation relating to tuition reimbursement methodology.

Section 200.13, as amended, corrects cross citations relating to educational programs for students with autism.

Section 200.14(f), as amended, corrects a cross citation relating to students with disabilities enrolled in day treatment programs.

Section 200.16, as amended, makes technical changes regarding IEEs; corrects cross citations relating to referral and the continuum of services for preschool students; conforms State regulations relating to procedural safeguards to federal requirements; and allows approved preschool programs to temporarily increase the enrollment of a class up to a maximum of 13 students for the remainder of the school year.

Section 201.2, as amended, removes an incorporation by reference and adds a cross citation relating to the definition of a student presumed to have disability for discipline purposes; conforms the definitions of disciplinary change in placement, illegal drug, and interim alternative educational setting (IAES) to the federal definitions; adds that district has authority to determine on a case-by-case basis if a pattern of removals constitutes a disciplinary change in placement and that such determination is subject to review through due process and judicial proceedings.

Section 201.3, is repealed and a new section 201.3 is added to conform CSE responsibilities for functional behavioral assessments and behavioral intervention plans to federal requirements.

Section 201.4, as amended, requires a school district to remedy IEP deficiencies when it is determined that the student's conduct is the direct result of the district's failure to implement the IEP.

Section 201.5, as amended, removes the requirement that an expression of concern about a student's pattern of behavior be made in accordance with the district's child find and special education referral system.

Section 201.6, as amended, requires that expedited evaluations be completed no later than 15 school days after receipt of parent consent.

Section 201.7(e), as amended, corrects a cross citation. 201.7(f), as amended, clarifies school personnel authority to consider unique circumstances when determining whether a change in placement is appropriate.

Section 201.8, as amended, repeals the considerations that an IHO must make to order a change of placement to an IAES; and repeals that an IAES ordered by an IHO be determined by the CSE.

Section 201.9(c), as amended, corrects a cross citation relating to the procedures for suspensions of more than five school days.

Section 201.10, as amended, repeals an incorporation by reference and establishes that school personnel determine services for students removed for more than 10 school days when it is not a disciplinary change in placement; and requires the CSE to determine services and the IAES for students suspended for periods in excess of 10 school days which constitute a disciplinary change in placement.

Section 201.11, as amended, conforms procedures for expedited hearings and timelines for an expedited hearing consistent with federal regulations; clarifies that an IHO appointment for an expedited hearing must be made in accordance with the rotational selection process; and establishes pendency during an expedited impartial hearing.

A cross citation has also been corrected in section 200.22(b)(3).

Revised rule compared with proposed rule: Substantial revisions were made in sections 100.2(ii), 200.1(ss), 200.4(a), (a)(8), (b)(1), (6)(ii), (d)(2) and (j), 200.5(a)(1), (b)(1)(v), (c)(1), (i)(3), (j)(2), (4)(iii), (5)(i), 200.6(a)(1), (d)(2), (f)(1), (g) and (j)(4)(ii), 200.16(i)(3)(iii)(b).

Text of revised 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: Rebecca H. Cort, Deputy Commissioner, VESID, Education Department, Rm., 1606, One Commerce Plaza, Albany, NY 12234, (518) 473-2714, e-mail: rcort@mail.nysed.gov

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

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the *State Register* on March 21, 2007, the following substantial revisions were made to the proposed rule:

Section 100.2(ii) was revised to provide further specificity to the minimum requirements for response to intervention (RTI) programs; define research-based instruction in reading; require the district to identify the RTI criteria and process for levels of intervention and progress monitoring; and require schools to ensure staff have knowledge and skills to implement RTI with consistency and fidelity.

Section 200.1(ss) was revised to clarify that the definition of school health services includes school nurse services.

Revisions were made to sections 200.4(a), regarding referrals, 200.4(b) regarding timelines for the evaluation, and 200.4(j), regarding learning disability (LD) procedures, to simplify the procedures for LD identification; to delete the alternative research based criteria; to extend the date for prohibition of the discrepancy criteria for grades K to four LD determinations in the area of reading to July 1, 2012.

Section 200.4(a) was revised to add language indicating that a school district must initiate a referral and promptly request parental consent to evaluate a student if the student needs special education services and programs if a student has not made adequate progress after an appropriate period of time when provided instruction as described in section 100.2(ii).

Section 200.4(a)(8) was revised to add examples of documented attempts to obtain parent consent for an evaluation.

Section 200.4(b)(1) was revised to add language requiring that an individual evaluation be completed within 60 days of receipt of consent unless extended by mutual agreement of the student's parents and the CSE pursuant to sections 200.4(b)(7)(i) and 200.4(j)(1).

Section 200.4(b)(6)(ii) retains the requirement that if an assessment used for an evaluation is not conducted under standard conditions, the evaluation report must describe the extent to which it varied.

Section 200.4(d)(2) was revised to extend the date for requiring the State's form for the individualized education program (IEP) to January 1, 2009.

Sections 200.5(a)(1) and (c)(1) were revised to extend the date for requiring the State's form for meeting and prior written notices to January 1, 2009.

Section 200.5(b)(1)(v) was revised to clarify when consent is required for use of public or private insurance.

Section 200.5(i)(3) was revised to clarify that, in an expedited hearing related to discipline, the parties may not challenge the sufficiency of the due process complaint notice request.

Section 200.5(j) was revised to add steps the district must take to ensure parents participate in the resolution meeting; to clarify that when parties reach a settlement, the terms of the agreement may be read into the record as an agreement between the parties only and the agreement would be enforceable in State or federal court; and to clarify that not more than one extension to the impartial hearing timeline may be granted at a time.

Section 200.6(a)(1) was revised to clarify that specially designed instruction and supplementary services provided in regular class to enable students with disabilities to be educated with nondisabled students to the maximum extent appropriate, may include, as appropriate, providing related services, resource room programs and special class programs within the general education classroom.

Sections 200.6(d) and (f) were revised to allow the combined services of direct and/or indirect consultant teachers services and resource room services for not less than three hours per week.

Section 200.6(g) was revised to specify that when a district includes integrated co-teaching services in their continuum of services, the number of students with disabilities, cannot, effective July 1, 2008, exceed 12 students. The proposed limitation of the one-third ratio of students with disabilities to nondisabled students in integrated co-teaching classes was deleted.

For purposes of ensuring consistency with section 200.4(e)(1), section 200.6(j)(4)(ii) was revised to change the specified timeline from 60 days to 30 days of receipt of the CSE recommendation, within which a board of education must provide appropriate special programs and services to students with disabilities placed in approved private schools.

Section 200.16(i)(3)(iii)(b) was revised to no longer limit to New York City only the proposed use of a procedure to temporarily increase the enrollment of a preschool class to 13 preschool students.

The above revisions to the proposed rule require that the sixth, seventh, eighth and tenth paragraphs of the Local Government Mandates section and the Federal Standards section of the previously published Regulatory Impact Statement be revised to read as follows:

LOCAL GOVERNMENT MANDATES

Paragraph sixth:

Section 200.4 makes technical amendments relating to evaluation procedures, recommended special education programs and services and written notice upon graduation or aging out; conforms State regulations to federal requirements relating to: referral, parental consent, individual evaluations and reevaluations, evaluation procedures, eligibility determinations, CSE recommendations, individualized education program (IEP) contents, and students who transfer districts; requires all IEPs developed on or after July 1, 2009 be on a form prescribed by the Commissioner; and adds additional procedures for identifying students with learning disabilities.

Paragraph seventh:

Section 200.5 makes a technical change relating to surrogate parent; conforms State due process requirements to Federal requirements relating to prior written notice, consent, notice of meetings, procedural safeguards notice, independent educational evaluations (IEEs), mediation, due process complaint notification requirements, impartial hearings, resolution process, State complaint procedures, pendency, and surrogate parents; adds, effective January 1, 2009, that prior written notice (notice of recommendation) and meeting notices be on forms prescribed by the Commissioner; adds steps the district must take to ensure parents participate in the resolution meeting; adds that when parties reach a settlement, the terms of the agreement may be read into the record as an agreement between the parties only and the agreement would be enforceable in State or federal court; and adds that not more than one 30-day extension at a time may be granted to an impartial hearing.

Paragraph eighth:

Section 200.6 makes technical changes regarding continuum of services; corrects a cross citation and timeline for providing services to students with disabilities in approved private schools; provides that the CSE may recommend that a student who needs both resource room services and consultant teacher services may receive a combination of such services for not less than three hours each week; and adds "integrated co-teaching services" option to the continuum of services and specifies that when a district provides integrated co-teaching services, the number of students with disabilities cannot, effective July 1, 2008, exceed 12 students.

Paragraph tenth:

Section 200.16 makes technical changes regarding IEEs; conforms State regulations relating to procedural safeguards to federal requirements; and allows approved preschool programs to temporarily increase the enrollment of a class up to a maximum of 13 students for the remainder of the school year.

FEDERAL STANDARDS:

In general, the amendments are necessary to conform the Commissioner's Regulations to recent changes in the Federal IDEA statutes and regulations (20 U.S.C. 1400 *et. seq.*, as amended by Public Law 108-446, and the final Federal amendments to 34 CFR Part 300) and to that extent do not exceed any minimum Federal standards. The amendments relating to evaluation and placement of preschool students; standardized forms for IEPs, written notifications and meeting notices; minimal levels of services for resource room and direct consultant teacher services; integrated co-teaching services; and temporary increases in the class enrollment of approved preschool programs are not required by Federal law or regulations, but are necessary to ensure consistency in procedural safeguards; to promote timely evaluations and services; and to facilitate services in the least restrictive environment for students with disabilities; and are otherwise consistent with Federal standards.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the *State Register* on March 21, 2007, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The revisions to the proposed rule require the Compliance Requirements section and the Minimizing Adverse Impact section of the previously published Regulatory Flexibility Analysis be revised to read as follows:

COMPLIANCE REQUIREMENTS:

In general, the amendments are necessary to conform the Commissioner's Regulations to recent changes in the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et. seq.*), as amended by Public Law 108-446, and recent amendments to 34 CFR Part 300 which became effective on October 13, 2006, and do not impose any additional compliance requirements upon local governments beyond those imposed by Federal statutes and regulations.

The amendments relating to evaluation and placement of preschool students; standardized forms for individualized education programs (IEPs), written notifications and meeting notices; minimal levels of services for resource room and consultant teacher services; integrated co-teaching services; and temporary increases in the class enrollment of approved preschool programs are not required by Federal law or regulations, but are necessary to ensure consistency in procedural safeguards; to promote timely evaluations and services; and to facilitate services in the least restrictive environment for students with disabilities, and are otherwise consistent with Federal standards.

Section 100.2(ii) establishes minimal requirements for using a response to intervention process to determine if a student responds to scientific research-based intervention.

Section 120.6(a) incorporates by reference the Federal definition of highly qualified special education teachers.

Section 200.2 requires consent for release of information about non-public school students with disabilities; adds examples of nonacademic and extracurricular programs; requires districts to take action to ensure timely evaluation and placement of preschool students; adds that districts may use a response to intervention process to remediate a student's performance prior to referral for special education; and requires districts to publicly report on revisions to inappropriate policies, procedures or practices that resulted in a significant disproportionality by race/ethnicity in the suspension, identification, classification and/or placement of students with disabilities.

Section 200.3 conforms State regulations relating to the role of a regular education teacher on the committee on special education (CSE) to Federal regulations.

Section 200.4 makes technical amendments relating to evaluation procedures, recommended special education programs and services and written notice upon graduation or aging out; conforms State regulations to Federal requirements relating to: referrals, parental consent, individual evaluations and reevaluations, evaluation procedures, eligibility determinations, CSE recommendations, IEP contents, and students who transfer districts; requires documentation of attempts, including telephone calls and correspondence, to obtain parent consent; requires all IEPs developed on or after January 1, 2009 be on a form prescribed by the Commissioner; and adds additional procedures for identifying students with learning disabilities.

Section 200.5 makes a technical change relating to surrogate parent; conforms State due process requirements to Federal requirements relating to prior written notice, consent, notice of meetings, procedural safeguards notice, independent educational evaluations (IEEs), mediation, due process complaint notification requirements, impartial hearings, resolution process, State complaint procedures, pendency, and surrogate parents; adds, effective January 1, 2009, that prior written notice (notice of recommendation) and meeting notices be on forms prescribed by the Commissioner; adds steps the district must take to ensure parents participate in the resolution meeting; adds that when parties reach a settlement, the terms of the agreement may be read into the record as an agreement between the parties only and the agreement would be enforceable in State or Federal court; and adds that not more than one 30-day extension at a time may be granted to an impartial hearing.

Section 200.6 makes technical changes regarding continuum of services; corrects a cross citation and timeline for providing services to students with disabilities in approved private schools; provides that the CSE may recommend that a student who needs both resource room services and consultant teacher services may receive a combination of such services for not less than three hours each week; and adds "integrated co-teaching services" option to the continuum of services and specifies that when a district provides integrated co-teaching services, the number of students with disabilities cannot, effective July 1, 2008, exceed 12 students.

Section 200.7(b) conforms State regulations relating to school conduct and discipline at private schools and State-operated and State-supported schools to Federal regulations.

Section 200.16 makes a technical change regarding IEEs; conforms State regulations relating to procedural safeguards to Federal requirements; and allows approved preschool programs to temporarily increase the enrollment of a class up to a maximum of 13 students for the remainder of the school year.

Section 201.2 conforms the definitions of disciplinary change in placement, illegal drug, and interim alternative educational setting (IAES) to the Federal definitions; adds that the district has authority to determine on a case by case basis if a pattern of removals constitutes a disciplinary change

in placement and that such determination is subject to review through due process and judicial proceedings.

Section 201.3 is repealed and a new section 201.3 is added to conform CSE responsibilities for functional behavioral assessments (FBAs) and behavioral intervention plans (BIPs) to Federal requirements.

Section 201.4 requires a school district to remedy IEP deficiencies when it is determined that the student's conduct is the direct result of the district's failure to implement the IEP.

Section 201.5 removes the requirement that an expression of concern about a student's pattern of behavior be made in accordance with the district's child find and special education referral system.

Section 201.6 requires that expedited evaluations be completed no later than 15 school days after receipt of parent consent.

Section 201.7(f) clarifies school personnel authority to consider unique circumstances when determining whether a change in placement is appropriate.

Section 201.8 repeals the considerations that an IHO must make to order a change of placement to an IAES; and repeals that an IAES ordered by an IHO be determined by the CSE.

Section 201.10 establishes that school personnel determine services for students removed for more than 10 school days when it is not a disciplinary change in placement; and requires the CSE to determine services and the IAES for students suspended for periods in excess of 10 school days which constitute a disciplinary change in placement.

Section 201.11 conforms procedures for expedited hearings and timelines for an expedited hearing consistent with Federal regulations; clarifies that an IHO appointment for an expedited hearing must be made in accordance with the rotational selection process; and establishes pendency during an expedited impartial hearing.

If a district uses a process to determine if a student responds to scientific, research-based intervention, written notification must be given to parents when the student requires an intervention beyond that provided to all students in the general education classroom that identifies student performance data, strategies for increasing the student's rate of learning and notification of the parents' right to request an evaluation for special education programs and/or services. In addition, the CSE must develop a written document for the determination of a student with a learning disability.

Consistent with Federal requirements, districts must obtain consent before: personally identifiable information about a nonpublic school student is released between the district of location of the private school and the district of residence; releasing information to a representative of any participating agency that is likely to be responsible for providing or paying for transition services or inviting such individual to a CSE meeting; and accessing a parent's public insurance. Changes also require consent before personally identifiable information is released to officials of participating agencies when a student is determined to be at risk of a future placement in a residential school and before providing evaluative information and program recommendations for a student to a Family Court judge, a probation department, a social services district, the Office of Child and Family Services, or a preadmission certification committee established pursuant to Mental Hygiene Law section 9.51(d).

Changes to due process provisions require that districts provide parents with a copy of the procedural safeguards notice upon receipt of their first State complaint and upon a disciplinary change in placement.

MINIMIZING ADVERSE IMPACT:

In general, the amendments are necessary to conform the Commissioner's Regulations to recent changes in the Federal IDEA statutes and regulations (20 U.S.C. 1400 *et. seq.*, as amended by Public Law 108-446, and the final Federal amendments to 34 CFR Part 300) and to that extent do not exceed any minimum Federal standards. The amendments relating to evaluation and placement of preschool students; standardized forms for IEPs, written notifications and meeting notices; minimal levels of services for resource room and direct consultant teacher services; integrated co-teaching services; and temporary increases in the class enrollment of approved preschool programs are not required by Federal law or regulations, but are necessary to ensure consistency in procedural safeguards; to promote timely evaluations and services; and to facilitate services in the least restrictive environment for students with disabilities, and are otherwise consistent with Federal standards.

School districts and other LEAs are required to comply with IDEA as a condition to their receipt of Federal funding. The proposed conforming amendments have been carefully drafted to meet Federal statutory and regulatory requirements and do not impose any additional costs or compli-

ance requirements on these entities beyond those imposed by Federal law and regulations and State statutes.

Various alternatives for establishing the staff-to-student ratio in the integrated co-teaching class option were considered, including only establishing a ratio of students with disabilities to nondisabled students, but the current proposal was selected to ensure reasonable class size. With regard to minimum levels of service requirements, the Department considered the repeal of minimum levels established for speech and language services, consultant teacher services and resource room services. The proposed amendment was selected because it is expected to maximize the participation of students with disabilities in general education classes and curriculum; will allow more students with disabilities to receive special education services without removing students from their required academic courses; and yield a more efficient and effective use of human and fiscal resources.

The Department also considered proposals to allow indirect support to be provided by related service providers; to repeal the chronological age-range limitations in middle- and secondary-level special classes; and to repeal the requirement for parent notification relating to math and reading achievement levels in special classes. The proposed amendment addresses recommendations most supported by public comment and most directly related to improved results for students with disabilities and placement in the least restrictive environment.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the *State Register* on March 21, 2007, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The revisions to the proposed rule require the Reporting, Recordkeeping and Other Compliance Requirements and Professional Services section and the Minimizing Adverse Impact section be revised to read as follows:

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS AND PROFESSIONAL SERVICES:

In general, the amendments are necessary to conform the Commissioner's Regulations to recent changes in the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et. seq.*), as amended by Public Law 108-446, and recent amendments to 34 CFR Part 300 which became effective on October 13, 2006, and do not impose any additional compliance requirements upon rural areas beyond those imposed by Federal statutes and regulations.

The amendments relating to evaluation and placement of preschool students; standardized forms for individualized education programs (IEPs), written notifications and meeting notices; minimal levels of services for resource room and consultant teacher services; integrated co-teaching services; and temporary increases in the class enrollment of approved preschool programs are not required by Federal law or regulations, but are necessary to ensure consistency in procedural safeguards; to promote timely evaluations and services; and to facilitate services in the least restrictive environment for students with disabilities, and are otherwise consistent with Federal standards.

Section 100.2(ii) establishes minimal requirements for using a response to intervention process to determine if a student responds to scientific research-based intervention.

Section 120.6(a) incorporates by reference the Federal definition of highly qualified special education teachers.

Section 200.2 requires consent for release of information about nonpublic school students with disabilities; adds examples of nonacademic and extracurricular programs; requires districts to take action to ensure timely evaluation and placement of preschool students; adds that districts may use a response to intervention process to remediate a student's performance prior to referral for special education; and requires districts to publicly report on revisions to inappropriate policies, procedures or practices that resulted in a significant disproportionality by race/ethnicity in the suspension, identification, classification and/or placement of students with disabilities.

Section 200.3 conforms State regulations relating to the role of a regular education teacher on the committee on special education (CSE) to Federal regulations.

Section 200.4 makes technical amendments relating to evaluation procedures, recommended special education programs and services and written notice upon graduation or aging out; conforms State regulations to Federal requirements relating to: referrals, parental consent, individual evaluations and reevaluations, evaluation procedures, eligibility determinations, CSE recommendations, IEP contents, and students who transfer districts; requires documentation of attempts, including telephone calls and correspondence, to obtain parent consent; requires all IEPs developed on

or after January 1, 2009 be on a form prescribed by the Commissioner; and adds additional procedures for identifying students with learning disabilities.

Section 200.5 makes a technical change relating to surrogate parent; conforms State due process requirements to Federal requirements relating to prior written notice, consent, notice of meetings, procedural safeguards notice, independent educational evaluations (IEEs), mediation, due process complaint notification requirements, impartial hearings, resolution process, State complaint procedures, pendency, and surrogate parents; adds, effective January 1, 2009, that prior written notice (notice of recommendation) and meeting notices be on forms prescribed by the Commissioner; adds steps the district must take to ensure parents participate in the resolution meeting; adds that when parties reach a settlement, the terms of the agreement may be read into the record as an agreement between the parties only and the agreement would be enforceable in State or Federal court; and adds that not more than one 30-day extension at a time may be granted to an impartial hearing.

Section 200.6 makes technical changes regarding continuum of services; corrects a cross citation and timeline for providing services to students with disabilities in approved private schools; provides that the CSE may recommend that a student who needs both resource room services and consultant teacher services may receive a combination of such services for not less than three hours each week; and adds "integrated co-teaching services" option to the continuum of services and specifies that when a district provides integrated co-teaching services, the number of students with disabilities cannot, effective July 1, 2008, exceed 12 students.

Section 200.7(b) conforms State regulations relating to school conduct and discipline at private schools and State-operated and State-supported schools to Federal regulations.

Section 200.16 makes a technical change regarding IEEs; conforms State regulations relating to procedural safeguards to Federal requirements; and allows approved preschool programs to temporarily increase the enrollment of a class up to a maximum of 13 students for the remainder of the school year.

Section 201.2 conforms the definitions of disciplinary change in placement, illegal drug, and interim alternative educational setting (IAES) to the Federal definitions; adds that the district has authority to determine on a case by case basis if a pattern of removals constitutes a disciplinary change in placement and that such determination is subject to review through due process and judicial proceedings.

Section 201.3 is repealed and a new section 201.3 is added to conform CSE responsibilities for functional behavioral assessments (FBAs) and behavioral intervention plans (BIPs) to Federal requirements.

Section 201.4 requires a school district to remedy IEP deficiencies when it is determined that the student's conduct is the direct result of the district's failure to implement the IEP.

Section 201.5 removes the requirement that an expression of concern about a student's pattern of behavior be made in accordance with the district's child find and special education referral system.

Section 201.6 requires that expedited evaluations be completed no later than 15 school days after receipt of parent consent.

Section 201.7(f) clarifies school personnel authority to consider unique circumstances when determining whether a change in placement is appropriate.

Section 201.8 repeals the considerations that an IHO must make to order a change of placement to an IAES; and repeals that an IAES ordered by an IHO be determined by the CSE.

Section 201.10 establishes that school personnel determine services for students removed for more than 10 school days when it is not a disciplinary change in placement; and requires the CSE to determine services and the IAES for students suspended for periods in excess of 10 school days which constitute a disciplinary change in placement.

Section 201.11 conforms procedures for expedited hearings and timelines for an expedited hearing consistent with Federal regulations; clarifies that an IHO appointment for an expedited hearing must be made in accordance with the rotational selection process; and establishes pendency during an expedited impartial hearing.

Consistent with Federal requirements, districts must publicly report on revisions to inappropriate policies, procedures or practices resulting in a significant disproportionality by race/ethnicity.

If a district uses a process to determine if a student responds to scientific, research-based intervention, written notification must be given to parents when the student requires an intervention beyond that provided to all students in the general education classroom that identifies student

performance data, strategies for increasing the student's rate of learning and notification of the parents' right to request an evaluation for special education programs and/or services. In addition, the CSE must develop a written document for the determination of a student with a learning disability.

Consistent with Federal requirements, districts must obtain consent before: personally identifiable information about a nonpublic school student is released between the district of location of the private school and the district of residence; releasing information to a representative of any participating agency that is likely to be responsible for providing or paying for transition services or inviting such individual to a CSE meeting; and accessing a parent's public insurance. Changes also require consent before personally identifiable information is released to officials of participating agencies when a student is determined to be at risk of a future placement in a residential school and before providing evaluative information and program recommendations for a student to a Family Court judge, a probation department, a social services district, the Office of Child and Family Services, or a preadmission certification committee established pursuant to Mental Hygiene Law section 9.51(d).

Changes to due process provisions require that districts provide parents with a copy of the procedural safeguards notice upon receipt of their first State complaint and upon a disciplinary change in placement.

The amendments do not impose any additional professional service requirements on rural areas, beyond those imposed by such Federal statutes and regulations and State statutes.

MINIMIZING ADVERSE IMPACT:

In general, the amendments are necessary to conform the Commissioner's Regulations to recent changes in the Federal IDEA statutes and regulations (20 U.S.C. 1400 *et. seq.*, as amended by Public Law 108-446, and the final Federal amendments to 34 CFR Part 300) and to that extent do not exceed any minimum Federal standards. The amendments relating to evaluation and placement of preschool students; standardized forms for IEPs, written notifications and meeting notices; minimal levels of services for resource room and direct consultant teacher services; integrated co-teaching services; and temporary increases in the class enrollment of approved preschool programs are not required by Federal law or regulations, but are necessary to ensure consistency in procedural safeguards; to promote timely evaluations and services; and to facilitate services in the least restrictive environment for students with disabilities, and are otherwise consistent with Federal standards.

School districts and other LEAs are required to comply with IDEA as a condition to their receipt of Federal funding. The proposed conforming amendments have been carefully drafted to meet Federal statutory and regulatory requirements and do not impose any additional costs or compliance requirements on these entities beyond those imposed by Federal law and regulations and State statutes. Since these requirements apply to all school districts in the State, it is not possible to adopt different standards for school districts in rural areas.

Various alternatives for establishing the staff-to-student ratio in the integrated co-teaching class option were considered, including only establishing a ratio of students with disabilities to nondisabled students, but the current proposal was selected to ensure reasonable class size. With regard to minimum levels of service requirements, the Department considered the repeal of minimum levels established for speech and language services, consultant teacher services and resource room services. The proposed amendment was selected because it is expected to maximize the participation of students with disabilities in general education classes and curriculum; will allow more students with disabilities to receive special education services without removing students from their required academic courses; and yield a more efficient and effective use of human and fiscal resources.

The Department also considered proposals to allow indirect support to be provided by related service providers; to repeal the chronological age-range limitations in middle- and secondary-level special classes; and to repeal the requirement for parent notification relating to math and reading achievement levels in special classes. The proposed amendment addresses recommendations most supported by public comment and most directly related to improved results for students with disabilities and placement in the least restrictive environment.

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the *State Register* on March 21, 2007, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The proposed rule, as revised, is necessary in order to ensure compliance with Federal law and regulations and State law relating to the educa-

tion of students with disabilities, ages 3-21; to ensure consistency in procedural safeguards; to promote timely evaluations and services; and to facilitate services in the least restrictive environment for students with disabilities, and will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the revised rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

Summary of Assessment of Public Comment

Since publication of Notice of Proposed Rule Making in the *State Register* on March 21, 2007, the Department received the following comments on the proposed amendments.

Section (§) 100.2(ii) – Response to Intervention (RTI) Programs

COMMENT:

Some supported RTI as general education program. Others recommended its use only in identifying learning disabilities (LD). Many requested additional specification on minimal requirements.

DEPARTMENT RESPONSE:

Revised regulation provides further specificity to RTI requirements; defines research-based reading instruction; requires districts identify RTI criteria; and requires schools ensure staff knowledge and skills to implement RTI.

§ 200.1 - Definitions

COMMENTS:

Revise parent definition to allow foster parents to serve as parent; delete term “legally appointed” and exception prohibiting State from acting as parent for wards of State; revise “related services” to include school nursing services; and clarify “group or individualized instruction” in consultant teacher (CT) definition.

DEPARTMENT RESPONSE:

Parent definition is consistent with State and Federal law. School health services is revised to replace term “nursing services” with “school nurse services.” § 200.1(wv)(3) defines group instruction. Term “individualized instruction” means specially designed instruction provided on an individual basis.

§ 200.2(b)(1) - Board of Education (BOE) Responsibilities

COMMENT:

Clarify whether students with disabilities must be enrolled in public school to access district extracurricular activities.

DEPARTMENT RESPONSE:

Consistent with Education Law section 414(2), districts must ensure students placed by Committees on Special Education (CSE) have opportunity to participate in district programs, appropriate to student’s needs.

§ 200.2(b)(15) - Disproportionality

COMMENT:

Provisions on disproportionality may make it harder for eligible student to receive special education based on minority status; and will improve data collection.

DEPARTMENT RESPONSE:

Regulation complies with 34 CFR § 300.646(b).

§ 200.4(b) - Individual evaluation

COMMENT:

Clarify district’s responsibility to provide services when parent refuses consent for reevaluation. Retain language requiring evaluation report describe extent an assessment varied from standard conditions.

DEPARTMENT RESPONSE:

Districts are responsible for providing special education, but may use due process to pursue evaluation. Revised rule retains § 200.4(b)(6)(ii).

§ 200.4(d) - Recommendation

COMMENT:

Clarify documentation necessary to ensure appropriateness of reading and math instruction. Require CSE members’ opinions be officially noted in minutes.

DEPARTMENT RESPONSE:

Proposed § 200.4(j) specifies required documentation to ensure appropriateness of reading and math instruction. Meeting notes are recommended, but not required; prior notice requires specific documentation to parent when CSE recommends or refuses to recommend programs or services.

§ 200.4(d)(4)(i)(c) – Transition meetings

COMMENT:

Clarify when vocational rehabilitation (VR) representative must be invited to transition planning meetings. Require transition planning at age 14.

DEPARTMENT RESPONSE:

Determination to invite participating agency is made on an individual student basis. State law requires transition planning at age 15; younger if appropriate.

§ 200.4(e)(1) - 60-day timeline

COMMENT:

Clarify timelines for BOE to arrange special education upon referral for review.

DEPARTMENT RESPONSE:

Department will consider this comment for future rule making.

§ 200.4(j) - Additional Procedures for Identifying Students with LD

COMMENT:

Add specific criteria to assist districts in determining LD. Clarify time period for intervention to be provided prior to referral; limit RTI use to reading; require data from RTI process be considered as part of comprehensive evaluation; delete alternative research-based procedures; eliminate or extend discrepancy model sunset date; and change eligibility group from CSE to Federally mandated group.

DEPARTMENT RESPONSE:

§§ 200.4(a) (referrals), 200.4(b) (evaluation timelines) and 200.4(j) (LD procedures) were revised to simplify procedures for LD identification; to delete alternative research based criteria; and to prohibit, effective July 1, 2012, use of discrepancy criteria for LD determinations in area of reading for students grades K to four.

§ 200.4(d) and § 200.5(a) and (c) – Required Forms

COMMENT:

Retain requirement for State IEPs, prior written notice and CSE meeting notice forms. Provide samples, but not mandated forms.

DEPARTMENT RESPONSE:

Revised regulation changes effective date to January 1, 2009 to ensure a public comment period.

§ 200.5(b) - Parent Consent

COMMENT:

Require consent forms be mailed within 10 days or reasonable timeframe; require consent prior to each time district proposes to access public insurance or parent’s private insurance; and include in procedural safeguards notice (PSN) that district is not required to use due process procedures when parent of parentally placed student refuses consent for evaluations or services.

DEPARTMENT RESPONSE:

Revised regulation requires districts document specific steps to obtain parent consent; and clarifies consent for use of public and private insurance. PSN will include language consistent with Federal and State requirements.

§ 200.5(f) – Procedural Safeguards Notice

COMMENT:

Retain language in § 200.5(f)(4). Add to PSN that resolution sessions are mandatory; and consequences for failing to appear; add date parents of parentally placed students must request services.

DEPARTMENT RESPONSE:

The Department will adopt Federal PSN with State specific modifications and will provide guidance on parentally placed students.

§ 200.5(g) - Independent Educational Evaluation (IEE)

COMMENT:

Limit IEEs to one evaluation of same type with which parent’s disagree. Require CSE to consider IEE results. Allow IEE observations in student’s educational environment. Entitle parent to IEE at public expense when district evaluation is untimely.

DEPARTMENT RESPONSE:

Proposed regulations are consistent with Federal requirements. Decisions as to whether observations by independent evaluators are appropriate must be made at local level in consideration of school’s policy to ensure security and safety of students and education is not disrupted.

§ 200.5(i)(3) - Due process complaint notice

COMMENT:

Proposed language regarding sufficiency challenges of due process complaint notice is incorrect.

DEPARTMENT RESPONSE:

Revised 200.5(j)(3) clarifies no party may challenge sufficiency of due process complaint for expedited hearings.

§ 200.5(j) - Impartial hearings

COMMENT:

Require districts to notify parents of consequences of not attending resolution session; resolution sessions for district initiated hearings; hearings to begin immediately when district fails to participate in resolution session; documentation of effort for parent participation in resolution

sessions; and sessions are at mutually agreeable times. Delete "prehearing conference" language. Define "reasonable and documented efforts" consistent with 34 CFR § 300.510(b)(4).

DEPARTMENT RESPONSE:

PSN will notify parents of resolution session requirements. Federal regulations do not require resolution session for district initiated hearings. Revised § 200.5(i) adds steps to ensure parent participation in resolution session. Proposed timelines are correct since hearings often begin with prehearing conferences.

COMMENT:

Revise regulation that impartial hearing officers (IHOs) not accept appointments unless available to initiate hearings within 14 days. Clarify hearing timeline begins at expiration of resolution period. Require IHOs enter data or allow parties to file State complaint against IHO who improperly delays hearing.

DEPARTMENT RESPONSE:

Regulations prescribe procedures to ensure hearing timelines consistent with Federal requirements. § 200.5(j)(3)(xvi) requires BOE to report data on hearings. Since this data is used to monitor IHO compliance with timelines, it would be inappropriate for IHOs to enter data.

COMMENT:

Comments of support were received regarding settlement agreements. Some expressed concern proposal may violate IDEA 2004; may affect recovery of attorneys' fees and ability for parents, particularly low-income parents, to find and retain attorneys; and may make it less likely school districts will comply with settlement agreements. Clarify when partial agreement is reached in form of agreement on any one or more issues among those raised, regulation would not require hearing to be closed and process to start over before new IHO. Some stated proposed amendment appears to interfere with IHO independence and parent's ability to demonstrate exhaustion of administrative remedies with regard to all or part of a claim.

DEPARTMENT RESPONSE:

Department strongly disagrees proposed language violates IDEA or interferes with IHO independence. Purpose of regulation is to improve effectiveness of hearing system and aligns New York with other states in regulating this practice, clarifies consistent with section 200.5(j) that IHO decision must be based solely upon record of proceeding and must set forth reasons and factual basis for determination. Decision must reference hearing record to support findings of fact and, consistent with Federal regulations, IHO's determination of whether student receives a free appropriate public education must be based on substantive grounds. Parties are encouraged to settle all disputed issues, including attorney fees, and proposed regulation poses no impediment. If agreement is not reached on issues, either party has right to proceed with hearing. IHO must issue decision on issues in complaint not resolved in settlement agreement and are within IHO's jurisdiction. Revised proposed regulation states settlement agreement shall not constitute a final decision, prescription or order of IHO; settlement agreement may be read into record as an agreement between parties only; and such agreement shall be enforceable in any State or Federal court.

COMMENT:

Delete proposed rule that allows only one 30-day extension at a time.

DEPARTMENT RESPONSE:

State must establish procedures to ensure hearings are completed within required timelines. Revised regulation clarifies that not more than one extension may be granted at a time.

§ 200.5(l)(i) - State Complaints

COMMENT:

Retain current timeline for filing State complaint.

DEPARTMENT RESPONSE:

Proposed timelines will help ensure problems are raised and resolved promptly.

§ 200.5(n) – Surrogate Parents

COMMENT:

Repeal requirement that foster parents must be appointed as surrogate; clarify parents' rights may be subrogated or temporarily suspended; and require appointment of surrogates no later than 30 days from determination that student needs surrogate parent.

DEPARTMENT RESPONSE:

Regulations require surrogate parent appointment within 10 business days, which is shorter than 30-day Federal requirement. Definition of

parent addresses when foster parents may be parent. Proposed regulations do not require qualified foster parents to be appointed from approved BOE list.

§ 200.6 Continuum of Services

COMMENT:

Some support, some oppose change to minimal level of service for combined resource room and CT. Allow flexibility for both direct and indirect CT. Require IEP to state time required for each service.

DEPARTMENT RESPONSE:

Revised regulation allows combined CT (direct and/or indirect) and resource room for not less than three hours per week. Regulations require IEP to specify frequency, location and duration for each special education program or service.

COMMENT:

Support co-teaching service as written. Comments ranged from recommendation for maximum one-third to 40-50 percent special education students. Clarify if students with disabilities means students with co-teaching on IEP or students in class with other recommended services. Limiting students with disabilities in regular education classes is discriminatory. Consider cost and program implications to implement co-teaching in 2007-08. Require grouping by similarity of needs and performance range of general education students be reflective of students in that grade. Clarify role of teaching assistant (TA). Separate State funding from service delivery. Repeal all instructional group size limitations and minimum level of services.

DEPARTMENT RESPONSE:

Revised regulation delays implementation of 12 student limit until July 1, 2008 and eliminates proposed one-third ratio. Regulations require grouping according to similarity of needs. Regulating performance range of general education students is beyond scope of this rulemaking. Regulations clarify TA may not be the teacher. Proposed regulations do not address funding. We decline to repeal all instructional group size limitations and minimum level of service requirements.

§ 200.16(i)(3)(iii)(b)(1) - Preschool Variances

COMMENT:

Do not limit variance to exceed 12 preschool statewide.

DEPARTMENT RESPONSE:

The recommended revision was made.

§ 201.3 – CSE Responsibilities for Functional Behavioral Assessments (FBA) and Behavioral Intervention Plans (BIP)

COMMENT:

Require FBAs whenever students' behaviors impede learning even when there is no manifestation.

DEPARTMENT RESPONSE:

It is not necessary to make change; current § 200.4 and § 200.22 specify when FBAs are required.

§ 201.4 - Manifestation Determination Review

COMMENT:

Clarify a student's no manifestation determination does not result in loss of their IDEA rights; require parent participation in manifestation determinations; and clarify that CSEs no longer determine services when student is placed in interim alternative educational setting (IAES).

DEPARTMENT RESPONSE:

Regulations clarify students with disabilities retain IDEA rights; manifestation teams include parents; and CSEs determine services for students placed in IAES for disciplinary changes in placement.

§ 201.8 – Authority of IHO

COMMENT:

Revise § 201.8(b) to allow IAES placements be repeated only once.

DEPARTMENT RESPONSE:

Federal law does not limit number of times IAES procedures may be repeated.

§ 201.11 – Expedited Hearings

COMMENT:

Require IAES to be an appropriate setting. Retain IHO considerations when changing student's placement to an IAES.

DEPARTMENT RESPONSE:

Term IAES implies the setting be appropriate. There is no statutory authority to retain IHO considerations when determining an IAES.

Department of Health

EMERGENCY RULE MAKING

Payment for FQHC Psychotherapy and Offsite Services

I.D. No. HLT-27-07-00001-E

Filing No. 605

Filing date: June 13, 2007

Effective date: June 13, 2007

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

Action taken: Amendment of section 86-4.9 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 201.1(v)

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

Specific reasons underlying the finding of necessity: The amendment to 10 NYCRR 86-4.9 will permit Medicaid billing for individual psychotherapy services provided by certified social workers in Article 28 Federally Qualified Health Centers (FQHCs). In conjunction with this change, DOH is also amending regulations to prohibit Article 28 clinics from billing for group visits and to prohibit such services from being provided by part-time clinics.

Based upon the Department's interpretation of 10 NYCRR 86-4.9(c), social work services have not been considered billable threshold visits in Article 28 clinic settings despite the fact that certified social workers have been an integral part of the mental health delivery system in community health centers. New Federal statute and regulation require States to provide and pay for each FQHC's baseline costs, which include costs which are reasonable and related to the cost of furnishing such services. Reimbursement for individual psychotherapy services provided by certified social workers in the FQHC setting is specifically mandated by Federal law. Failure to comply with these mandates could lead to federal sanctions and the loss of Federal dollars. Additionally, allowing Medicaid reimbursement for clinical social worker services is expected to increase access to needed mental health services.

Subject: Payment for FQHC Psychotherapy and offsite services.

Purpose: To permit psychotherapy by certified social workers as a billable service under certain circumstances.

Text of emergency rule: Section 86-4.9 is amended to read as follows:

86-4.9 Units of service. (a) The unit of service used to establish rates of payment shall be the threshold visit, except for dialysis, abortion, sterilization services and free-standing ambulatory surgery, for which rates of payment shall be established for each procedure. For methadone maintenance treatment services, the rate of payment shall be established on a fixed weekly basis per recipient.

(b) A threshold visit, including all part-time clinic visits, shall occur each time a patient crosses the threshold of a facility to receive medical care without regard to the number of services provided during that visit. Only one threshold visit per patient per day shall be allowable for reimbursement purposes, except for transfusion services to hemophiliacs, in which case each transfusion visit shall constitute an allowable threshold visit.

(c) Offsite services and group services, (except in relation to Federally Qualified Health Center (FQHC) clinics, as defined in subdivision (h) of this section), visits related to the provision of offsite services, visits for ordered ambulatory services, and patient visits solely for the purpose of the following services shall not constitute threshold visits: pharmacy, nutrition, medical social services with the exception of clinical social services in FQHC clinics as defined in subdivision (g) of this section, respiratory therapy, recreation therapy. Offsite services are medical services provided by a facility's clinic staff at locations other than those operated by and under the licensure of the facility.

(d) A procedure shall include the total service, including the initial visit, preparatory visits, the actual procedure and follow-up visits related to the procedure. All visits related to a procedure, regardless of number, shall be part of one procedure and shall not be reported as a threshold visit.

(e) Rates for separate components of a procedure may be established when patients are unable to utilize all of the services covered by a procedure rate. No separate component rates shall be established unless the

facility includes in its annual financial and statistical reports the statistical and cost apportionments necessary to determine the component rates.

(f) Ordered ambulatory services may be covered and reimbursed on a fee-for-service basis in accordance with the State medical fee schedule. Ordered ambulatory services are specific services provided to nonregistered clinic patients at the facility, upon the order and referral of a physician, physician's assistant, dentist or podiatrist who is not employed by or under contract with the clinic, to test, diagnose or treat the patient. Ordered ambulatory services include laboratory services, diagnostic radiology services, pharmacy services, ultrasound services, rehabilitation therapy, diagnostic services and psychological evaluation services.

(g) For purposes of this section clinical social services are defined as individual psychotherapy services provided in a Federally Qualified Health Center, by a licensed clinical social worker or by a licensed master social worker who is working in a clinic under qualifying supervision in pursuit of licensed clinical social worker status by the New York State Education Department.

(h) Clinical group psychotherapy services provided in a Federally Qualified Health Center, are defined as services performed by a clinician qualified as in subdivision (g) of this section, or by a licensed psychiatrist or psychologist to groups of patients ranging in size from two to eight patients. Clinical group psychotherapy shall not include case management services. Reimbursement for these services shall be made on the basis of a FQHC group rate which will be calculated by the Department for this specific purpose, payable for each individual up to the limits set forth herein, using elements of the Relative Based Relative Value System (RBRVS) promulgated by the Centers For Medicare And Medicaid Services (CMS), and approved by the State Division of Budget. Psychotherapy, including clinical social services and clinical group psychotherapy services, may not exceed 15 percent of a clinic's total annual threshold visits.

(i) Federally Qualified Health Centers will be reimbursed for the provision of offsite primary care services to existing FQHC patients in need of professional services available at the FQHC, but, due to the individual's medical condition, is unable to receive the services on the premises of the center.

(1) FQHC offsite services must:

(i) consist of services normally rendered at the FQHC site.

(ii) be rendered to an FQHC patient with a pre-existing relationship with the FQHC (i.e., the patient was previously registered as a patient with the FQHC) in order to allow the FQHC to render continuous care when their patient is too ill to receive on-site services, and only to patients expected to recover and return to become an on-site patient again. Off-site services may not be billed for patients whose health status is expected to permanently preclude return to on-site status.

(iii) be rendered only for the duration of the limiting illness, with the intent that the patient return to regular treatment as an on-site patient as soon as their medical condition allows.

(iv) be an individual medical service rendered to an FQHC patient by a physician, physician assistant, midwife or nurse practitioner.

(v) not be rendered in a nursing facility or long term care facility, to any patient expected to remain a patient in that facility or at that level of care.

(vi) not be billed in conjunction with any other professional fee for that service, or on the same day as a threshold visit.

(2) Reimbursement for these services shall be made on the basis of an FQHC offsite professional rate, which will be calculated by the Department using elements of the Relative Based Relative Value System (RBRVS) promulgated by the Centers For Medicare And Medicaid Services (CMS) and approved by the State Division of Budget.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 10, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: William Johnson, Department of Health, Office of Regulatory Affairs, Corning Tower, Rm. 2438, Empire State Plaza, Albany, NY 12237-0097, (518) 473-7488, fax: (518) 473-2019, e-mail: regsna@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in section 2803(2)(a) of the Public Health Law which authorizes the State Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner. Section 702 of

the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000 made changes to the Social Security Act affecting how prices are set for Federally Qualified Health Centers and rural health centers. Section 1902(a)(10) of the federal Social Security Act (42 USC 1396a(a)(10)) and 1905(a)(2) of the Social Security Act (42 USC 1396d(a)(2)) require the State to cover the services of Federally Qualified Health Centers. Additionally, section 1861(aa) of the Social Security Act (42 USC 1395x(aa)) defines the services that a Federally Qualified Health Center provides, including the services of a clinical social worker.

Legislative Objective:

The regulatory objective of this authority is to bring the State into compliance with Federal Law regarding payments to Federally Qualified Health Centers (FQHCs). Based on the Federal Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000 we will allow payments for group psychotherapy provided by social workers and limited off-site services at special rates developed for these services. Individual psychotherapy remains allowed at the threshold visit rate.

This amendment will allow individual psychotherapy by licensed clinical social workers (LCSWs) as a billable visit in FQHCs under the following circumstances:

- Services are provided by a licensed clinical social worker or by a licensed master social worker who is working in a clinic under qualifying supervision in pursuit of licensed clinical social worker status.
- Psychotherapy services only will be permitted, not case management and related services.

Group psychotherapy as a clinical social service will be allowed in FQHCs in accordance with the following:

- Services are provided to a group of patients by a licensed clinical social worker, or by a licensed master social worker who is working in a clinic under qualifying supervision in pursuit of licensed clinical social worker status or a licensed psychiatrist or psychologist.
- Payment will be made on the basis of a FQHC group rate.
- Payment will only be made for services that occur in FQHCs.

Payment for individual or group psychotherapy will not be allowed for services rendered off-site.

Both individual and group psychotherapy in FQHCs is limited to a total of 15 percent of all billings.

Off-site primary care services by FQHCs will be reimbursable under the following provisions:

- Individuals given care must be existing FQHC patients who are temporarily unable to receive services on-site due to their medical condition but are expected to return to the FQHC as an on-site patient.
- Services must be rendered by a physician, physician assistant, midwife or nurse practitioner and reimbursed at the FQHC offsite professional rate.
- Services are not billable with any other professional fee for that service or on the same day as a threshold visit.

Needs and Benefits:

Recent Federal changes related to Medicaid reimbursement for FQHCs mandate that group psychotherapy services provided by a social worker and off-site primary care services be considered a billable service.

This approach will ensure access to social work services in the most underserved areas and increase consistency with the policies of other state agencies.

Costs:

Costs for the Implementation of, and Continuing Compliance with this Regulation to Regulated Entity:

We estimate this change will increase Medicaid costs by about 7.4 million dollars gross, annually. Of this amount, about 1.2 million dollars is attributable to allowing FQHCs to bill for limited off-site visits. 6.2 million dollars is attributable to allowing FQHCs to bill for group therapy services. These changes are being made in order to comply with Federal requirements.

Pricing & Volume Data	Statewide			Cost Estimates
	Downstate	Upstate	Average	
Offsite Visits				Offsite Visits
Subsequent Hospital Care	\$62.73	\$55.19	\$58.96	\$1,117,212
Psychotherapy Services				Group Therapy
Group Psychotherapy	\$34.86	\$30.81	\$32.84	\$6,222,733
2004 FQHC Visit Volume	1,894,864			
				Total
Volume Increase Assumptions				\$7,339,945

Group Therapy Increase = 10%
 Increase 2004 FQHC Volume.
 Off-site Visit Increase = 1% Increase
 Over 2004 FQHC Volume

Cost to the Department of Health:

This represents a permanent filing of regulations already in effect. There will be no additional costs to the Department.

Local Government Mandates:

This amendment will not impose any program service, duty or responsibility upon any county, city, town, village school district, fire district or other special district.

Paperwork:

This amendment will increase the paperwork for providers only to the extent that providers will bill for social work services.

Duplication:

This regulation does not duplicate, overlap or conflict with any other state or federal law or regulations.

Alternatives:

Recent changes to federal law make it clear that states must reimburse FQHCs under Medicaid for off-site primary care services and the services of certified social workers for both individual and group psychotherapy. In light of this federal requirement, no alternatives were considered.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The proposed amendment will become effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

No impact on small businesses or local governments is expected.

Compliance Requirements:

This amendment does not impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Professional Services:

No new professional services are required as a result of this proposed action. These changes will bring our regulations into compliance with the State Education Department's (SED) new standards for social worker licensure.

Compliance Costs:

This amendment does not impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Economic and Technological Feasibility:

DOH staff has had conversations with the National Association of Social Workers (NASW), UCP, and CHCANYS concerning the interpretation of the current regulation as well as proposed changes to the existing regulation. Although some systems changes will be necessary to ensure that payment is made only to FQHCs, the proposed regulation will not change the way providers bill for services, and thus there should be no concern about technical difficulties associated with compliance.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Small Business Participation:

Participation is open to any FQHC that is certified under Article 28 of the Public Health Law, regardless of size, to provide individual psychotherapy services by certified social workers. Any FQHC, regardless of size, may participate in providing off-site primary care services as well as on-site group psychotherapy services by certified social workers, a licensed psychiatrist or psychologist.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

This rule will apply to all Article 28 clinic sites in New York that have been designated by the Centers for Medicare and Medicaid Services (CMS) as Federally Qualified Health Centers. These businesses are located in rural, as well as suburban and metropolitan areas of the State.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

No new reporting, recordkeeping or other compliance requirements and professional are needed in a rural area to comply with the proposed rule.

Compliance Costs:

There are no direct costs associated with compliance.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Rural Area Participation:

The Department has had conversations with the National Association of Social Workers Association (NASW), UCP, and CHCANYS to discuss Medicaid reimbursement for social work services and the impact of this new rule on their constituents. These groups and associations represent social workers and clinic providers from across the State, including rural areas.

Job Impact Statement

Nature of Impact:

It is not anticipated that there will be any impact of this rule on jobs or employment opportunities.

Categories and Numbers Affected:

There are almost 1000 Article 28 clinics of which approximately 58 are FQHCs, FQHC look-alikes, and rural health clinics.

Regions of Adverse Impact:

This rule will affect all regions within the State and businesses out of New York State that are enrolled in the Medicaid Program as an Article 28 clinic and that has been designated by the Centers for Medicare and Medicaid Services (CMS) as a Federally Qualified Health Center.

Minimizing Adverse Impact:

The Department is required by federal rules to reimburse FQHCs for the provision of primary care services, including clinical social work services, based upon the Center's reasonable costs for delivering covered services.

Self-Employment Opportunities:

The rule is expected to have no impact on self-employment opportunities since the change affects only services provided in a clinic setting.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Blood Banks

I.D. No. HLT-27-07-00008-P

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

Proposed action: Amendment of Subpart 58-2 of Title 10 NYCRR.

Statutory authority: Public Health Law, art. 31 and section 3121(5)

Subject: Blood banks.

Purpose: To amend Subpart 58-2 to reflect currently accepted nomenclature and technology, update practice standards and provide needed clarification of provisions for regulation of blood banks and transfusion services.

Substance of proposed rule (Full text is posted at the following State website: www.health.state.ny.us): This amendment to Subpart 58-2 reflects currently accepted nomenclature and technology, updates practice standards, and provides needed clarification of provisions for regulation of blood banks and transfusion services. Definitions have been revised for the terms intraoperative blood recovery, allogeneic collection, and medical director, while new definitions are added for the terms clinical laboratory technician, clinical laboratory technologist, health care provider, nurse practitioner, physician, physician assistant, and physician designee. References to solvent/detergent-treated plasma have been deleted from definitions for the terms blood components and derivatives.

The minimum age for allogeneic blood donors is lowered from 17 to 16 years, with written parental permission.

The amendment requires that blood donor samples undergo nucleic acid testing for detection of human immunodeficiency virus and hepatitis C virus. Current regulatory language is modified to reflect the industry standard of utilizing a combination test for human T-lymphotropic virus types I and II. To recognize advances in technology, the requirement for weakly reactive controls is made generic so as to apply to any test methodology that might be employed.

Testing of a specimen collected subsequent to the date of donation is permitted for autogeneic donors.

Repeated listings of individual blood grouping and infectious disease tests are replaced by references to the section that specifies the required tests.

Requirements for labeling pre-transfusion specimens are expanded to include identification of the individual drawing the specimen.

Centrifuge maintenance and frequency of functional calibration requirements are specified. The amendment also clarifies initiation of the time limit for storage of blood recovered during or after surgery, and for blood collected for normovolemic hemodilution.

Requirements for collection, by serial plasmapheresis, of plasma for fractionation are separated from those for collection, by infrequent apheresis, of plasma for transfusion. A new provision requires that all floor

supervisors complete a training program that includes documented satisfactory performance of donor apheresis procedures. The amendment specifies that a person specifically trained in recognizing and addressing reactions that may occur in association with the procedures being performed to be immediately available on the premises during an apheresis procedure, rather than relying solely on educational credentials for qualification of staff.

The amended regulation specifies that a supervisor must possess one year of experience in overseeing allogeneic blood collections, and specific training in the recognition and treatment of any reactions that may occur.

The roles and responsibilities of transfusion staff within and outside a health care setting are delineated. Identification procedures for the unit of blood to be transfused, the accompanying paperwork, and the recipient are clarified.

The maximum temperature of blood warmers is changed from 42 degrees Celsius to "the temperature specified in a written protocol, in conformance with the system manufacturer's instructions." The amendment specifies that blood warmer temperatures be recorded on each day of use.

Minimums for apheresis donor hemoglobin, hematocrit, and weight are clarified, and maximum permissible red blood cell loss is increased.

Required elements are enumerated for full documentation of the product name, lot number, and expiration date of infused plasma derivatives.

Text of proposed rule and any required statements and analyses may be obtained from: William Johnson, Department of Health, Office of Regulatory Affairs, Corning Tower, Rm. 2438, Empire State Plaza, Albany, NY 12237-0097, (518) 473-7488, fax: (518) 473-2019, e-mail: regsqa@health.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

Statutory Authority:

Article 31 of the Public Health Law (PHL) establishes the Department's authority to protect the public health, safety and welfare through oversight of the collection, processing, fractionation, storage, distribution and supply of human blood, and blood products for transfusion. The New York State Council on Human Blood and Transfusion Services is authorized by PHL Section 3121(5) to enact, amend and repeal rules and regulations setting forth minimum standards for these processes as applied to blood and blood products, subject to the approval of the Commissioner of Health.

Legislative Objectives:

The Council on Human Blood and Transfusion Services has proposed revision of Subpart 58-2 to update practice standards and promote safe blood bank operation, ensure that donor safeguards are not compromised, and prevent release of unsuitable blood units. Such amendment, which is necessary to keep pace with technology and codify practice standards, is consistent with the legislative mandate that the Department regulate the blood supply.

Needs and Benefits:

This regulatory amendment is necessitated by advances in medical technology, chronic blood shortages, and the need to maintain consistency with the State Education Department's standards of practice for licensed health professionals, and to clarify regulatory intent. The amendment facilitates expansion of the blood supply and enhances apheresis, plasmapheresis and blood transfusion safety without compromising blood donor safeguards.

References to solvent/detergent-treated plasma have been deleted because this product is no longer available. Minor changes for clarification purposes are also proposed for the definitions of blood components, derivatives, intraoperative blood recovery, allogeneic collection, and medical director. The amendment would set forth new definitions for the terms clinical laboratory technician, clinical laboratory technologist, health care provider, nurse practitioner, physician, physician assistant, and physician designee. References to health care providers caring for patients have been broadened to recognize the growing role of physician extenders, such as physician assistants and nurse practitioners, in health care delivery, consistent with their scope of practice as specified by the State Education Department. Clinical laboratory technician and clinical laboratory technologist have been defined consistent with the recently enacted Clinical Laboratory Technology Practice Act (Article 165 of the Education Law).

The minimum age of allogeneic blood donors has been lowered from 17 to 16 years, provided that the 16 year-old has presented written permission specific to the occasion from a parent or guardian. This provision is

expected to expand the domestic donor pool and reduce the need to import blood from out-of-State sources. The added opportunities for blood donation during potential donors' high-school years may make these donors more aware of their civic responsibility earlier and more likely to become repeat blood donors as adults. In terms of donor safety, the rate of adverse incidents for donors 16 years of age is not significantly higher than that for donors 17 years of age, and adverse reactions (e.g., fainting) are similar in scope and severity. These factors are demonstrated by a retrospective review of blood center collection data for the years 2001 through 2003 made available to the Department by several major blood centers.

The Department has long recognized advances in testing technologies applicable to donated blood processing and blood donors, and proposes to codify several upgrading modifications to existing procedures. A requirement is added for blood donor testing with nucleic acid testing (NAT) technology. Such testing has been shown to detect human immunodeficiency virus type 1 (HIV-1) and hepatitis C virus (HCV) infection significantly earlier than antibody testing, thus reducing the risk that an infectious blood donation may go undetected. Terminology related to testing blood donors for human T-lymphotropic viruses (HTLV) is proposed to reflect the current industry standard of using a combination test for HTLV types I and II, referred to as HTLV-I/II. New provisions would permit testing of an autogeneic donor specimen collected subsequent to the date of donation. To simplify regulatory language and thereby facilitate compliance, actual lists of tests for blood grouping and detection of infectious diseases have been replaced by a reference to the regulation's section specifying the required tests. To recognize advances in technology, the requirement for weakly reactive controls is made generic so as to apply to any test methodology that might be employed.

Several other technical requisites have been clarified, including those for frequency of centrifuge maintenance, as well as the time limit restriction for storage of blood recovered during or after surgery and blood collected for normovolemic hemodilution, consistent with industry standards.

Specimen labeling for pre-transfusion testing is further detailed to include identification of the person collecting the specimen. Errors in labeling of such specimens have been found to contribute to administration of incompatible blood, which may cause a fatal reaction. Requirements for collection by serial plasmapheresis of plasma intended for fractionation into blood derivatives have been separated from those for collection, by infrequent apheresis, of plasma for transfusion. Serial plasmapheresis is a more intensive and risky procedure that calls for additional donor safeguards. The revisions clarify requisites, increase donor safety, improve component quality, and take into account currently available equipment, which allows collection of plasma for transfusion in combination with other components, such as platelets or red blood cells.

The proposed regulation would permit persons with one year's experience in supervising allogeneic blood collections to qualify as apheresis site floor supervisors, rather than the previous limitation of such supervision to registered nurses, physician assistants or individuals with six years' experience. This change would maximize the availability of qualified candidates without compromising blood donor or recipient safety. The requirement for a physician or registered nurse to be immediately available on the premises at all times during a cytopheresis procedure has been replaced by a provision that a person be present specifically trained in recognizing and addressing reactions that may occur in association with apheresis procedures. Given the ongoing shortage of registered nurses in New York State, blood collection facilities have found it difficult to retain fulltime registered nurses to work in apheresis collection sites, necessitating the hiring of per diem nurses from temporary services agencies solely to meet current regulatory requirements. This proposed change, which appropriately places emphasis on training and experience rather than on educational credentials, would increase donor safety by ensuring that an appropriately trained person is present to handle any donor reactions and would eliminate the need to retain per diem nurses, without such specific training, solely to meet regulatory requirements.

Minimum apheresis donor hemoglobin, hematocrit and weight restrictions are clarified, and maximum-allowable red blood cell (RBC) loss is increased, consistent with apheresis equipment manufacturers' requirements. These revisions would serve to increase the number of eligible donors without compromising donor safety. Also, Section 58-2.15, currently entitled, "Cytapheresis," has been renamed, "Collection of blood components by apheresis," to reflect the variety of apheresis procedures available with current technology.

Identification procedures for blood units and attendant paperwork, as well as for the recipient and blood to be transfused, have been expanded to

clarify the individual steps necessary. Errors in such identification procedures are the primary cause of acute hemolytic transfusion reactions, a leading cause of deaths due to transfusion complications.

To enhance patient safety, the types of personnel who may administer transfusions within and outside a health care setting have been clarified, consistent with State Education Department practice guidelines and this Department's requirements for healthcare facilities and home care services.

The present maximum temperature for blood warmers (42 degrees Celsius) has been replaced by "the temperature specified in a written protocol, in conformance with the system manufacturer's instructions." This change would allow regulated parties to purchase U.S. Food and Drug Administration (FDA)-approved blood warmers programmed to alarm prior to red blood cell hemolysis, but not necessarily at 42 degrees Celsius. This change is consistent with existing Section 58-2.16(j) specifications for blood warming systems.

The regulation has been amended to list product name, lot number, and expiration date as specific elements for full documentation of infused plasma derivatives. Such documentation would facilitate identification of patient risk in case of adverse events and recall of unsuitable blood products.

Costs for the Implementation of, and Continuing Compliance with, the Regulation to the Regulated Entity:

Regulated parties implementing the proposed amendments would incur minimal costs to modify written procedures in their standard operating procedure manuals. Labeling of specimens intended for pre-transfusion testing reflects good laboratory practice, and minimal costs to regulated facilities are anticipated.

Facilities already voluntarily employ approved tests for HIV-1 and HCV nucleic acid based on FDA recommendations, and have already hired technologists or contracted out the services to New York State-permitted laboratories.

Although some facilities could expend resources, and therefore incur costs, in obtaining parental permission for donations by 16-year-olds, considerable cost savings would be realized by an expanded donor base, lessening the need to import blood from out-of-State.

Facilities that now employ per diem RNs may realize cost savings since they will no longer need to do so solely to meet regulatory requirements.

Apheresis training programs are an industry standard. Minimal cost is anticipated for supervisory training, as on-site training programs for operators are already in existence. The supervisory training program may be less extensive than the operators' training program.

Costs to State and Local Government:

State and local government agencies that operate blood banks would incur the same costs and benefits as private regulated parties. School districts may incur minimal costs for staff at high schools to participate in coordination, distribution and collection of parental permission forms for 16-year-old donors.

Costs to the Department:

Monitoring compliance with these revisions would entail minimal Department staff time. Costs incurred by the Department would include the costs of revising inspection-related documents and training staff members who conduct compliance inspections of regulated facilities. These one-time costs are estimated to be less than \$1,000, and will be recovered by the Department through Clinical Laboratory Reference System fees.

Local Government Mandates:

This proposed amendment imposes no new mandates on any county, city, town or village government, fire or other special district.

Paperwork:

Regulated parties would need to modify written procedures in their standard operating procedure manuals to implement the amendment.

Duplication:

This proposed amendment does not duplicate any other State regulations, as Subpart 58-2 is the only State regulation governing blood banking. This proposed amendment does not duplicate federal rules pertaining to blood banks found in Parts 600 through 640, Title 21 of the Code of Federal Regulations.

Alternative Approaches:

The Council on Human Blood and Transfusion Services is charged with ensuring the safety and adequacy of the blood supply in the State of New York through promulgation and amendment of regulations. There are no alternatives that would adequately clarify and render enforceable requirements essential for protecting the public health, recognize technological advances, and ensure the least restrictive practices, consistent with national standards.

Federal Standards:

FDA has established requirements governing blood products shipped in interstate commerce. Existing Subpart 58-2 applies to New York State-permitted blood banks operating intra-state and interstate, and is consistent with federal requirements and recommendations where in place. The proposed rule does not exceed minimum federal standards in the same or related subject areas, with the exception of HIV-1 and HCV nucleic acid testing (NAT), which is recommended, but not mandated, by FDA.

Compliance Schedule:

The Department has notified affected regulated parties to solicit preliminary comments regarding the proposed amendments. Regulated parties should be able to comply with these amended regulations as of their effective date, upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis**Effect of Rule:**

The Department of Health has determined that the proposed amendment, when adopted, would not result in adverse economic impact, nor impose burdensome recordkeeping, reporting or other compliance requirements on small businesses or local governments.

Compliance Requirements:

The proposed revisions to Subpart 58-2 would not extend regulatory oversight to any parties not regulated presently. Most facilities approved to collect and/or transfuse blood that are small businesses or operated by local governments would be affected by at least one proposed change, but not in an adverse manner. However, full compliance would not significantly increase overall costs, or reporting or recordkeeping requirements for any regulated parties, including those that are small businesses and operated by local governments. Savings could be realized by focusing on adequately trained personnel, rather than employing individuals with specific educational credentials in order to satisfy regulatory requirements.

Three hundred fifty-four (354) facilities hold a New York State permit or approval to conduct blood services activities. Two hundred forty-nine (249) of those facilities have a New York State permit for collection and/or transfusion activities. Of those 249 facilities, five are self-declared as meeting the criteria for small businesses, while eight have not indicated their status. The remaining 105 facilities are providers of limited transfusion services, and include 56 dialysis centers, 15 physician offices, four home care agencies, nine skilled nursing facilities, 13 ambulatory surgery centers, two outpatient transfusion services, five cancer treatment centers, and one diagnostic and treatment center. Their small business status is unknown, but the impact of the amendment on such sites would be minimal nonetheless.

All facilities would benefit from the amendments' objectives to: clarify terminology; standardize requirements for labeling of patient specimens intended for pre-transfusion testing; specify centrifuge maintenance and associated documentation; increase flexibility in maximum temperatures for blood warmers and associated documentation; require human immunodeficiency virus type 1 (HIV-1) and hepatitis C virus (HCV) nucleic acid testing (NAT) to decrease the incidence of transfusion-associated infectious disease during the window period of infection; lower the minimum age for blood donation to 16 years of age with parental permission; increase staffing flexibility by modifying supervisory qualifications; increase apheresis donor safety by amending training requirements for staff present to handle any reactions; and clarify storage limits for recovered blood and blood collected for normovolemic hemodilution. The small businesses that collect blood would benefit from the proposed expanded donor pool. Portions of the amendments may also apply to limited transfusion services, but their impact would be minimal.

Professional Services:

Regulated parties will not need additional professional services to comply with these regulations.

Compliance Costs:

Small businesses and local governments that operate blood banks implementing the proposed requirements would need to modify their standard operating procedure manuals, thus incurring minimal costs. Facilities already voluntarily employ approved tests for HIV-1 and HCV nucleic acid based on U.S. Food and Drug Administration recommendations. Clarification of requirements for labeling of specimens for pre-transfusion testing had been requested by transfusion services and blood banks; no additional costs to regulated facilities are anticipated as a result of this change.

Economic and Technological Feasibility:

The proposed changes present no economic or technical difficulties to small businesses and local governments. Although some revisions to blood

collection procedures and record keeping practices are necessary, these requirements are straightforward and easily instituted by existing blood bank staff.

Minimizing Adverse Impact:

The proposed amendments would have no significant adverse impact on small businesses presently in compliance with established industry standards. These amendments were developed with the goal of minimizing any burdens on regulated parties.

Small Business and Local Government Participation:

The Department has notified all regulated parties directly regarding the proposed regulation in order to solicit comments. Recommended changes have been incorporated, as appropriate, based on comments and suggestions received as a result.

Rural Area Flexibility Analysis**Types and Estimated Numbers of Rural Areas:**

Three hundred fifty-four (354) facilities hold a New York State permit or approval to conduct blood service activities. One hundred nineteen (51 percent) of the 232 in-State facilities with a New York State permit for collection and/or transfusion, and 57 (54 percent) of the 105 facilities approved to provide limited transfusion services (LTS) are located in rural counties.

Reporting, Record Keeping and Other Compliance Requirements, and Professional Services:

This proposed amendment would not extend regulatory oversight to any parties not presently regulated. Most facilities approved to collect and transfuse blood would be affected by some of the provisions of the proposal, but not in an adverse manner. The amendments would have no adverse effect on blood banks located in rural areas, as full compliance would not significantly increase overall costs, or reporting or recordkeeping requirements for any regulated parties, including blood banks located in rural areas.

This amendment would not impose an adverse economic impact on public or private entities in rural areas. Many of the proposed revisions are less restrictive than those in the existing regulation. Regulated parties may, but would not be required to, relax present practices to comply with the proposed amendments.

All facilities would benefit from the amendments' objectives to: clarify terminology; standardize requirements for labeling of patient specimens intended for pre-transfusion testing; specify centrifuge maintenance and associated documentation; streamline language pertaining to maximum temperatures for blood warmers and associated documentation; require human immunodeficiency virus type 1 (HIV-1) and hepatitis C virus (HCV) nucleic acid testing (NAT) to decrease the incidence of transfusion-associated infectious disease during the window period of infection; lower the minimum age for blood donation to 16 years of age with parental permission; increase staffing flexibility by modifying supervisory qualifications; enhance apheresis donor safety by modifying training requirements for staff present to handle any reactions; and clarify storage limits for recovered blood and blood collected for normovolemic hemodilution. Facilities located in rural areas that collect blood would benefit from the proposed expanded donor pool. Portions of the amendments may also apply to LTS facilities.

Regulated parties will not need additional professional services to comply with these regulations.

Costs:

Regulated parties in rural areas implementing the revised requirements would need to modify their standard operating procedure manuals, thus incurring minimal costs. Facilities already employ approved tests for HIV-1 and HCV NAT based on U.S. Food and Drug Administration recommendations. The proposal's detailing labeling requirements for specimens intended for pre-transfusion testing had been requested by transfusion services; no additional costs to regulated facilities are anticipated. Although some facilities may incur some minimum costs in documenting parental permission for 16-year-old donors, long-term cost savings would be realized by an expanded donor pool, reducing the need to import blood from out-of-State sources. Additional savings would in fact be realized, as per diem RNs will no longer need to be hired from temporary services agencies solely to meet regulatory requirements.

Minimizing Adverse Impact:

The proposed amendments would have no significant adverse impact on blood banks in rural communities presently in compliance with established industry standards. These amendments were developed with the intent to minimize any burdens on regulated parties.

Rural Area Participation:

The Department has notified all regulated parties directly regarding the proposed regulation in order to solicit comments. Recommended changes have been incorporated, as appropriate, based on comments and suggestions received as a result.

Job Impact Statement

A Job Impact Statement is not included because it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs and employment opportunities. Since the amendment simply clarifies or relaxes current requirements, there are no implications for job opportunities. Laboratories that have voluntarily adopted human immunodeficiency virus type 1 and hepatitis C virus nucleic acid testing technology have already hired technologists or contracted out these services to clinical laboratories under permit to operate in New York State.

Office of Mental Health

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Medical Assistance Payment for Outpatient Programs

I.D. No. OMH-27-07-00002-EP

Filing No. 608

Filing date: June 18, 2007

Effective date: June 18, 2007

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

Action taken: Amendment of Part 588 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b) and 31.04(a)

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

Specific reasons underlying the finding of necessity: These amendments increase the Medicaid rate schedule associated with clinic treatment programs and day treatment programs serving children, equalize reimbursement fees for certain outpatient programs, and make certain other changes consistent with the enacted 2005-06 State budget and the enacted 2006-07 State budget. These changes will avoid a reduction in services that would otherwise take place.

Subject: Medical assistance payment for outpatient programs.

Purpose: To increase certain Medicaid rate schedules and make other changes consistent with the enacted 2005-06 and 2006-07 State budgets.

Text of emergency/proposed rule: Subdivision (a) of Section 588.13 is amended to read as follows:

(a) Reimbursement under the medical assistance program for outpatient programs licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title which serve adults with a diagnosis of mental illness and children with a diagnosis of emotional disturbance shall be in accordance with the following fee schedule. This section shall not apply to programs licensed by both the Office of Mental Health and the Department of Health.

(1) Reimbursement under the medical assistance program for clinic treatment programs [operated by agencies which received State aid under article 41 of the Mental Hygiene Law, during the fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City,] shall be in accordance with the following fee schedule. Such reimbursement shall be adjusted pursuant to [Section 579.7] subdivisions (i), (j) and (k) of this [Title] Section.

(i) For programs operated in Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Putnam, Rockland and Westchester counties:
Regular at least 30 minutes [\$66.00] \$71.94
Brief at least 15 minutes [33.00] 35.97
Group at least 60 minutes [23.10] 25.18
Collateral at least 30 minutes [66.00] 71.94
Group Collateral at least 60 minutes [23.10] 25.18
Crisis at least 30 minutes [66.00] 71.94

(ii) For programs operated in Allegheny, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Or-

leans, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Wyoming and Yates counties:

Regular at least 30 minutes [\$59.40] \$64.75
Brief at least 15 minutes [29.70] 32.37
Group at least 60 minutes [20.79] 22.66
Collateral at least 30 minutes [59.40] 64.75
Group Collateral at least 60 minutes [20.79] 22.66
Crisis at least 30 minutes [59.40] 64.75

(iii) For programs operated in Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, St. Lawrence, Albany, Columbia, Dutchess, Greene, Orange, Rensselaer, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren and Washington counties:

Regular at least 30 minutes [\$58.30] \$63.55
Brief at least 15 minutes [29.15] 31.77
Group at least 60 minutes [20.41] 22.25
Collateral at least 30 minutes [58.30] 63.55
Group Collateral at least 60 minutes [20.41] 22.25
Crisis at least 30 minutes [58.30] 63.55

(2) [Reimbursement under the medical assistance program for clinic treatment programs operated by providers of services which did not receive State aid under article 41 of the Mental Hygiene Law during fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City, shall be in accordance with the following fee schedule unless a higher fee was approved by the commissioner in accordance with the appeal methodology under the previous reimbursement regulations.

Regular at least 30 minutes \$58.30
Brief at least 15 minutes 29.15
Group at least 60 minutes 20.41
Collateral at least 30 minutes 58.30
Group Collateral at least 60 minutes 20.41
Crisis at least 30 minutes 58.30]

The minimum duration of a group or group collateral visit at a school-based clinic program shall consist of the duration of a scheduled class period at the school in which the program is based, or 60 minutes, whichever is less.

(3) Reimbursement under the medical assistance program for non-state operated continuing day treatment programs licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title shall be in accordance with the following fee schedule. [Such reimbursement shall be adjusted pursuant to Part 579.7 of this Title.]

(i) For programs operated in Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Putnam, Rockland and Westchester counties:

(a) Regular, collateral, group collateral, and crisis visits shall be reimbursed on the basis of service hours. The reimbursement for any service hour shall be based upon the cumulative number of service hours provided in a calendar month to an individual recipient. When the service hours of any single visit include more than one rate the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. The rates of reimbursement are as follows:

Service hour 1-50	\$13.20 per service hour
Service hour 51-80	\$10.45 per service hour
Service hour beyond 80	\$ 7.70 per service hour

(ii) For programs operated in Allegheny, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Tompkins, Wayne, Wyoming and Yates counties:

(a) Regular, collateral, group collateral, and crisis visits shall be reimbursed on the basis of service hours. The reimbursement for any service hour shall be based upon the cumulative number of service hours provided in a calendar month to an individual recipient. When service hours of any single visit include more than one rate, the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. The rates of reimbursement are as follows:

Service hour 1-50	\$11.88 per service hour
Service hour 51-80	\$10.45 per service hour
Service hour beyond 80	\$ 7.70 per service hour

(iii) For programs operated in Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, St. Lawrence, Tioga, Albany, Columbia, Dutchess, Greene, Orange, Rensselaer, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren and Washington counties:

(a) Regular, collateral, group collateral, and crisis visits shall be reimbursed on the basis of service hours. The reimbursement for any service hour shall be based upon the cumulative number of service hours provided in a calendar month to an individual recipient. When the service hours for any single visit include more than one rate, the provider of service shall be reimbursed at the rate that applies to the first hour of such visit. The rates of reimbursement are as follows:

Service hour 1-50	\$11.66 per service hour
Service hour 51-80	\$10.45 per service hour
Service hour beyond 80	\$ 7.70 per service hour

(4) Reimbursement under the medical assistance program for day treatment programs serving children [operated by agencies which received State aid under article 41 of the Mental Hygiene Law, during the fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City,] shall be in accordance with the following fee schedule.

(i) For programs operated in Bronx, Kings, New York, Queens and Richmond counties:

Full day at least 5 hours	[\$70.01] 72.89
Half day at least 3 hours	[35.01] 36.45
Brief day at least 1 hour	[23.34] 24.30
Collateral at least 30 minutes	[23.34] 24.30
Home at least 30 minutes	[70.01] 72.89
Crisis at least 30 minutes	[70.01] 72.89
Preadmission - full day at least 5 hours	[70.01] 72.89
Preadmission - half day at least 3 hours	[35.01] 36.45

(ii) For programs operated in other than Bronx, Kings, New York, Queens and Richmond counties:

Full day at least 5 hours	[\$67.68] 70.46
Half day at least 3 hours	[33.84] 35.23
Brief day at least 1 hour	[22.52] 23.45
Collateral at least 30 minutes	[22.52] 23.45
Home at least 30 minutes	[67.68] 70.46
Crisis at least 30 minutes	[67.68] 70.46
Preadmission - full day at least 5 hours	[67.68] 70.46
Preadmission - half day at least 3 hours	[33.84] 35.23

(5) [Reimbursement under the medical assistance program for day treatment programs serving children operated by agencies which did not receive State aid under article 41 of the Mental Hygiene Law, during the fiscal year ended June 30, 1985 for agencies located in New York City and calendar year 1984 for agencies located outside of New York City, shall be in accordance with the following fee schedule unless a higher fee was approved by the commissioner in accordance with the appeal methodology under the previous reimbursement regulations.

Full day at least 5 hours	\$63.80
Half day at least 3 hours	31.90
Brief day at least 1 hour	21.23
Collateral at least 30 minutes	21.23
Home at least 30 minutes	63.80
Crisis at least 30 minutes	63.80
Preadmission - full day at least 5 hours	63.80
Preadmission - half day at least 3 hours	31.90

(6) Providers whose reimbursement under the medical assistance program for clinic, continuing day treatment, and/or day treatment has been supplemented in accordance with subdivision (g) of this section will have this additional reimbursement limited in total to an amount established by the Commissioner which shall be subject to the availability of appropriations in the Office of Mental Health's budget. Supplemental reimbursement received in excess of this threshold will be recovered in a succeeding year through the medical assistance recovery process authorized pursuant to Section 368-c of the Social Services Law.

Subdivision (b) of Section 588.13 is amended to read as follows:

(b) Reimbursement under the medical assistance program for regular, collateral, and crisis visits to all non-State operated partial hospitalization programs licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title shall be in accordance with the following fee schedule.

(1) For programs located in Nassau and Suffolk counties, the fee shall be [\$21.55]\$22.15 for each service hour.

(2) For programs located in New York City, the fee shall be [\$28.30]\$29.09 for each service hour.

(3) For programs located in the counties included in the region of New York State designated by the Office of Mental Health as the Hudson River Region, the fee shall be [\$23.78] \$24.45 for each service hour.

(4) For programs located in the counties in the region of New York State designated by the Office of Mental Health as the Central Region, the fee shall be [\$16.30] \$16.76 for each service hour.

(5) For programs located in the counties included in the region of New York State designated by the Office of Mental Health as the Western Region, the fee shall be [\$20.21] \$20.78 for each service hour.

Subdivision (c) of section 588.13 is amended to read as follows:

(c) Reimbursement under the medical assistance program for on-site, and off-site visits for all *non-State operated* intensive psychiatric rehabilitation treatment programs, licensed pursuant to Article 31 of the Mental Hygiene Law and Part 587 of this Title shall be at [\$23.22] \$23.87 for each service hour.

New subdivisions (i), (j), and (k) are added to Section 588.13 to read as follows:

(i) *Clinic treatment programs for which an operating certificate has been issued shall receive an adjustment to the fee schedules set forth in paragraph (1) of subdivision (a) of this Section if they are enrolled in a continuous quality improvement initiative implemented by the Commissioner. In order to be enrolled in such continuous quality improvement initiative, the program shall execute an agreement with the Office of Mental Health under which the provider agrees to participate in such initiative, and undertake such quality improvement measures as shall be developed by the Commissioner.*

(j) *Any program eligible to receive supplemental medical assistance reimbursement pursuant to subdivision (i) of this Section, and which fails at any time to meet the requirements set forth in the agreement executed pursuant to such subdivision, shall have its continuous quality improvement adjustment suspended until such time as the program meets such requirements, as determined by the Commissioner.*

(k) *A clinic treatment program that has been approved by the Office of Mental Health to provide services to children and adolescents during evening and weekend hours shall receive a rate enhancement for regular or collateral clinic visits provided to recipients under the age of 18 years, when such services are provided during weekdays commencing 6 p.m. or later, or on a Saturday or Sunday, provided, however, that an enhanced rate shall only be paid for one visit provided for a recipient on any given day.*

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 16, 2007.

Text of rule and any required statements and analyses may be obtained from: Dan Odell, Assistant Director, Bureau of Policy, Regulation and Legislation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 474-1331, e-mail: dodell@omh.state.ny.us

Data, views or arguments may be submitted to: Joyce Donohue, Office of Mental Health, 44 Holland Ave. 8th Fl., Albany, NY 12229, (518) 474-1331, e-mail: cocbjdd@omh.state.ny.us

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

Regulatory Impact Statement

1. Statutory Authority: Subdivision (b) of Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Subdivision (a) of Section 31.04 of the Mental Hygiene Law empowers the Commissioner to issue regulations setting standards for licensed programs for the provision of services for persons with mental illness.

Subdivision (a) of Section 43.02 of the Mental Hygiene Law grants the Commissioner the power to set rates for facilities licensed under Article 31 of the Mental Hygiene Law.

Sections 364-3 and 364-a of the Social Services Law give the Office of Mental Health responsibility for establishing and maintaining standards for care and services eligible for Medicaid reimbursement in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

Chapter 54 of the Laws of 2005 provides increased funding appropriations in support of amendments to Part 588. (Section 1, State Agencies, Office of Mental Health, lines 25-29 on page 268 and lines 16-20 on page 273.)

Chapter 54 of the Laws of 2006 provides increased funding appropriations in support of further amendments to Part 588. (Section 1, State Agencies, Office of Mental Health, lines 44-50 on page 277 and lines 1-5 on page 278.)

2. Legislative Objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner’s authority to establish regulations regarding mental health programs.

3. Needs and Benefits: These amendments increase the medicaid reimbursement associated with certain outpatient treatment programs regulated by the Office of Mental Health (OMH) consistent with the enacted 2005-2006 state budget and the enacted 2006-2007 state budget. These changes will be targeted in such a way as to provide general fiscal relief to providers, as well as improve the quality and availability of services. They will also clarify that the minimum duration of a group or group collateral visit for a school-based clinic is the shorter of 60 minutes or the duration of a scheduled class period at the school where the clinic is located. They will also equalize reimbursement fees for clinic, children’s day treatment and continuing day treatment with geographic areas, as approved by the Division of the Budget.

The enacted state budget for State Fiscal Year 2005-2006 provided for an approximately \$6 million annual increase for clinic treatment programs. Clinic treatment programs provide outpatient treatment designed to reduce symptoms, improve functioning and provide ongoing support to adults and children admitted to the program with a diagnosis of a designated mental illness. Medicaid reimbursement for services provided by clinic treatment programs is available based on fee schedules established in Part 588 of 14 NYCRR. This rulemaking includes a proposed increase in the Medicaid fee schedules for clinics of approximately 9%.

The enacted state budget for State Fiscal Year 2005-2006 provided for implementation of Children’s Day Treatment initiatives that are budgeted to cost \$200,000 per year. Children’s Day Treatment programs provide treatment to individuals, up to 18 years of age, designed to stabilize children’s adjustment to educational settings, to prepare children for return to educational settings, and to transition children to educational settings. Admission to Children’s Day Treatment programs is based on a diagnosis of a designated mental illness, plus either an extended impairment in functioning due to emotional disturbance or a current impairment in functioning with severe symptoms. Medicaid reimbursement for services provided by Children’s Day Treatment programs is available based on a fee schedule established in Part 588 of 14 NYCRR. This rulemaking includes a proposed increase in the Medicaid fee schedule for these programs of approximately 6%.

Additionally, this rulemaking adds a provision to Part 588 that the minimum duration of a group or group collateral visit at a school-based clinic treatment program shall consist of the duration of a scheduled class period at that school or 60 minutes, which ever is less. Currently the regulation provides only for a group or group collateral visit of 60 minutes minimum duration. In meeting with school-based clinic program providers, the agency learned that this caused problems when the regular school period was less than 60 minutes. Such school periods may range from 45 minutes to one hour. In order to comply with the 60 minute requirement, in some cases children had to be kept for a period greater than a normal school period, and this resulted in their being late to their next class. In other cases children had to leave class early to attend a group or group collateral session. Both of these situations caused difficulties for children, treatment staff, and teachers. By aligning the group and group collateral visit duration with regular school periods, these services can be more effectively integrated into the child’s school day, are less likely to disrupt other educational activities, and will be more effective.

This rulemaking also provides authority to the Commissioner to provide an adjustment to the Medicaid fee schedules for those clinic treatment programs that choose to enroll in a Continuous Quality Improvement (CQI) enhancement to be implemented by the Commissioner. This initiative uses a proven best practices model to help providers deliver high quality services. In order to encourage broad participation, OMH will provide financial incentives to providers who undertake measurable quality improvement approaches.

Further, this rulemaking provides for an enhanced rate for clinic treatment programs, approved by OMH to provide services to children and adolescents during weekend and evening hours. This rate increase, to be known as the Children’s Evening and Weekend (CEW) enrichment, will be an incentive to serve children and families at times that are more convenient to their schedules.

Finally, the enacted state budget for State Fiscal Year 2006-2007 provided for approximately \$2,000,000 to equalize, within geographic areas, the reimbursement fees for clinics, children’s day treatment and continuing day treatment programs licensed solely under Article 31 of the Mental Hygiene Law, as approved by the Division of the Budget and

provided for an increase in intensive psychiatric rehabilitation treatment program and partial hospital program fees.

4. Costs:

a) Costs of regulated parties: There are no costs to providers associated with these amendments.

b) Costs to State and Local government and the agency:

Costs associated with 2005-2006 enacted state budget:

Medicaid services typically involve both a state and county share in matching the federal portion. While the state share of this \$24 million outpatient initiative is over \$6 million, the impact on local governments is much less. This is because most of the increase is being implemented after the local share Medicaid cap is already in place. (The local share Medicaid cap was an initiative included in the enacted state budget for 2005-2006, under which the state pays for increases in the local share of Medicaid after January 1, 2006.) The 9% base increase was implemented April 1, 2005. But because Medicaid is billed on an approximate 2 month lag, only 7 months, or 7/12 of the expected increase will impact on the local share Medicaid cap in the first year. None of the 7% CQI increase was paid in calendar year 2004 nor was any of the CEW enrichment paid in calendar year 2005. Of the children’s school group visits, only September and October (2 out of the 10 school months) were paid in calendar year 2005. For this reason, the expected impact on local governments will be \$1.7 million each year.

Annual Cost Effective for 2005

	Total Initiative	State Share	Local Share
Clinic Increase	10,781,260	2,695,315	1,572,267
CQI Enhancement	8,385,344	2,096,336	0
CEW Enrichment	4,439,068	1,109,767	0
School Based Group	370,012	92,503	9,250
Day Treatment Increase	799,528	199,882	139,917
TOTAL	24,775,212	6,193,803	1,721,434

Costs associated with and funded from the 2006-2007 enacted state budget:

For equalizing, within geographic areas the reimbursement fees for clinics, children’s day treatment and continuing day treatment effective October 1, 2006: \$2,000,000 for state share of Medicaid (no local share).

For intensive psychiatric rehabilitation program fee increases effective October 1, 2006: \$79,221.00 for state share of Medicaid (no local share).

For partial hospital fee increases, effective October 1, 2006: \$34,365.00 (no local share).

For implementation of children’s day treatment initiatives: \$300,000 for state share of Medicaid (no local share).

5. Local Government Mandates: Other than the local share of Medicaid participation, noted in Section 4, these regulatory amendments will not involve or result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule should not substantially increase the paperwork requirements of affected providers.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives:

A. Alternatives to providing increased Medicaid rates.

The application of the increased funding for certain outpatient programs consistent with the 2005-2006 enacted state budget, resulted in a statewide across the board rate increase for all clinic treatment programs, other than those operated by general hospitals, of approximately 9%. It was also determined to increase rates for Children’s Day Treatment programs on a statewide basis by approximately 6%.

Selection of these rate schedule changes was determined in consultation with the New York State Division of Budget, to be consistent with the enacted state budget. The programs selected were determined most in need of rate adjustments as they do not receive the cost based rate that is used for outpatient programs operated by general hospitals. This across the board increase is a balanced and fair approach. Other rate changes and increases consistent with the 2006-2007 enacted state budget were determined, in consultation with the New York State Division of Budget, to be consistent with the enacted state budget and to be necessary and required by the statute.

B. Alternatives to adjustment of minimum duration of group or group collateral visit duration.

The change in the minimum duration from a fixed 60 minutes for the duration of a scheduled class period was selected with input from providers. The alternative of reducing the time period to some fixed duration of less than 60 minutes was considered and rejected as unresponsive to needs

given that the approach to be used, i.e., match the duration of group visit to that of a scheduled class period at the school where the clinic is located, will best address the concerns of providers and the children receiving services.

C. Alternatives to the continuous quality improvement incentive.

Provision of a fiscal incentive, in the 2005-2006 enacted state budget, for those clinic programs who meet requirements for enrolling in a continuous quality improvement (CQI) initiative was selected as a best practice model that will encourage providers to deliver high quality services. The alternative of developing a continuous quality improvement program without a financial incentive was rejected as lacking incentive and less fair to those providers who choose to invest the time and effort necessary to maintain and enhance quality service and improve their service delivery. The alternative of also providing added funds to programs that do not participate in the CQI initiative was rejected as not supportive of the Office's efforts to improve program quality.

D. Alternatives to equalize reimbursement for certain outpatient programs.

Equalizing Medicaid reimbursement fees, within geographic areas, for clinic, children's day treatment and continuing day treatment programs licensed solely under Article 31 of the Mental Hygiene Law is required by the enacted 2006-2007 state budget. This will provide added resources to these programs to enable them to continue to deliver quality services. The rates involved with equalization, or "leveling up", require approval by the Division of Budget. The alternative of not providing equalization was not available since it would conflict with statute.

9. Federal Standards: The regulatory amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: The rate changes associated with the 2005-2006 enacted state budget regulatory amendments were effective upon their adoption, and were deemed to have been effective on and after April 1, 2005 consistent with the 2005-2006 enacted state budget. The adjustment of minimum duration of a group or group collateral visit and the continuous quality improvement incentive were effective on September 26, 2005.

The rate changes associated with the 2006-2007 enacted budget which provide for equalization for clinic, children's day treatment and continuing day treatment were effective upon adoption and were deemed to have been effective on and after April 1, 2006, consistent with the 2006-2007 enacted state budget. The fee increases for partial hospital programs and intensive psychiatric rehabilitation treatment programs were effective upon adoption and were deemed to have been effective on and after October 1, 2006, consistent with the 2006-2007 enacted state budget.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rule will not impose a significant economic impact on small businesses, or local governments. The rate increases associated with this rule are required by state statute, the enacted state budgets for state fiscal years 2005-2006 and 2006-2007.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the amended rules will not impose any adverse economic impact on rural areas. This rule impacts outpatient treatment program rates of reimbursement. The impact of the rate change will be to increase the medicaid reimbursement rates associated with outpatient programs in rural and non-rural areas. This will support the continued provision of these vital programs which serve children, adolescents and adults in both rural and non-rural areas.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is apparent from the nature and purpose of this rule that it involves adjustments to financing mechanisms for existing outpatient treatment programs and will not have a substantial adverse impact on jobs and employment activities.

Department of Motor Vehicles

NOTICE OF ADOPTION

Drinking Driver Program and Conditional License Eligibility and Re-Licensure Requirements

I.D. No. MTV-17-07-00006-A

Filing No. 611

Filing date: June 19, 2007

Effective date: July 3, 2007

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

Action taken: Amendment of Parts 134 and 136 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 510(6)(a), 1192(10)(a) and (d), 1193(2)(c)(1), 1196(4) and 1196(7)(a)

Subject: Drinking Driver Program and conditional license eligibility and re-licensure requirements.

Purpose: To set forth Drinking Driver Program and conditional license eligibility criteria for multiple DWI offenders and establishes re-licensure requirements for such offenders.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-17-07-00006-P, Issue of April 25, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Michele L. Welch, Counsel's Office, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Power Authority of the State of New York

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

Revision in Rates for the Village of Marathon

I.D. No. PAS-27-07-00007-P

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

Proposed action: Revision in rates for Village of Marathon.

Statutory authority: Public Authorities Law, section 1005(5)

Subject: Rates for the sale of power and energy.

Purpose: To maintain the system's fiscal integrity; this increase in rates is not the result of a Power Authority rate increase to the Village.

Text of proposed rule:

VILLAGE OF MARATHON
Proposed Monthly Rates

	Proposed Rates ¹
Residential S.C.1 Customer Charge	\$5.00 Non-Winter (May-October)
Energy Charge, per kWh	\$.0500 Winter (November-April)
Energy Charge, per kWh First 1,000 kWh.	\$.0500
Over 1,000 kWh only	\$.0691
Commercial S.C.2 Customer Charge	\$7.00

	Non-Winter (May-October)
Energy Charge, per kWh	\$.0494
	Winter (November-April)
Energy Charge, per kWh	\$.0666

¹ Purchased Power Adjustment reflected in proposed rates.

VILLAGE OF MARATHON

Proposed Monthly Rates

	Proposed Rates ¹
L. Commercial S.C.3	
Demand Charge, per kWh	\$5.50
Energy Charge, per kWh	\$.0276
Security Lighting S.C.4	
Facilities Charge, per Lamp	\$5.50
Energy Charge, per kWh	\$.0119
Street Lights - Village S.C.5	
Facilities Charge, per Lamp	\$5.37
Energy Charge, per kWh	\$.0119

¹ Purchased Power Adjustment reflected in proposed rates.
Text of proposed rule and any required statements and analyses may be obtained from: Anne B. Cahill, Power Authority of the State of New York, 123 Main St., 15-M, White Plains, NY 10601, (914) 390-8036, e-mail: secretarys.office@nypa.gov
Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.
Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
 Statements and analyses are 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.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Reliability Rules

I.D. No. PSC-27-07-00009-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 adopt, in whole or in part, proposed changes to Reliability Rules B-R2, B-R3, E-R2 and E-R3 and the associated Measurement B-M1 as well as Reliability Rule B-R5 and the associated Measurement B-M3 of the New York State Reliability Council.

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

Subject: Adoption by the Public Service Commission of a proposed change to Reliability Rules B-R2, B-R3, E-R2 and E-R3 and the associated Measurement B-M1 as well as Reliability Rule B-R5 and the associated Measurement B-M3 of the New York State Reliability Council.

Purpose: To consider adopting in whole or in part Reliability Rules B-R2, B-R3, E-R2 and E-R3 and the associated Measurement B-M1 as well as Reliability Rule B-R5 and the associated Measurement B-M3 of the New York State Reliability Council.

Substance of proposed rule: The Public Service Commission is considering whether to adopt in whole or in part revisions made by the New York State Reliability Council (NYSRC) to Version 18 of its Reliability Rules, Version 19, which was adopted by the NYSRC Executive Committee on April 13, 2007, contains several changes intended to bring the Reliability Rules in conformance with the criteria of the Northeast Power Coordinat-

ing Council (NPCC) and current practice of the New York Independent System Operator, Inc. (NYISO). One revision involves Transmission Capability - Planning, with specific reference to Emergency Transfer Capability. Directly affected are Reliability Rules B-R2, B-R3, E-R2 and E-R3 and associated Measurement B-M1. Another revision involves restoration. Directly affected is Reliability Rule B-R5 and associated Measurement B-M3.

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. Brillong, 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.
 (05-E-1180SA6)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Direct Current Service by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-27-07-00010-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 proposed filed by Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, and regulations contained in its schedule for electric service, P.S.C. No. 9—Electricity, to become effective Sept. 21, 2007.

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

Subject: Direct current service.

Purpose: To terminate direct current service.

Substance of proposed rule: The Commission is considering Consolidated Edison Company of New York, Inc.'s (Con Edison) request to terminate direct current (DC) service. Con Edison proposes to stop supplying DC after September 30, 2007. However, DC service will be supplied through December 31, 2007, as applicable, to customers who applied for an incentive under Rider T - DC Conversion Program on or before September 30, 2007. The proposed filing has an effective date of September 21, 2007. The Commission may approve, reject or modify, in whole or in part, Con Edison's request.

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. Brillong, 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-E-0690SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Business Incentive Rate Program by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island

I.D. No. PSC-27-07-00011-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 KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (the company) to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service, P.S.C. No. 1—Gas, to become effective Sept. 30, 2007.

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

Subject: Business Incentive Rate Program.

Purpose: To extend the company's current Business Incentive Rate Program for three additional years until Sept. 30, 2010.

Substance of proposed rule: The Commission is considering KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery - Long Island's (KeySpan or the company) request to extend the company's Business Incentive Rate program for three additional years until September 30, 2010. The Commission may approve, reject or modify, in whole or in part, KeySpan's request.

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-G-0676SA1)

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

Weather Normalization Adjustment by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY

I.D. No. PSC-27-07-00012-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 The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY (the company) to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service, P.S.C. No. 12—Gas, to become effective Sept. 20, 2007.

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

Subject: Weather normalization adjustment.

Purpose: To revise how the company files updates to its weather normalization factors.

Substance of proposed rule: The Commission is considering The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY's (Brooklyn Union or the company) request to revise how the company files updates to its weather normalization factors. The company proposes to file these updates on a Statement of Weather Normalization Adjustment Factors. The Commission may approve, reject or modify, in whole or in part, Brooklyn Union's request.

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-G-0689SA1)

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

Low Income Gas Energy Efficiency Program by Niagara Mohawk Power Corporation d/b/a National Grid

I.D. No. PSC-27-07-00013-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, reject or modify, in whole or in part, a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid for approval to extend for 12 months the Low-Income Gas Energy Efficiency Program for gas heating customers.

Statutory authority: Public Service Law, section 66

Subject: Low-Income Gas Energy Efficiency Program.

Purpose: To extend the program for 12 months.

Substance of proposed rule: The Public Service Commission is considering whether to approve, reject, or modify, in whole or in part, a Petition filed by Niagara Mohawk Power Corporation d/b/a National Grid for approval to extend for 12 months the Low-Income Gas Energy Efficiency Program approved in Case 05-G-0668 (issued September 12, 2005) for gas hearing customers.

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-G-0733SA1)

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

Transfer of Certain Real Property between Niagara Mohawk Power Corporation d/b/a National Grid and the County of Oswego

I.D. No. PSC-27-07-00014-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 joint petition filed by Niagara Mohawk Power Corporation d/b/a National Grid and the County of Oswego for authority, pursuant to Public Service Law, section 70, to transfer certain real property and improvements known as the Oswego Fire School Facility to the County of Oswego.

Statutory authority: Public Service Law, section 70

Subject: Transfer by National Grid of certain real property and improvements known as the Oswego Fire School Facility to the County of Oswego.

Purpose: To approve the transfer of certain real property and improvements.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a joint petition filed by Niagara Mohawk Power Corporation d/b/a National Grid and the County of Oswego for authority, pursuant to Public Service Law Section 70, to transfer certain real property and improvements known as the Oswego Fire School Facility to the County of Oswego, as well as the proposed accounting and ratemaking treatment. The parties are requesting

permission to transfer ownership of the facility because it is presently shut down and no longer useful as a utility asset. However, it could be used as a fire training school for municipal and volunteer firefighters in the surrounding communities. The purchase and sale agreement between the parties allows National Grid the right to use the facility for a certain number of days annually to meet the periodic fire training needs of its workforce.

National Grid is transferring the Oswego Fire School Facility at below its book value. However, the accounting treatment will be such that the loss will not impact ratepayers.

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. Brillong, 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-M-0704SA1)

Department of State

EMERGENCY RULE MAKING

Manufacturer's and Installer's Warranty Seals

I.D. No. DOS-27-07-00005-E

Filing No. 609

Filing date: June 18, 2007

Effective date: June 18, 2007

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

Action taken: Addition of Part 1210 to Title 19 NYCRR.

Statutory authority: Executive Law, section 604(5); L. 2005, ch. 729, section 4

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

Specific reasons underlying the finding of necessity: This rule is adopted as an emergency measure to preserve the general welfare and because time is of the essence. This rule implements the provisions of Article 21-B (Manufactured Homes) of the Executive Law, which was added by Chapter 729 of the Laws of 2005, and which became effective on January 1, 2006. This rule establishes procedures for obtaining the manufacturer's warranty seals and installer's warranty seals required by Article 21-B of the Executive Law; establishes standards regarding the initial training, certification, and continuing education of manufacturers, retailers, installers, and mechanics of manufactured homes; establishes procedures for the resolution of disputes relating to manufactured homes; and otherwise implements the provisions Article 21-B of the Executive Law. Adoption of this rule on an emergency basis preserves the general welfare by permitting the continuation of all aspects of the manufactured housing industry in this State without interruption.

Subject: Obtaining and attaching manufacturer's warranty seals and installer's warranty seals to manufactured homes; certification of manufacturers, retailers, installers, and mechanics of manufactured homes; and administrative procedures for resolution of disputes relating to the construction, installation, or servicing of manufactured homes.

Purpose: To implement art. 21-B of the Executive Law, as added by chapter 729 of the Laws of 2005.

Substance of emergency rule: Chapter 729 of the Laws of 2005 added Article 21-B (Manufactured Homes) of the Executive Law. This emergency rule has been adopted to implement the provisions of Article 21-B. This rule establishes procedures for obtaining and the manufacturer's warranty seals and installer's warranty seals which must be attached to manufactured homes. This rule establishes the qualifications for certification of manufacturers, retailers, installers, and mechanics of manufactured homes. This rule establishes administrative procedures for resolution of disputes relating to the construction, installation, or servicing of manufactured homes. This rule also establishes fees relating to warranty seals, certifications, approval of instructional providers and approval of courses.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 15, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Joseph Ball, Department of State, 41 State St., Albany, NY 12231, (518) 474-6740, e-mail jball@dos.state.ny.us

Regulatory Impact Statement

1. STATUTORY AUTHORITY.

The statutory authority for this rule is section 4 of Chapter 729 of the Laws of 2005, which provides that the Department of State (the Department) is authorized and empowered to take such steps, including the promulgation of rules and regulations, as may be necessary for the proper implementation of Article 21-B of the Executive Law (hereinafter referred to as "Article 21-B"), and section 604(5) of the Executive Law, which provides that the Department has the power and duty to promulgate rules and regulations relating to the provisions of Article 21-B.

Article 21-B was added by Chapter 729 of the Laws of 2005, and took effect on January 1, 2006. Rules similar to this rule were adopted on an emergency basis on December 22, 2005, March 22, 2006, June 20, 2006, September 18, 2006, December 18, 2006, and March 19, 2007. Those rules have expired. This rule, which will be effective on the date of filing, implements Article 21-B.

2. LEGISLATIVE OBJECTIVES.

Article 21-B was enacted for the purpose of ensuring that manufactured homes are installed and serviced in a professional manner; ensuring that disputes regarding the manufacture, installation, and servicing of manufactured homes be resolved fairly and expeditiously; providing a degree of security for the payment of legitimate claims; and otherwise implementing the provisions of the federal Manufactured Housing Improvement Act of 2000 (PL 106-569). The Manufactured Housing Improvement Act of 2000 requires States to enact requirements for the licensing or certification of installers of manufactured homes, training, dispute resolution, and other matters relating to manufactured homes. Article 21-B requires manufacturers and installers to attach warranty seals to manufactured homes installed in this State, requires manufacturers, retailers, installers, and mechanics to be certified by the Department, and requires the Department to provide administrative procedures for the resolution of disputes.

This rule establishes procedures for obtaining and attaching the warranty seals required by Article 21-B; establishes standards for certification as a manufacturer, retailer, installer, or mechanic of manufactured homes; establishes administrative dispute resolution procedures; and establishes fees.

3. NEEDS AND BENEFITS. This rule establishes procedures regarding manufacturer's and installer's warranty seals. These procedures are necessary to implement the warranty seal provisions of Article 21-B. These provisions permit manufacturers and installers to obtain the warranty seals, specify the manner in which and place where the warranty seals are to be attached, establish the fees to be paid by manufacturers and installers for obtaining the warranty seals, and establish the maximum fees that can be charged by manufacturers and installers for attaching the warranty seals.

This rule establishes qualifications and procedures for obtaining certification as a manufacturer, retailer, installer, or mechanic. These qualifications and procedures are necessary to implement the certification provisions of Article 21-B. The qualifications established by this rule include minimum experience and education requirements for retailers, installers, and mechanics; initial training requirements for installers and mechanics; and continuing education requirements for all classes of certificate holders. These provisions in this rule will benefit purchasers of manufactured homes by helping to ensure that homes will be installed in a professional manner.

This rule requires each certificate holder to file a deposit account control agreement evidencing the existence of a deposit account which is

maintained with a financial institution and which is pledged to the Department, a letter of credit, or a surety bond (provided, however, that a person holding a limited certificate will not be required to file his or her own deposit account control agreement, letter of credit, or surety bond if he or she is covered by his or her employer's deposit account control agreement, letter of credit, or surety bond). These financial responsibility requirements will benefit owners of manufactured homes by providing a measure of assurance that legitimate claims relating to the delivered condition, installation, service, or construction of a manufactured home will be satisfied.

The rule establishes procedures for the resolution of disputes involving the delivered condition, installation, service or construction of manufactured homes. These procedures are necessary to implement the dispute resolution provisions of Article 21-B. These procedures will benefit manufacturers, retailers, installers, mechanics, lending entities, and manufactured home owners by permitting expeditious and cost-effective resolution of disputes.

The rule establishes fees, as required by Article 21-B. The fees will defray the cost of administering Article 21-B.

4. COSTS.

a. Cost to regulated parties for the implementation of and continuing compliance with this rule:

This rule will require manufacturers and installers to obtain warranty seals to be attached to manufactured homes. Manufacturers will pay \$125 per seal. Installers will pay \$35 per seal if they request 5 or fewer, or \$25 per seal if they request 6 or more. This rule will also permit manufacturers and installers to charge purchasers a fee for attaching such seals; such fees will cover the manufacturer's and installer's costs of obtaining the seals and an additional sum (between \$15 and \$25) to cover anticipated administrative expenses.

This rule will require manufacturers, retailers, installers, and mechanics to be certified by the Department. The fee for certification for a period of 2 years will be \$200 for manufacturers, retailers, and installers, and \$100 for mechanics. However, a person employed by a person who or a business entity which is certified may apply for a limited certificate, which is valid only while such person is acting within the scope of his or her employment by his or her certified employer. The fee for a limited certificate will be \$25 for the 2-year term of the limited certificate.

A certified party must also file a deposit account control agreement, letter of credit, or surety bond with the Department (provided, however, that person who holds a limited certificate will not be required to file his or her own deposit account control agreement, letter of credit, or surety bond if he or she is covered by the deposit account control agreement, letter of credit, or surety bond filed by his or her employer). The Department estimates that the premiums to be paid for surety bonds having terms of 2 years will be between \$800 and \$1,200 for the \$50,000 surety bond to be filed by a manufacturer, between \$400 and \$600 for the \$25,000 surety bond to be filed by a retailer, approximately \$200 for the \$10,000 surety bond to be filed by an installer, and approximately \$200 for the \$5,000 surety bond to be filed by a mechanic. The Department estimates that the fee for obtaining a letter of credit will typically be 1% of the face amount of the letter of credit per year, subject to a minimum fee of \$100 per year; this indicates that the fee for a \$50,000 letter of credit will be \$500 per year (or \$1,000 for 2 years), the fee for a \$25,000 letter of credit will be \$250 per year (or \$500 for 2 years), the fee for a \$10,000 letter of credit will be \$100 per year (or \$200 for 2 years), and the fee for a \$5,000 letter of credit will be \$100 per year (or \$200 for 2 years).

A person certified as an installer will be required to complete 16 hours of initial training prior to certification, and a business entity certified as an installer will be required to employ at least one person who has completed such initial training and who is certified by the Department. The Department estimates that the fees that will be charged by instructional providers who provide such initial training will be between \$200 and \$300.

A person certified as a mechanic will be required to complete 6 hours of initial training prior to certification, and a business entity certified as a mechanic will be required to employ at least one person who has completed such initial training and who is certified by the Department. The Department estimates that the fees that will be charged by instructional providers who provide such initial training will be between \$100 and \$125.

A person certified as a manufacturer, retailer, installer, or mechanic will be required to complete 3 hours of continuing education every 2 years, and a business entity certified as a manufacturer, retailer, installer, or mechanic will be required to employ at least one person who has completed such continuing education and who is certified by the Department. The Department estimates that the fees that will be charged by instruc-

tional providers who provide such continuing education will be approximately \$50.

A private trade association or other entity applying for approval as an instructional provider will be required to pay \$100 once every 2 years. An approved instructional provider applying for approval of a course it wishes to provide will be required to pay \$50 plus \$5 for each student who takes the course.

b. Costs to the Department:

The Department anticipates that the cost to the Department to administer the programs contemplated by Article 21-B will be approximately \$490,000 per year. Those costs include the costs associated with the 5 employees that the Department anticipates it will need to administer the programs. The costs of administering Article 21-B are largely attributed to the statute and not significantly to this implementing rule.

c. Costs to other State agencies:

This rule does not impose any costs on other State agencies.

d. Cost to local governments:

This rule does not impose any costs on local governments.

5. PAPERWORK.

Under this rule, manufacturers and installers will be required to file written requests for warranty seals; manufacturers will be required to file quarterly reports of homes completed; installers will be required to file quarterly reports of installations performed; manufacturers, retailers, installers, and mechanics will be required to file written applications for certification and for periodic renewal of certification; a private trade organization or other entity wishing to provide initial training or continuing education will be required to file a written application for approval as an instructional provider and for periodic renewals of such approval; approved instructional providers will be required to file written applications for approval or courses to be provided; and instructional providers will be required to file reports of each course presented. It is the intention of the Department to develop and implement request, application, and report forms, to post such forms on the Department's web page, and otherwise to make such forms freely available to regulated parties.

6. LOCAL GOVERNMENT MANDATES.

This rule does not impose any duty on local governments.

7. DUPLICATION.

The Department is not aware of any relevant rule or other legal requirement of the State or Federal government which duplicates, overlaps or conflicts with this rule.

8. ALTERNATIVES.

The Department has not considered any significant alternatives to this rule.

9. FEDERAL STANDARDS.

The Department is not aware of any instance in which this rule exceeds any minimum standards of the federal government for the same or similar subject areas.

10. COMPLIANCE SCHEDULE.

This rule can be complied with immediately. Rules substantially similar to this rule have been in effect since December 22, 2005. Previous versions of this rule established the qualifications for certification, and provided regulated parties with the information necessary to apply for and obtain the required certification prior to the date certification was first required (July 1, 2006). Previous versions of this rule also included transitional provisions, as required by section 3 of Chapter 729 of the Laws of 2005, that permitted installers and mechanics to obtain certification prior to completion of the initial training requirements that otherwise would apply. This rule continues, without substantial change, the qualifications for certification first established on December 22, 2005.

Summary of Regulatory Flexibility Analysis

1. EFFECT OF RULE.

This rule applies to all persons and all business entities who manufacture, sell, install, or service manufactured homes, including all small businesses that manufacturer, sell, install, or service manufactured homes. The Department of State estimates that this rule will apply to approximately 268 small businesses engaged in the retail selling of manufactured homes and approximately 100 small businesses engaged in the installation manufactured homes for buyers. This rule will also apply to small businesses that "service" (i.e., modify, alter or repair the structural systems of) manufactured homes; however, the Department of State is unable to determine at this time the number of small businesses that service manufactured homes. This rule will also apply to any small business that manufactures or produces manufactured homes. The Department of State estimates that this rule will apply to approximately 36 manufacturers; however, the Depart-

ment of State believes that few, if any, of such manufacturers are small businesses.

This rule does not apply directly to local governments. However, this rule does specify that no certificate of occupancy shall be issued for any manufactured home installed on or after January 1, 2006 unless the required warranty seals have been attached to the home. This provision will affect every local government that issues certificates of occupancy.

2. COMPLIANCE REQUIREMENTS.

This rule requires manufacturers and installers of manufactured homes to obtain warranty seals from the Department of State, and to attach the warranty seals to manufactured homes that are installed on or after January 1, 2006. (The rule specifies certain situations in which a manufacturer's warranty seal is not required.)

This rule requires manufacturers and installers to file quarterly reports with the Department of State.

This rule requires each person and each business entity that manufactures, sells, installs, or services manufactured homes to obtain certification from the Department of State. The qualifications for obtaining and retaining certification include (1) the filing of a surety bond, letter of credit, or deposit account control agreement; (2) having have at least a high school education, or the equivalent; (3) satisfying specified experience requirements; (4) satisfying specified initial training requirements; (5) in the case of an installer or mechanic, passing a written examination; and (6) satisfying specified continuing education requirements. In addition, a certified manufacturer must be approved by the United States Department of Housing and Urban Development to construct manufactured homes.

Each certified business entity must employ at least one certified person.

At least one person certified by the Department of State as an installer must be present at the home site during the installation of a manufactured home.

At least one person certified by the Department of State as a mechanic must be present at the home site during the performance of any service.

Any person or business entity owning or operating more than one manufacturing plant that manufactures, delivers, or sells manufactured homes in the State of New York shall be required to obtain a separate certification as a manufacturer for each such manufacturing plant.

Any person or business entity owning or operating more than one retail sales location in the State of New York shall be required to obtain a separate certification as a retailer for each such retail sales location.

This rule establishes requirements for approval of instructional providers.

This rule provides that no governmental agency or department or other person or entity responsible for issuing certificates of occupancy in any jurisdiction shall issue a certificate of occupancy for any manufactured home installed in such jurisdiction at any time on or after January 1, 2006 unless the manufacturer's warranty seal has been attached to such manufactured home (unless such manufacturer's warranty seal is not required by reason of an exception set forth in the rule) and the installer's warranty seal has been attached to such manufactured home.

3. PROFESSIONAL SERVICES.

Professional services are not likely to be required to comply with the reporting, record keeping and other requirements of this rule.

4. COMPLIANCE COSTS.

Manufacturers will be required to pay \$125 for each manufacturer's warranty seal, and will be permitted to charge up to \$150 for attaching a seal to a manufacture home.

Installers will be required to pay between \$25 and \$35 for each installer's warranty seal, and will be permitted to charge up to \$50 for attaching a seal to a manufacture home.

The initial cost of obtaining certification will include (1) the cost of obtaining the required surety bond, letter of credit, or deposit account control agreement, (2) the certification fee to be paid to the Department of State, and (3) in the case of certification as an installer or mechanic, the cost of the required initial training. The Department of State estimates that the initial cost of obtaining certification as a manufacturer will be between \$1,000 and \$1,400, the initial cost of obtaining certification as a retailer will be between \$600 and \$800, the initial cost of obtaining certification as an installer will be between \$600 and \$700, and the initial cost of obtaining certification as a mechanic will be between \$400 and \$425.

A person applying for a limited certificate is not required to provide his or her own surety bond, letter of credit, or deposit account control agreement. In addition, the fee to be paid to the Department of State for a limited certificate is lower than the fee to be paid for a corresponding non-limited certificate. The Department of State estimates that the initial cost of obtaining limited certification as a manufacturer or retailer will be \$25, the

initial cost of obtaining limited certification as an installer will be between \$225 and \$325, and the initial cost of obtaining limited certification as a mechanic will be between \$125 and \$150.

The cost of maintaining certification will include (1) the cost of renewing the required surety bond, letter of credit, or deposit account control agreement, (2) the renewal fee to be paid to the Department of State, and (3) the cost of the required continuing education courses. The Department of State estimates that the cost of maintaining certification as a manufacturer will be between \$1,050 and \$1,450 every 2 years (or between \$525 and \$725 per year), the cost of maintaining certification as a retailer will be between \$650 and \$850 every 2 years (or between \$325 and \$425 per year), the cost of maintaining certification as an installer will be \$450 every 2 years (or \$225 per year), and the cost of maintaining certification as a mechanic will be \$350 every 2 years (or \$175 per year).

A person holding a limited certificate will not incur the expense of renewing his or her own surety bond, letter of credit or deposit account control agreement. In addition, the fee to be paid to the Department of State to renew a limited certificate will be less than the fee to be paid to renew a corresponding non-limited certificate. The Department of State estimates that the cost of maintaining limited certification in any category (manufacturer, retailer, installer or mechanic) will be \$75 every 2 years (or \$37.50 per year).

The foregoing compliance costs are not likely to vary significantly by reason of the size of the business.

Local governments are not likely to incur any costs in complying with this rule.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY.

The Department of State will print the warranty seals required by this rule. The Department of State intends to prepare the application forms that will be required by this rule, and to posts such forms on the Department's web page and otherwise make such forms freely available to the regulated parties. The Department of State believes that it will be economically and technologically feasible for small businesses to comply with this rules.

6. MINIMIZING ADVERSE IMPACT.

It appears that the Legislature intended that purchasers of manufactured homes be afforded the full measure of the consumer protections contemplated by Article 21-B without regard to the size of the businesses involved in the manufacture, sale, installation, or servicing of the home. Further, the Department of State is not aware of any information suggesting that compliance with this rule will be significantly more difficult for small businesses than for it will be for larger businesses. Accordingly, this rule makes no special provisions for small businesses.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION.

The Department of State has solicited comments from the manufactured home industry, including manufacturers, retailers, and installers, and from the insurance industry, and the Department of State will continue to solicit comments from those industries.

The Department of State will notify code enforcement officials throughout the State and other interested parties of the adoption of this rule by means of a notice in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and currently distributed to approximately 3,700 subscribers representing all aspects of the construction industry. In addition, the Department of State will post the full text of this rule on the Department's website.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule implements Article 21-B of the Executive Law. Both Article 21-B and this rule apply uniformly throughout the State, including all rural areas of the State.

2. REPORTING, RECORD KEEPING AND OTHER COMPLIANCE REQUIREMENTS.

This rule requires manufacturers and installers of manufactured homes to obtain warranty seals from the Department of State, and to attach the warranty seals to manufactured homes that are installed on or after January 1, 2006. (The rule specifies certain situations in which a manufacturer's warranty seal is not required.) The seals are to be requested in writing, on a form to be supplied by or otherwise acceptable to the Department of State.

This rule requires manufacturers to file quarterly reports with the Department of State specifying, with respect to each manufactured home completed by the manufacturer during the reporting period covered by such report, the type or model of such manufactured home and, if applicable, the name and address of the retailer to which such manufactured home

was delivered. The quarterly reports are to be filed on forms provided by or otherwise acceptable to the Department of State.

This rule requires installers to file quarterly reports with the Department of State specifying, with respect to each manufactured home installed by the installer during the reporting period covered by such report, the location where such manufactured home was installed, the owner of such manufactured home at the time of installation, the type or model of such manufactured home, the manufacturer of such manufactured home; and the written certification of the installer that the installation of such manufactured home meets the standards of the New York State Uniform Fire Prevention and Building Code. The quarterly reports are to be filed on forms provided by or otherwise acceptable to the Department of State.

This rule requires each person and each business entity that manufactures, sells, installs, or services manufactured homes to obtain certification from the Department of State. Applications for certification are to be in writing, on forms provided by or otherwise acceptable to the Department of State. The qualifications for obtaining and retaining certification are summarized in paragraph 2 of the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

This rule requires any private trade association or other entity wishing to provide initial training courses or continuing education courses to apply to the Department of State for approval as an instructional provider. This rule requires approved instructional providers to apply to the Department of State for approval of each course it proposes to provide. All applications are to be submitted in writing, on forms provided by or otherwise acceptable to the Department of State. Instructional providers are required to keep records showing the date and location of each course presentation and the names and addresses of each student taking the course, and to file reports showing such information with the Department of State.

This rule provides that no governmental agency or department or other person or entity responsible for issuing certificates of occupancy in any jurisdiction shall issue a certificate of occupancy for any manufactured home installed in such jurisdiction at any time on or after January 1, 2006 unless the manufacturer's warranty seal required by this rule has been attached to such manufactured home (unless such manufacturer's warranty seal is not required by reason of an exception set forth in the rule), the installer's warranty seal required by this section has been attached to such manufactured home, and the governmental agency or department or other person or entity responsible for issuing certificates of occupancy has independently determined that such manufactured home has been installed in accordance with the applicable provisions of the New York State Uniform Fire Prevention and Building Code.

Professional services are not likely to be required in rural areas in order to comply with the reporting, record keeping and other compliance requirements imposed by this rule.

3. COSTS.

Manufacturers will be required to pay \$125 for each manufacturer's warranty seal, and will be permitted to charge up to \$150 for attaching a seal to a manufacture home.

Installers will be required to pay between \$25 and \$35 for each installer's warranty seal, and will be permitted to charge up to \$50 for attaching a seal to a manufacture home.

The initial cost of obtaining certification will include (1) the cost of obtaining the required surety bond, letter of credit, or deposit account control agreement, (2) the certification fee to be paid to the Department of State, and (3) in the case of certification as an installer or mechanic, the cost of the required initial training. The Department of State estimates that the initial cost of obtaining certification as a manufacturer will be between \$1,000 and \$1,400, the initial cost of obtaining certification as a retailer will be between \$600 and \$800, the initial cost of obtaining certification as an installer will be between \$600 and \$700, and the initial cost of obtaining certification as a mechanic will be between \$400 and \$425.

A person applying for a limited certificate is not required to provide his or her own surety bond, letter of credit, or deposit account control agreement. In addition, the fee to be paid to the Department of State for a limited certificate is lower than the fee to be paid for a corresponding non-limited certificate. The Department of State estimates that the initial cost of obtaining limited certification as a manufacturer or retailer will be \$25, the initial cost of obtaining limited certification as an installer will be between \$225 and \$325, and the initial cost of obtaining limited certification as a mechanic will be between \$125 and \$150.

The cost of maintaining certification will include (1) the cost of renewing the required surety bond, letter of credit, or deposit account control agreement, (2) the renewal fee to be paid to the Department of State, and (3) the cost of the required continuing education courses. The Department

of State estimates that the cost of maintaining certification as a manufacturer will be between \$1,050 and \$1,450 every 2 years (or between \$525 and \$725 per year), the cost of maintaining certification as a retailer will be between \$650 and \$850 every 2 years (or between \$325 and \$425 per year), the cost of maintaining certification as an installer will be \$450 every 2 years (or \$225 per year), and the cost of maintaining certification as a mechanic will be \$350 every 2 years (or \$175 per year).

A person holding a limited certificate will not incur the expense of renewing his or her own surety bond, letter of credit or deposit account control agreement. In addition, the fee to be paid to the Department of State to renew a limited certificate will be less than the fee to be paid to renew a corresponding non-limited certificate. The Department of State estimates that the cost of maintaining limited certification in any category (manufacturer, retailer, installer or mechanic) will be \$75 every 2 years (or \$37.50 per year).

Such costs are not likely to vary significantly for different types of public and private entities in rural areas. An installer who requests fewer than 6 installer's warranty seals at a time will be required to pay \$35 per seal, or \$10 per seal more than an installer who requests at least 6 warranty seals at a time. In addition, the fee for a letter of credit or premium for a surety bond may be dependent, in part, on the location of the business for which the letter of credit or surety bond is issued.

4. MINIMIZING ADVERSE IMPACT.

It appears that the Legislature intended that purchasers of manufactured homes be afforded the full measure of the consumer protections contemplated by Article 21-B without regard to the location of the businesses involved in the manufacture, sale, installation, or servicing of the home. Further, the Department of State is not aware of any information suggesting that compliance with this rule will be significantly more difficult for regulated parties located in rural areas than for it will be for regulated parties located in suburban or metropolitan areas. Accordingly, this rule makes no special provisions for regulated parties located in rural areas.

5. RURAL AREA PARTICIPATION.

The Department of State has solicited comments from the manufactured home industry, including manufacturers, retailers, and installers, and from the insurance industry, and the Department of State will continue to solicit comments from those industries, including representatives of those industries located in rural areas.

The Department of State will notify code enforcement officials throughout the State, including those in rural areas, and other interested parties of the adoption of this rule by means of a notice in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and currently distributed to approximately 3,700 subscribers representing all aspects of the construction industry. In addition, the Department of State will post the full text of this rule on the Department's website.

Job Impact Statement

The Department of State has determined that this rule will not have a substantial adverse impact on jobs or employment opportunities.

This rule establishes the procedures for obtaining and attaching the manufacturer's warranty seal and installer's warranty seal required by Article 21-B of the Executive Law, the fees to be paid by the manufacturer and installer to obtain the warranty seals, and the maximum fees that may be charged to the customer for attaching the warranty seals to the manufactured home. The maximum fee that may be charged to a customer for attaching the required seals will be \$200. The typical delivered and installed cost of a manufactured home in this State is approximately \$70,000. Therefore, the cost of the warranty seals will be less than 0.3% of the cost of a home, and the statutory requirement that warranty seals be attached, as implemented by this rule, should not have a substantial impact on the market for manufactured homes or on jobs or employment opportunities in the manufactured home industry.

This rule also establishes procedures for determination of certain disputes regarding manufactured homes by the Department of State. Article 21-B directs the Department of State to establish such procedures. It is anticipated that by providing for administrative determination of disputes, this rule will reduce the litigation expenses for all parties involved in such disputes. Therefore, the statutory requirement that the Department of State provided for administrative resolution of disputes, as implemented by this rule, should not have a substantial impact on jobs or employment opportunities in the manufactured home industry.

This rule also established the qualifications for obtaining certification as a manufacturer, retailer, installer, or mechanic of manufactured homes.

A person or business entity applying for certification will incur the following costs:

(1) Generally, the cost of obtaining a certification will be \$100 per year in the case of a manufacturer, retailer, and installer, and \$50 per year in the case of a mechanic. However, a person who is employed by a person who or a business entity which is certified may apply for a limited certification, which is valid only while such person is acting within the scope of his or her employment by his or her certified employer; the cost of obtaining such a limited certificate will be \$12.50 per year.

(2) Installers and mechanics may be required to pay fees to the instructional providers who present the initial training courses required for certification, and all certificate holders may be required to pay fees to the instructional providers who present the continuing education courses required to maintain certified status.

(3) Generally, each certificate holder will be required to file a deposit account control agreement, letter of credit, or surety bond. Those certificate holders who file a letter of credit will be required to pay fees to the financial institutions that issue such letters of credit, and those certificate holders who file a surety bond will be required to pay premiums to the insurance companies that issue such bonds. However, the holder of a limited certificate will not be required to file a deposit account control agreement, letter of credit, or surety bond, provided that his or her certified employer has filed an acceptable deposit account control agreement, letter of credit, or surety bond.

It is anticipated that the total cost of certification, instruction, and bonding will be relatively modest, particularly when these costs are spread over all the units manufactured by a certified manufacturer, sold by a certified retailer, installed by a certified installer, or serviced by a certified mechanic, during the course of a year. Therefore, the statutorily mandated certification process, as implemented by this rule, should not add a significant sum to the total cost of a manufactured home in this State, and should not have a substantial impact on jobs or employment opportunities in the manufactured home industry.