

RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

NOTICE OF EXPIRATION

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

Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-51-06-00005-P	December 20, 2006	December 20, 2007

Crime Victims Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Reimbursement of Claimants' New or Enhanced Security Devices

I.D. No. CVB-02-08-00004-P

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

Proposed action: Addition of section 525.12(g)(1)(ii) to Title 9 NYCRR.

Statutory authority: Executive Law, section 626

Subject: Reimbursement of claimants' new or enhanced security devices.

Purpose: To establish the process through which claimants may be reimbursed by the board for the costs associated with new or enhanced security devices and allow claimants or potential claimants to be aware of what expenses the board would consider reimbursable under its statutory authority.

Text of proposed rule: A new subparagraph (ii) is added to read as follows:

(ii) *In order for the costs associated with new or enhanced security devices, beyond those which, pursuant to the Executive Law are repaired or replaced under subdivision 2 of section 631, or are awarded under subdivision 12 of section 631, to be compensable, the Board shall require a statement from the claimant's physician or counselor, or the district attorney handling the victim's case, indicating that without the aid of such a device the claimant's health is in imminent danger. Compensable costs shall be limited to the devices themselves and their installation, and shall not include the periodic service charges for monitoring or maintaining any such devices.*

Text of proposed rule and any required statements and analyses may be obtained from: John Watson, General Counsel, Crime Victims Board, One Columbia Circle, Ste. 200, Albany, NY 12203, (518) 457-8066, e-mail: johnwatson@cvb.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: New York State Executive Law, section 623 grants the Crime Victims Board (the Board) the authority to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of Article 22 of the Executive Law. New York State Executive Law, section 626 provides that the Board may make awards to for out-of-pocket losses which include unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary as a result of the injury upon which such claim is based.

2. Legislative objectives: By enacting the New York State Executive Law, sections 626, the Legislature sought to ensure that the Board could reimburse claimants' out-of-pocket losses reasonably incurred for medical care or other services necessary as a result of the injury upon which such claim is based.

3. Needs and benefits: Currently, New York State Executive Law, section 631, subdivision 2 permits the Board to make awards to repair/replace security devices for certain victims as part of essential personal property and/or crime scene cleanup expenses. Section 631, subdivision 12 permits the Board to make awards for the costs associated with security devices for certain victims of harassment, menacing, criminal contempt and stalking offenses. Section 626 relates to the reimbursement of general out-of-pocket expenses, which include unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary as a result of the injury upon which such claim is based. From recent history to date, the Board has consistently interpreted section 626 to mean the costs associated with new or enhanced security devices could be reimbursed as an out-of-pocket loss reasonably incurred by a claimant, as long as the claimant provided proof from a physician, counselor or district attorney that without such a device their health would be in imminent danger. The Board has consistently determined that compensable costs shall be limited to the devices themselves and their installation,

and shall not include the periodic service charges for monitoring or maintaining these devices. This proposed regulation would establish the process through which the Board may determine an award for the reimbursement of the costs associated with new or enhanced security devices beyond those which are reimbursable under section 631(2) and (12), and will allow claimants or potential claimants to be aware of what expenses the Board may consider reimbursable under its statutory authority.

4. Costs: a. Costs to regulated parties. For the most part, these proposed regulations would be codifying the Board's current interpretation of its statutory authority, therefore it is not expected that the proposed regulations would impose any additional costs to the agency or State.

b. Costs to local governments. These proposed regulations do not apply to local governments and would not impose any additional costs on local governments.

c. Costs to private regulated parties. The proposed regulations do not apply to private regulated parties and would not impose any additional costs on private regulated parties.

5. Local government mandates: These proposed regulations do not impose any program, service duty or responsibility upon any local government.

6. Paperwork: These proposed regulations do not require any additional paperwork requirements more than is currently required of the Board's claimants.

7. Duplication: These proposed regulations do not duplicate any other existing state or federal requirements.

8. Alternatives: Although the current Board has consistently applied its interpretation of Executive Law, sections 626 and 631, not implementing these proposed regulatory changes could result in inconsistent claimant award decisions in the future. The only parties impacted by these proposed regulatory changes would be future applicants for crime victim compensation. The victim advocacy community is fully aware of the Board's current interpretation of its statutory authority and as these proposed regulatory changes simply codify the Board's recent practices to date, there will be no significant change or impact to victims' award determinations.

9. Federal Standards: Permissible under 42 USCS 10602.

10. Compliance Schedule: The regulations will be effective on the date they are adopted.

Regulatory Flexibility Analysis

The New York State Crime Victims Board (the Board) projects there will be no adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments in the State of New York as a result of these proposed rule changes. This proposed rule change simply establishes the process through which the Board may reimburse claimants for the costs associated with new or enhanced security devices. Since nothing in these proposed rule changes will create any adverse impacts on any small businesses or local governments in the state, no further steps were needed to ascertain these facts and one were taken. As apparent from the nature and purpose of these proposed rule changes, a full Regulatory Flexibility Analysis is not required and therefore one has not been prepared.

Rural Area Flexibility Analysis

The New York State Crime Victims Board (the Board) projects there will be no adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas in the State of New York as a result of these proposed rule changes. This proposed rule change simply establishes the process through which the Board may reimburse claimants for the costs associated with new or enhanced security devices. Since nothing in these proposed rule changes will create any adverse impacts on any public or private entities in rural areas in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of these proposed rule changes, a full Rural Area Flexibility Analysis is not required and therefore one has not been prepared.

Job Impact Statement

The New York State Crime Victims Board (the Board) projects there will be no adverse impact on jobs or employment opportunities in the State of New York as a result of these proposed rule changes. This proposed rule change simply establishes the process through which the Board may reim-

burse claimants for the costs associated with new or enhanced security devices. Since nothing in these proposed rule changes will create any adverse impacts on jobs or employment opportunities in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of these proposed rule changes, a full Job Impact Statement is not required and therefore one has not been prepared.

Department of Health

NOTICE OF ADOPTION

Feeding Assistants in Nursing Homes

I.D. No. HLT-30-07-00002-A

Filing No. 1396

Filing date: Dec. 19, 2007

Effective date: Jan. 9, 2008

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

Action taken: Amendment of section 415.13, addition of sections 415.2(u) and 415.26(k) to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2800 and 2803

Subject: Feeding assistants in nursing homes.

Purpose: To permit the use of paid feeding assistants in New York State nursing facilities.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-30-07-00002-P, Issue of July 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: Katherine E. Ceroalo, 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

Assessment of Public Comment

The Department received two letters in comment on the proposed regulations. The first letter was submitted from the Healthcare Association of New York State (HANYNS) expressing its support for the regulations and urging their speedy adoption and implementation. In its letter, HANYNS noted that it and other associations participated with DOH in developing the feeding assistant curriculum, and contributed in the addition of additional content to the basic federal standards, including training on cognitive impairments and behavioral needs of residents. The HANYNS letter also provided a list of reasons for adoption and implementation of the feeding assistant regulations.

A second letter was received from the New York State Nurses Association (NYSNA). The Nurses Association indicated its concern with the following section of the regulation (10 NYCRR 415.13(d)(3)): The charge nurse's selection of residents who can safely be fed or assisted by a feeding assistant shall be based upon a registered professional nurse's assessment and the resident's latest assessment and plan of care. NYSNA noted that many charge nurses in New York State nursing homes are LPN's, which, consistent with the Education Law, cannot perform assessments. DOH responded that it was in complete agreement with NYSNA, and proposed that a clarification be issued at the time of the regulation's implementation. NYSNA agreed with this approach without modification to the language of the regulation. DOH will include this clarification with the Dear Administrator Letter accompanying the release of the feeding assistant curriculum.

Public comment regarding these regulations can be evaluated as favorable and without reservation.

Higher Education Services Corporation

NOTICE OF ADOPTION

New York State Nursing Faculty Loan Forgiveness Incentive Program

I.D. No. ESC-44-07-00007-A

Filing No. 1402

Filing date: Dec. 19, 2007

Effective date: Jan. 9, 2008

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

Action taken: Amendment of section 2201.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 653(9), 655(4) and 679-d

Subject: New York State Nursing Faculty Loan Forgiveness Incentive Program.

Purpose: To implement the program.

Text or summary was published in the notice of proposed rule making, I.D. No. ESC-44-07-00007-P, Issue of October 31, 2007.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Senator Patricia K. McGee Nursing Faculty Scholarship Program

I.D. No. ESC-44-07-00009-A

Filing No. 1401

Filing date: Dec. 19, 2007

Effective date: Jan. 9, 2008

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

Action taken: Amendment of section 2201.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 653(9), 655(4) and 679-c

Subject: Senator Patricia K. McGee Nursing Faculty Scholarship Program.

Purpose: To implement the program.

Text or summary was published in the notice of proposed rule making, I.D. No. ESC-44-07-00009-P, Issue of October 31, 2007.

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

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

Assessment of Public Comment

The agency received no public comment.

Insurance Department

**EMERGENCY
RULE MAKING**

Market Stabilization Mechanisms for Individual and Small Group Market

I.D. No. INS-41-07-00005-E

Filing No. 1395

Filing date: Dec. 19, 2007

Effective date: Dec. 19, 2007

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

Action taken: Amendment of sections 361.5 and 361.7(a), renumbering of sections 361.6-361.7 to sections 361.7-361.8 and addition of new section 361.6 to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 3233; and L. 1992, ch. 501, L. 1995, ch. 504

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

Specific reasons underlying the finding of necessity: The first filing for the new pooling methodology was Nov. 10, 2006, and the second filing was Jan. 31, 2007.

The Fifth Amendment to Regulation 146 is the result of comments and suggestions received by the Insurance Department in relation to the current market stabilization pool. Regulation 146 was originally promulgated pursuant to the requirements of Chapter 501 of the Laws of 1992 and the statutory authority set forth in Section 3233 of the Insurance Law, which require the Superintendent to: promulgate regulations designed to encourage insurers to remain in or enter the small group or individual health insurance markets, and promote an insurance marketplace where premiums do not unduly fluctuate and where insurers and HMOs are reasonably protected against unexpected significant shifts in the number of persons insured who are ill or who have a history of poor health. In addition, Section 3233 of the Insurance Law specifically directs the Superintendent to create a pooling process involving insurer contributions to, or receipts from, a fund designed to share the risk of or equalize high cost claims and claims of high cost persons.

The proposed amendment is consistent with statutory intent and will modify the pooling methodology established in the Fourth Amendment to Regulation 146 (11 NYCRR 361.5) to provide a simplified approach. The proposed amendment should increase uniformity and consistency in the methodologies used by insurers and health maintenance organizations when determining their contributions and/or distributions from the pools, and should help insurers and health maintenance organizations avoid reporting errors. Under the Fifth Amendment, the current market stabilization pool is being phased-out. Payments, collections and data reports were not required in 2005, and the new pooling methodology established by the proposed amendment was established in 2006 and will become fully operational by 2008.

Since the specified medical condition pools established in the Fourth Amendment to Regulation 146 were phased out in 2005, there is currently no pooling mechanism in place. Therefore, insurers who currently have a disproportionate number of enrollees with high cost claims are not receiving any funds to equalize or share these risks, as the Legislature intended under Section 3233 of the Insurance Law. This may cause premium rates to unduly fluctuate because there is no market stabilization process in place and insurers and health maintenance organizations may not be reasonably protected against unexpected significant shifts in the number of persons insured. The Insurance Department must implement a new pooling mechanism to ensure that health maintenance organizations and insurers are sufficiently protected. The first reporting requirement under the new pooling methodology for health maintenance organizations and insurers was November 10, 2006 and the second reporting requirement was January 31, 2007. The amendment to this regulation must continue in order to utilize the data collected during the two reporting periods, which will enable the pools to become fully operational on a prospective basis.

For the reasons stated above, this amendment to Regulation 146 must be promulgated on an emergency basis for the preservation of the general welfare.

Subject: Market stabilization mechanisms for individual and small group market.

Purpose: To create a new market stabilization process in the individual and small group market, to share among plans substantive cost variations attributable to high cost medical claims.

Text of emergency rule: The title of Section 361.5 is amended to read as follows:

Section 361.5 Pooling of variations in costs attributable to variations in specified medical conditions (SMC) beginning in 1999 through 2006.

Section 361.5 is hereby amended to add a new subdivision (k) to read as follows:

(k) Reporting requirements, payments to the pools, or collections from the pools under this section shall not be required in 2005 or 2006.

Sections 361.6 and 361.7 are hereby renumbered 361.7 and 361.8 and a new section 361.6 is added to read as follows:

361.6 Pooling of variations of costs attributable to high cost claims beginning in 2006 for individual and small group policies, other than Medicare supplement and Healthy New York policies.

(a) In each pool area a risk adjustment pool is established in connection with individual and small group health insurance policies, other than Medicare supplement insurance policies and Healthy New York health insurance policies. Each pool shall operate independently; that is, all calculations and payments described below are made for each pool independently of any other pool.

(b) The annual funding amount for all pool areas combined is as follows:

(1) \$80,000,000 for 2007;

(2) \$120,000,000 for 2008; and

(3) \$160,000,000 for 2009 and each calendar year thereafter.

(c) The annual funding amount for each pool area is in proportion to the annualized premiums in that pool area. For 2007 and each calendar year thereafter, each pool participant shall provide to the superintendent annualized premium information on or before January 31. The superintendent shall advise carriers of the funding amount for each pool area within sixty days of receipt of annualized premium information from all carriers.

(d)(1) Each carrier's share of the total funding payable to or from the pools shall be determined based on the carrier's high cost claims in its areas of operation.

(2) In order to implement the phase in of the new specified medical condition pooling process, on or before November 10, 2006 each carrier shall report to the superintendent its annualized premium amount as of December 31, 2005 and its cumulative calendar year claims paid in 2005 for individual standardized direct payment health maintenance organization policies, individual standardized direct payment point of service policies, all other individual health insurance policies, and small group health insurance policies, using the form in subdivision (h) of this section for each pool area. The superintendent will provide carriers with an estimate of potential pool receivables or liabilities using this 2005 data for advisory purposes only.

(3) Each following year, beginning in 2007, on or before January 31, each carrier shall report to the superintendent its annualized premium amount as of December 31 of the preceding year and its cumulative calendar year claims paid in the preceding year for individual standardized direct payment health maintenance organization policies, individual standardized direct payment point of service policies, all other individual health insurance policies, and small group health insurance policies, using the form in subdivision (h) of this section for each pool area. In 2007, the superintendent provided carriers with a second estimate of potential pool receivables or liabilities using 2006 data, for advisory purposes. Payments to the pools, or collections from the pools, shall be required beginning in 2008 and shall be based upon the data from the preceding calendar year.

(4) Cumulative calendar year claims paid shall include the total of all claim payments on behalf of an insured individual from January 1 through December 31 of the preceding year, regardless of when the services were provided.

(5) Cumulative calendar year claims paid shall include payments for hospital and medical services, prescription drug payments, capitation payments, and regional covered lives assessments paid pursuant to section 2807-t of the Public Health Law or percentage surcharges paid pursuant to section 2807-j or section 2807-s of the Public Health Law. Carriers that include the covered lives assessments shall convert the family covered lives assessment into a per member assessment component in order to be included with claims expenses attributable to any one member.

(6) Cumulative calendar year claims paid shall not include amounts paid in satisfaction of the percentage surcharge requirement set forth in

section 2807-j(2)(b)(i)(B) of the Public Health Law or interest paid out by a carrier pursuant to section 3224-a(c) of the Insurance Law.

(7) Each carrier's submission shall be signed by an officer of the carrier certifying that the information is accurate.

(8) If a carrier makes a submission after January 31 and the carrier is a pool payer, the carrier's payment into the pool will be increased by one percent interest per month. If a carrier makes a submission after January 31 and the carrier is a pool receiver, the carrier's distribution will be reduced by one percent per month.

(e) The superintendent shall calculate each carrier's share of the total funding payable to or from the pools pursuant to the example in subdivision (i) of this section for each pool area as follows:

(1) Identify the total claims paid by each carrier for the following types of policies: individual standardized direct payment health maintenance organization policies, individual standardized direct payment point of service policies, all other individual health insurance policies, and small group health insurance policies, other than Medicare supplement and Healthy New York insurance policies.

(2) Identify the total claims paid in excess of \$20,000 for each insured by type of policy.

(3) For each carrier for each type of policy, divide the claims paid in excess of \$20,000 by the total claims paid (the amount specified in paragraph (2) of this subdivision divided by the amount specified in paragraph (1) of this subdivision) to determine the high cost claim ratio.

(4) Calculate the average high cost claim ratio for all carriers for all types of policies combined and multiply that ratio by the total claims paid for each carrier for each type of policy (a carrier's amount specified in paragraph (1) of this subdivision multiplied by the average high cost claim amount specified in paragraph (3) of this subdivision.)

(5) Subtract the amount calculated in paragraph (4) of this subdivision from the amount in paragraph (2) of this subdivision for each carrier for each type of policy to determine the adjustment needed to equalize high cost claims and determine if the carrier is a net contributor or receiver.

(6) Sum the net contributions of all carriers who are net contributors in the pool area to determine the total net contribution.

(7) Divide the pool area funding amount by the total of paragraph (6) of this subdivision and multiply by the amount identified for each carrier for each type of policy in paragraph (5) of this subdivision to determine the carrier's net pool contribution or distribution.

(f) Billings will be done by the superintendent beginning in 2008 within thirty days of receipt of submissions from all carriers, and payments will be due from carriers within five business days from the date billed. Payments made after the due date shall include interest at a rate of one percent per month. Subsequent to the billing date, but within the calendar year, carrier data that formed the basis of the billing will be audited. In the event audits necessitate post-billing adjustments, such adjustments will be charged or credited in the next year's billing or distribution. Additional payments due from any carrier whose data errors caused it to underpay, or refunds due back from any carrier whose data errors caused it to be overpaid, shall include a one percent interest charge per month from the original due date or payment date.

(g) A carrier shall, with respect to distributions from the pools attributable to each type of policy, as determined in paragraph (7) of subdivision (e) of this section, without reduction for contributions owed on other types of policies:

(1) refund the distributions directly to insureds based upon the type of policy that caused the payments to be received without consideration of minimum loss ratio provisions; or

(2) submit a detailed plan to the superintendent for approval:

(i) demonstrating how the distribution will be applied to reduce future premium rates for the type of policy whose insureds caused the payments to be received, or

(ii) providing a detailed explanation as to how the distribution was considered in the development of premium rates for that year.

(h) Claim Submission Form.

Claims Paid From January 1 – December 31, ()

Carrier: _____

Pool Area: _____

Total annualized premium for individual standardized direct payment health maintenance organization (HMO) policies, individual standardized direct payment point of service (POS) policies, other individual health insurance policies, and small group policies:

Cumulative Total Claims Paid Above Listed Amounts (Attachment Point) ZERO	Direct Payment HMO	Direct Payment POS	Direct Payment Other	Small Group	Total
\$10,000					
\$15,000					
\$20,000					
\$25,000					
\$30,000					
\$35,000					
\$40,000					
\$45,000					
\$50,000					
\$60,000					
\$70,000					
\$80,000					
\$90,000					
\$100,000					

Instructions:

- * Do not include Medicare Supplement Policies or Healthy New York Policies.
 - ** For each insured determine the cumulative claims paid from January 1 through December 31 and report the total claims paid for all insureds for each type of policy listed above.
 - ***At each dollar level (Attachment Point), report all claims paid over that attachment point level amount from January 1 through December 31 for any insured. Cumulative total claims paid above the ZERO attachment point level would equal the total claims paid by the carrier for all insureds for the period.
- (i) Chart for calculation of pool amounts.

	1	2	3	4	5	6
Albany Region Total	Claims Paid	High Cost Claim Ratio (Column 2 Divided by Column 1)	Claims Paid Multiplied by Average High Cost Ratio (Column 1 Multiplied by Column 3)	Adjustment to Equalize High Cost Claims (Column 4 Minus Column 5)	Pool Amount Owed or Receivable (Pre-determined Total Pool Minus Column 5 Total Contributions of All Net Contributors Multiplied by Column 5)	

Carrier A
Dir Pay HMO
Dir Pay POS
Dir Pay Other
Small Group
Carrier A
Net
Contribution
or
Distribution
Carrier B
Dir Pay HMO
Dir Pay POS
Dir Pay Other
Small Group
Carrier B
Net
Contribution
or
Distribution
Total Net
Contributions
All Net
Contributors
Total Net
Distributions
All Net
Receivers

Section 361.6 is renumbered to be 361.7 and the opening paragraph of subdivision (a) is amended to read as follows:

361.7(a) The pools shall be administered *either directly* by the superintendent, *or in conjunction with a firm*, performing at least the following functions:

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. INS-41-07-00005-P, Issue of October 10, 2007. The emergency rule will expire February 16, 2008.

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

Regulatory Impact Statement

1. Statutory authority: The superintendent's authority for the fifth amendment to 11 NYCRR 361 is derived from Sections 201, 301, 1109, 3233 and Chapter 501 of the Laws of 1992 and Chapter 504 of the Laws of 1995.

Sections 201 and 301 of the Insurance Law authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law, as well as effectuate any power given to him under the provisions of the Insurance Law to prescribe forms or otherwise make regulations.

Section 1109 authorizes the Superintendent to promulgate regulations to effectuate the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to contracts between a health maintenance organization and its subscribers.

Section 3233 authorizes the Superintendent to promulgate regulations to create a pooling process involving insurer contributions to, or receipts from, a fund designed to share the risk of or equalize high cost claims with respect to individual and small group health insurance.

Chapter 501 of the Laws of 1992 amended the insurance law and public health law to require that individual and small group health insurance be made available on an open enrollment basis; community rating of individual and small group health insurance policies; portability of health insurance coverage; continuation of hospital, surgical or medical expense insurance; and that the superintendent promulgate regulations to assure an orderly implementation and ongoing operation of open enrollment and community rating.

Chapter 504 of the Laws of 1995 amended the insurance law and the public health law to establish standardized direct payment contracts for individual health insurance and to provide that regulations promulgated by the Superintendent shall include only reinsurance or a pooling process involving insurer or health maintenance organization contributions to, or receipts from, a fund which shall be designed to share the risk of high cost claims or the claims of high cost persons.

2. Legislative objectives: The statutory sections cited above provide a framework for the establishment of a market stabilization process in the individual and small group health insurance markets. The proposed amendment to Regulation 146 is consistent with legislative objectives in that it would effectuate the Legislature's direction in Section 3233 to establish a pooling process involving health maintenance organization and insurer contributions to, or receipts from, a fund that shall be designed to share the risk of or equalize high cost claims or claims of high cost persons, and to protect insurers and health maintenance organizations from disproportionate adverse risks of offering coverage to all applicants.

3. Needs and benefits: The proposed amendment will modify the pooling methodology established in the Fourth Amendment to Regulation 146 (11 NYCRR 361.5) to provide a simplified approach and to increase uniformity and consistency in the methodologies used by insurers and health maintenance organizations when determining their contributions and/or distributions from the pools, and should help insurers and health maintenance organizations avoid reporting errors. The proposed amendment is needed because of the widely differing methodologies used by insurers and health maintenance organizations, and the inconsistencies and resulting confusion as to how to apply the distributions and/or contributions to premium rates.

This amendment is the result of comments and suggestions received by the Department from health maintenance organizations and insurers with regard to the current market stabilization pools. As a result of the comments and suggestions, the current market stabilization pools are being phased-out. Payments, collections and data reports were not required in 2005 or 2006, and the new pooling methodology will be transitioned into operation over a three year period. In 2007, the pools will be funded at \$80 million, which is half of the funding amount of the prior specified medical condition pools established under the Fourth Amendment to Regulation 146. In 2008, the funding level of the pools will be increased to \$120 million. And in 2009, the funding level of the pools will be increased to the

full funding amount of \$160 million. This phase-in will ensure that health maintenance organizations and insurers have sufficient time to account for the impact of this amendment.

Comparable to all prior pooling methodologies established pursuant to Section 3233 of the Insurance Law, the Fifth Amendment to Regulation 146 continues to pool individual and small group policies in order share the risk of, or equalize, high cost claims or high cost persons. The pooling of individual and small group policies is necessary to provide meaningful distribution of high cost persons and claims across the community rated markets.

4. **Costs:** This amendment imposes no compliance costs upon state or local governments. The amendment does not impose any significant additional compliance costs to insurers or health maintenance organizations. Insurers and health maintenance organizations may have to modify their internal policies and procedures for compliance with the new pooling methodology, and if insurers or health maintenance organizations fail to comply with statutory or regulatory pooling requirements, a penalty could be imposed. In addition, similar to the previous pooling methodology, insurers and health maintenance organizations with healthier lives will have to pay money into the market stabilization pools, and those with unhealthy lives will receive money from the pools. There will be a cost to insurers and health maintenance organizations with healthier lives; however, the purpose of any market stabilization mechanism is to share risk and equalize claim costs. There should be no additional costs to the Insurance Department, as existing personnel are available to assist insurers and health maintenance organizations with the transition to the new market stabilization process.

5. **Local government mandates:** The proposed amendment imposes no new programs, services, duties or responsibilities on local government.

6. **Paperwork:** The proposed amendment imposes new reporting requirements. However, insurers and health maintenance organizations are currently reporting similar information to the Superintendent for the pooling requirements set forth in the specified medical condition pools established by the Fourth Amendment to Regulation 146 (11 NYCRR 361.5). Therefore, this proposed amendment should not create more paperwork for the insurers and health maintenance organizations than is currently in place.

7. **Duplication:** Section 3233 directs the Superintendent of Insurance to promulgate regulations to create a pooling process to establish stabilization in the individual and small group markets. There is no duplication with federal or state laws.

8. **Alternatives:** The Insurance Department has met extensively with the Health Plan Association and the Conference of BlueCross BlueShield Plans to discuss this amendment. A suggestion was made to take payments from the Direct Payment Stop Loss Funds into consideration when determining amounts owed or received under the new pooling methodology. The Direct Payment Stop Loss Funds were established in 1999 pursuant to Sections 4321-a and 4322-a of the Insurance Law, which establishes a separate statutory mandate from Section 3233 of the Insurance Law, which first provided for the establishment of the market stabilization pools in 1992. The Direct Payment Stop Loss Funds were created to provide additional state subsidies to the individual direct payment market, and were not meant to replace the market stabilization pools. Although the previous market stabilization pools did not take the direct payment stop loss recoveries into consideration, the Department reviewed the suggestion of taking the payments from the Direct Payment Stop Loss Funds into consideration under this proposed amendment. The Department determined that if the stop loss recoveries were taken into consideration, the standardized individual HMO policies could become payors, which would undermine the intent of Section 3233 of the Insurance Law. That statute is meant to equalize the risk of high cost persons throughout the individual and small group markets by encouraging each HMO and insurer to insure high cost persons (who are mostly found in the individual direct payment market). If direct payment policies become payors, HMOs could be discouraged from insuring high cost persons – a circumstance that would run counter to the statutory intent.

Another suggestion was made to increase the claim threshold from \$20,000 to \$100,000. The Insurance Department found that the risk sharing and market stabilization would be significantly diminished, by up to 80%, if the claim threshold were increased. If this were to occur, the risk adjustment would be so nominal that the statutory requirement for risk adjustment could not be accomplished.

Interested parties also expressed concern that when the individual and small group policies are pooled together, that the market stabilization pools could involve the small group market subsidizing the individual market.

The Department has previously pooled individual and small group policies together under all prior pooling methodologies established pursuant to Section 3233 of the Insurance Law in order to accomplish the legislative goals. Moreover, if individual and small group coverage were not pooled, there would not be appropriate risk adjustment in the individual market.

9. **Federal standards:** There are no minimum standards of the federal government for the same or similar subject areas.

10. **Compliance schedule:** The provisions of this amendment will take effect immediately. However, implementation will be gradual, with the market stabilization pools reaching full funding only after three years. Insurers and health maintenance organizations were expected to submit initial reports to the Superintendent by November 10, 2006 and January 31, 2007 for advisory purposes only, and payments under the new pooling process will begin in 2008. The Insurance Department has had several meetings with representatives of insurers and health maintenance organizations to discuss this amendment, and insurers and health maintenance organizations should be aware of the requirements established by this amendment.

Regulatory Flexibility Analysis

1. **Effect of the rule:** This amendment will affect all health maintenance organizations (HMOs) and insurers licensed to do business in New York State. Based upon information provided by these companies in annual statements filed with the Insurance Department, HMOs and insurers licensed to do business in New York do not fall within the definition of “small business” found in Section 102(8) of the State Administrative Procedures Act because none of them are both independently owned and have under 100 employees.

Some of the small businesses in New York purchase health insurance from HMOs and insurers. This amendment modifies and simplifies the current pooling methodology for the individual and small group health insurance markets established by the Fourth Amendment to Regulation 146. Similar to all prior pooling methodologies, the new pooling methodology establishes a risk adjustment mechanism so that insurers covering persons with higher cost claims will receive monies from the market stabilization pools, and insurers covering persons with lower cost claims will pay money into the pools. Also similar to all prior pooling methodologies, the Fifth Amendment to Regulation 146 continues to pool individual and small group policies together in order share the risk of or equalize high cost claims or high cost persons, as required by Section 3233 of the Insurance Law. As has been the experience under prior pooling methodologies, the Department estimates that some small groups will see a premium reduction, while others will see a nominal increase. In order to mitigate the initial impact of the amendment, the Department has established a gradual three-year implementation period until the pools become fully funded. In 2007, the pools will be funded at \$80 million, which is half of the funding amount of the prior specified medical condition pools established under the Fourth Amendment to Regulation 146. In 2008, the funding level of the pools will be increased to \$120 million. And in 2009, the funding level of the pools will be increased to the full funding amount of \$160 million. This amendment does not apply to or affect local governments.

2. **Compliance requirements:** This amendment will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

3. **Professional services:** Small businesses or local governments should not need professional services to comply with the amendment.

4. **Compliance costs:** This amendment will not impose any compliance costs upon small businesses or local governments.

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

6. **Minimizing adverse impact:** This amendment simplifies the market stabilization methodology for individual and small group coverage established by the Fourth Amendment to Regulation 146. The same requirements will apply uniformly to individual and small group insurance coverage offered by HMOs and insurers, similar to the Fourth Amendment to Regulation 146, and should not impose any adverse or disparate impact. As has been the experience under prior pooling methodologies, the Department estimates that some small groups will see a premium reduction, while others will see a nominal increase. The amendment also is being transitioned into full effect over three years in order to moderate any impact.

7. **Small business and local government participation:** These regulations are directed at HMOs and insurers licensed to do business in New York State, none of which fall within the definition of “small business” as found in Section 102(8) of the State Administrative Act. Notice of the proposal was previously published in the Insurance Department’s Regula-

tory Agenda. That notice was intended to provide small businesses with the opportunity to participate in the rulemaking process. Interested parties were also consulted through direct meetings during the development of the proposed regulations.

Rural Area Flexibility Analysis

1. Effect of the rule: This amendment will affect all health maintenance organizations (HMOs) and insurers licensed to do business in New York State. Insurers and HMOs to which the amendment applies do business in all counties of the state, including rural areas as defined under State Administrative Procedure Act Section 102(13). This amendment may also affect small business and individuals that purchase health insurance coverage, some of which are located in rural areas across the state. This amendment modifies and simplifies the current pooling methodology for the individual and small group health insurance markets established by the Fourth Amendment to Regulation 146. Similar to all prior pooling methodologies, the new pooling methodology establishes a risk adjustment mechanism so that insurers covering persons with higher cost claims will receive monies from the market stabilization pools, and insurers covering persons with lower cost claims will pay money into the pools. Also similar to all prior pooling methodologies, the Fifth Amendment to Regulation 146 continues to pool individual and small group policies together in order share the risk of or equalize high cost claims or high cost persons, as required by Section 3233 of the Insurance Law. As has been the experience under prior pooling methodologies, the Department estimates that some small groups will see a premium reduction, while others will see a nominal increase. In addition, persons covered under the individual standardized direct payment policies will on average likely see a decrease in their premiums. In order to mitigate the initial impact of the amendment, the Department has established a gradual three-year implementation period until the pools become fully funded. In 2007, the pools will be funded at \$80 million, which is half of the funding amount of the prior specified medical condition pools established under the Fourth Amendment to Regulation 146. In 2008, the funding level of the pools will be increased to \$120 million. And in 2009, the funding level of the pools will be increased to the full funding amount of \$160 million.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The proposed amendment imposes new reporting requirements for insurers and health maintenance organizations. However, insurers and health maintenance organizations are currently reporting similar information to the Superintendent for the pooling requirements set forth in the specified medical condition pools established by the Fourth Amendment to Regulation 146 (11 NYCRR 361.5). Therefore, this proposed amendment should not create more paperwork, recordkeeping or other compliance requirements or professional services for insurers and health maintenance organizations than are currently in place.

3. Costs: As under all prior pooling methodologies, some small businesses will see a premium reduction, while others will see a nominal increase. These small businesses may be located in rural or urban areas across the state. Individuals covered under the standardized direct payment policies will likely see a reduction in their premiums. These individuals may be located in rural or urban areas across the state.

4. Minimizing adverse impact: This amendment simplifies the market stabilization methodology for individual and small group coverage established by the Fourth Amendment to Regulation 146. The same requirements will apply uniformly to individual and small group insurance coverage offered by HMOs and insurers, similar to the Fourth Amendment to Regulation 146. The impact on small businesses and individuals who purchase health insurance in the individual or small group market and who may be located in rural areas, should be comparable to the impact on small businesses or individuals who are located in urban areas. The amendment is being transitioned into full effect over the course of three years in order to mitigate any impact.

5. Rural area participation: These regulations are directed at HMOs and insurers licensed to do business in New York State, which do businesses in every county in New York. Notice of the proposal was previously published in the Insurance Department's Regulatory Agenda. That notice was intended to provide small businesses or individuals who are located in rural areas with the opportunity to participate in the rulemaking process. Interested parties were also consulted through direct meetings during the development of the proposed regulations.

Job Impact Statement

This amendment to Regulation 146 will not adversely impact job or employment opportunities in New York. The proposed amendment is likely to have no measurable impact on jobs. Insurers and health maintenance organizations will need to annually report to the Superintendent their

annualized premium amount and their cumulative calendar year claims paid. However, it is anticipated that such responsibilities will be handled by existing personnel because these reporting requirements are similar to the existing reporting requirements set forth in the Fourth Amendment to Regulation 146 (11 NYCRR 361.5). Costs to the Insurance Department will also be minimal, as existing personnel are available to assist insurers and health maintenance organizations in implementing the new pooling methodology.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Charges for Professional Health Services

I.D. No. INS-02-08-00005-P

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

Proposed action: This is a consensus rule making to amend Part 68 (Regulation 83) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2601, 5221 and art. 51

Subject: Charges for professional health services.

Purpose: To repeal the fee schedules previously established by the Insurance Department for prescription drugs, durable medical equipment, medical/surgical supplies, orthopedic footwear, and orthotic and prosthetic appliances that are now covered by the two fee schedules established by the Workers' Compensation Board, clarifies that a pharmacy is deemed to be a provider of health services for purposes of eligibility of direct payments pursuant to Regulation 68-C.

Text of proposed rule: Section 68.1(b) (3) of Part 68 is hereby amended to read as follows:

(3) A "licensed health provider" means a licensed healthcare professional acting within the scope of his or her licensure or an entity, *including a pharmacy*, properly formed in accordance with applicable law and acting within the scope of its license.

Part E of Appendix 17-C to Part 68 is repealed.

Part F of Appendix 17-C to Part 68 is repealed.

Parts G, H, I, J, K of Appendix 17-C to Part 68-C are relettered Parts E, F, G, H and I.

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

Data, views or arguments may be submitted to: Buffy Cheung, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5587, e-mail: bcheung@ins.state.ny.us

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

Consensus Rule Making Determination

Sections 201, 301, 2601, 5221, 5108 and Article 51 of the Insurance Law establish the Superintendent's authority to promulgate regulations governing charges for professional health services under No-fault.

Chapter 892 of the Laws of 1977 recognized the necessity of establishing schedules of maximum permissible charges, for professional health services payable as no-fault insurance benefits, in order to contain the costs of no-fault insurance. In order to contain costs, the Superintendent is required to adopt those fee schedules that are promulgated by the Chairman of the Workers' Compensation Board. Effective July 11, 2007, the Workers' Compensation Board issued two new fee schedules, one for prescription drugs and the other for durable medical equipment, medical/surgical supplies, orthopedic footwear, and orthotic and prosthetic appliances.

No person is likely to object to the rule. The rule repeals the fee schedules previously established by the Insurance Department for prescription drugs, durable medical equipment, medical/surgical supplies, orthopedic footwear, and orthotic and prosthetic appliances. The charges for these goods and services are now covered by two fee schedules established by the Workers' Compensation Board. In addition, the proposed rule clarifies that a pharmacy is deemed to be a provider of health services for purposes of eligibility for direct payments pursuant to Regulation 68-C.

Job Impact Statement

Nature of Impact:

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. The proposed amendment, which is required by statute, repeals the fee schedules previously estab-

lished by the Insurance Department for prescription drugs, durable medical equipment, medical/surgical supplies, orthopedic footwear, and orthotic and prosthetic appliances and replaces those schedules with the same schedules implemented by the Workers' Compensation Board. These services are now covered by two fee schedules established by the Workers' Compensation Board. The rule also clarifies that a pharmacy is deemed to be a provider of health services for purposes of eligibility for direct payments pursuant to Regulation 68-C.

Categories and number affected:

No categories of jobs or number of jobs will be affected.

Regions of adverse impact:

This rule applies to all property/casualty insurance companies authorized to do business in New York State, self-insurers, health care providers and medical supply companies. There would be no region in New York which would experience an adverse impact on jobs and employment opportunities.

Minimizing adverse impact:

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

Self-employment opportunities:

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

the company) proposal for a automated meter reading (AMR) pilot proposal and directed the company to file a supplemental advanced metering infrastructure plan.

Statutory authority: Public Service Law, sections 65(1), 66(1), (2) and 67

Subject: Central Hudson's meter installation and reading practices.

Purpose: To reject the proposal to undertake a AMR Pilot Program in Central Hudson's service territory.

Substance of final rule: The Public Service Commission adopted an order rejecting Central Hudson Gas & Electric Corporation's (the company) proposal for a Automated Meter Reading Pilot Proposal and directed the company to file a supplemental Advanced Metering Infrastructure Plan, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-E-0934SA7)

Office of Mental Health

NOTICE OF ADOPTION

Child and Family Clinic Plus Program

I.D. No. OMH-42-07-00001-A

Filing No. 1400

Filing date: Dec. 19, 2007

Effective date: Jan. 9, 2008

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

Action taken: Amendment of Part 587 of Title 14 NYCRR.

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

Subject: Child and family clinic plus.

Purpose: To establish the Child and Family Clinic Plus Program.

Text or summary was published in the notice of proposed rule making, I.D. No. OMH-42-07-00001-P, Issue of October 17, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Joyce Donohue, Office of Mental Health, 44 Holland Ave., 8th Fl., Albany, NY 12229, (518) 474-1331, e-mail: cocbjdd@omh.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Meter Installation and Reading Practices by Central Hudson Gas & Electric Corporation

I.D. No. PSC-06-07-00021-A

Filing date: Dec. 19, 2007

Effective date: Dec. 19, 2007

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

Action taken: The commission, on Dec. 12, 2007, adopted an order rejecting Central Hudson Gas & Electric Corporation's (Central Hudson, the company) proposal for a automated meter reading (AMR) pilot proposal and directed the company to file a supplemental advanced metering infrastructure plan.

Statutory authority: Public Service Law, sections 65(1), 66(1), (2) and 67

Subject: Central Hudson's meter installation and reading practices.

Purpose: To reject the proposal to undertake a AMR Pilot Program in Central Hudson's service territory.

Substance of final rule: The Public Service Commission adopted an order rejecting Central Hudson Gas & Electric Corporation's (the company) proposal for a Automated Meter Reading Pilot Proposal and directed the company to file a supplemental Advanced Metering Infrastructure Plan, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-G-0935SA6)

Public Service Commission

NOTICE OF ADOPTION

Meter Installation and Reading Practices by Central Hudson Gas & Electric Corporation

I.D. No. PSC-06-07-00016-A

Filing date: Dec. 19, 2007

Effective date: Dec. 19, 2007

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

Action taken: The commission, on Dec. 12, 2007, adopted an order rejecting Central Hudson Gas & Electric Corporation's (Central Hudson,

NOTICE OF ADOPTION

Submetering of Electricity by Herbert E. Hirschfeld, P.E. on behalf of SP Park LLC

I.D. No. PSC-13-07-00012-A

Filing date: Dec. 20, 2007

Effective date: Dec. 20, 2007

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

Action taken: The commission, on Dec. 12, 2007, adopted an order in Case 07-E-0264 approving the petition of Herbert E. Hirschfeld, P.E. to submeter electricity at SP Park LLC 20 Park Ave., New York, NY, located in the territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of Herbert E. Hirschfeld, P.E. to submeter electricity at SP Park LLC 20 Park Ave., New York, NY.

Substance of final rule: The Commission approved the petition of Herbert E. Hirschfeld, P.E. to submeter electricity at SP Park LLC 20 Park Avenue, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-E-0264SA1)

NOTICE OF ADOPTION

Utility Plan Pertaining to Advanced Metering by Central Hudson Gas & Electric Corporation

I.D. No. PSC-18-07-00017-A

Filing date: Dec. 19, 2007

Effective date: Dec. 19, 2007

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

Action taken: The commission, on Dec. 12, 2007, adopted an order rejecting Central Hudson Electric & Gas Corporation’s automated meter reading pilot proposal and advanced metering infrastructure plan.

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

Subject: Utility plan for the implementation of a pilot program.

Purpose: To reject the implementation of the pilot program.

Substance of final rule: The Public Service Commission rejected Central Hudson Electric & Gas Corporation’s (Central Hudson) Automated Meter Reading Pilot Proposal and Advanced Metering Infrastructure Plan, and directed Central Hudson to file a revised metering pilot proposal, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (02-M-0514SA6)

NOTICE OF ADOPTION

Utility Plan Pertaining to Advanced Metering by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-18-07-00019-A

Filing date: Dec. 19, 2007

Effective date: Dec. 19, 2007

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

Action taken: The Commission, on Dec. 12, 2007, adopted an order directing Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities Inc. to file supplemental plans for the development and deployment of advanced electric and gas metering infrastructure.

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

Subject: Utility plan for the implementation of a pilot program.

Purpose: To direct supplemental filings for development and deployment of advanced electric and gas metering infrastructure.

Substance of final rule: The Public Service Commission adoption an order directing Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities Inc. to file supplemental plans for the development and deployment of advanced electric and gas metering infrastructure, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (02-M-0514SA8)

NOTICE OF ADOPTION

Major Rate Filing by National Fuel Gas Distribution Corporation

I.D. No. PSC-20-07-00019-A

Filing date: Dec. 21, 2007

Effective date: Dec. 21, 2007

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

Action taken: The commission, on Dec. 12, 2007, approved National Fuel Gas Distribution Corporation’s request to make various changes in the rates, charges, rules and regulations for gas service—P.S.C. No. 8.

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

Subject: Major rate filing.

Purpose: To approve the increase of annual gas revenues by \$1.8 million for delivery rate increase.

Substance of final rule: The Public Service Commission adopted an order approving National Fuel Gas Distribution Corporation to increase its natural gas delivery rates by \$1.8 million, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-G-0141SA1)

NOTICE OF ADOPTION

Transfer of Property by Niagara Mohawk Power Corporation d/b/a National Grid

I.D. No. PSC-31-07-00012-A

Filing date: Dec. 20, 2007

Effective date: Dec. 20, 2007

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

Action taken: The commission, on Dec. 12, 2007, adopted an order approving the petition of Niagara Mohawk Power Corporation d/b/a National Grid for the transfer of certain utility property and for related relief.

Statutory authority: Public Service Law, section 70

Subject: Transfer of property.

Purpose: To allow National Grid to transfer ownership of utility transformers.

Substance of final rule: The Commission adopted an order approving the petition of Niagara Mohawk Power Corporation d/b/a National Grid to

participate in the Edison Electric Institute Spare Transformer Equipment Program and authority to sell and transfer spare transformers required by its participation in the program, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-E-0683SA1)

NOTICE OF ADOPTION

Submetering of Electricity by 1094 Group, LLC

I.D. No. PSC-33-07-00007-A

Filing date: Dec. 20, 2007

Effective date: Dec. 20, 2007

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

Action taken: The commission, on Dec. 12, 2007, adopted an order in Case 07-E-0845 approving the petition filed by 1094 Group, LLC to submeter electricity at 132 Lakefront Blvd., Buffalo, NY, located in the territory of Niagara Mohawk Power Corporation d/b/a National Grid Corporation.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of 1094 Group, LLC to submeter electricity at 132 Lakefront Blvd., Buffalo, NY.

Substance of final rule: The Commission approved a petition by 1094 Group, LLC to submeter electricity at 132 Lakefront Boulevard, Buffalo, New York, located in the territory of Niagara Mohawk Power Corporation d/b/a National Grid Corporation.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-E-0845SA1)

NOTICE OF ADOPTION

Submetering of Electricity by 53rd and 2nd Associates, LLC

I.D. No. PSC-33-07-00008-A

Filing date: Dec. 20, 2007

Effective date: Dec. 20, 2007

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

Action taken: The commission, on Dec. 12, 2007, adopted an order in Case 07-E-0857 approving the petition of 53rd & 2nd Associates, LLC, to submeter electricity at 250 E. 53rd St., New York, NY, located in the territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of 53rd & 2nd Associates, LLC, to submeter electricity at 250 E. 53rd St., New York, NY.

Substance of final rule: The Commission approved the petition of 53rd & 2nd Associates, LLC, to submeter electricity at 250 East 53rd Street,

New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-E-0857SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Herbert E. Hirschfeld, P.E., on behalf of The Jack Parker Corporation

I.D. No. PSC-33-07-00009-A

Filing date: Dec. 20, 2007

Effective date: Dec. 20, 2007

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

Action taken: The commission, on Dec. 12, 2007, adopted an order in Case 07-E-0865 approving the petition of Herbert E. Hirschfeld, P.E., on behalf of The Jack Parker Corporation to submeter electricity at 104-20, 104-40 and 104-60 Queens Blvd., Queens, NY, located in the territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of Herbert E. Hirschfeld, P.E. on behalf of The Jack Parker Corporation to submeter electricity at 104-20, 104-40 and 104-60 Queens Blvd., Queens, NY.

Substance of final rule: The Commission approved the petition of Herbert E. Hirschfeld, P.E. on behalf of The Jack Parker Corporation to submeter electricity at 104-20, 104-40 and 104-60 Queens Boulevard, Queens, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-E-0865SA1)

NOTICE OF ADOPTION

Extension of Deadline for Pole Audit

I.D. No. PSC-35-07-00004-A

Filing date: Dec. 19, 2007

Effective date: Dec. 19, 2007

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

Action taken: The commission, on Dec. 12, 2007, adopted an order approving the request of utility pole owners for a one-year extension in the deadline for the completion of audits for utility pole attachments.

Statutory authority: Public Service Law, sections 77(1) and 94(2)

Subject: Extension of the deadline for the utility pole audit.

Purpose: To approve an extension of the deadline for the utility pole audit as set out in the Aug. 6, 2004 order.

Substance of final rule: The Public Service Commission adopted an order approving the request of utility pole owners for a one-year extension in the deadline for the completion of audits for utility pole attachments, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(03-M-0432SA6)

NOTICE OF ADOPTION

Submetering of Electricity by Site 16/17 Development, LLC

I.D. No. PSC-37-07-00006-A

Filing date: Dec. 20, 2007

Effective date: Dec. 20, 2007

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

Action taken: The commission, on Dec. 12, 2007, adopted an order in Case 07-E-0931 approving the petition of Site 16/17 Development LLC, to submeter electricity at One and Two River Terrace, Battery Park City, NY, located in the territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of Site 16/17 Development LLC, to submeter electricity at One and Two River Terrace, Battery Park City, NY.

Substance of final rule: The Commission approved the petition of Site 16/17 Development LLC, to submeter electricity at One and Two River Terrace, Battery Park City, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(07-E-0931SA1)

NOTICE OF ADOPTION

Submetering of Electricity by 170 East 77th 1 LLC, et al.

I.D. No. PSC-37-07-00008-A

Filing date: Dec. 20, 2007

Effective date: Dec. 20, 2007

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

Action taken: The commission, on Dec. 12, 2007, adopted an order in Case 07-E-0960 approving the petition of 170 East 77th 1 LLC, 170 East 77th 2 LLC, 170 East 77th 3 LLC, 170 East 77th 4 LLC, 170 East 77th 5 LLC, 170 East 77th 6 LLC and 170 East 77th Realty Group LLC to submeter electricity at 170 E. 77th St., New York, NY, located in the territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of 170 East 77th 1 LLC, 170 East 77th 2 LLC, 170 East 77th 3 LLC, 170 East 77th 4 LLC, 170 East 77th 5 LLC, 170 East 77th 6 LLC and 170 East 77th Realty Group LLC to submeter electricity at 170 E. 77th Street, New York, NY.

Substance of final rule: The Commission approved the petition of 170 East 77th 1 LLC, 170 East 77th 2 LLC, 170 East 77th 3 LLC, 170 East 77th 4 LLC, 170 East 77th 5 LLC, 170 East 77th 6 LLC and 170 East 77th

Realty Group LLC to submeter electricity at 170 East 77th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(07-E-0960SA1)

NOTICE OF ADOPTION

Submetering of Electricity by 89 Murray Street Associates

I.D. No. PSC-38-07-00006-A

Filing date: Dec. 20, 2007

Effective date: Dec. 20, 2007

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

Action taken: The commission, on Dec. 12, 2007, adopted an order in Case 07-E-1015 approving the petition of 89 Murray Street Associates LLC and 101 Warren Street Associates LLC, to submeter electricity at 89 Murray St. and 101 Warren St., New York, NY, located in the territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of 89 Murray Street Associates LLC and 101 Warren Street Associates LLC, to submeter electricity at 89 Murray St. and 101 Warren St., New York, NY.

Substance of final rule: The Commission approved the petition of 89 Murray Street Associates LLC and 101 Warren Street Associates LLC, to submeter electricity at 89 Murray Street and 101 Warren Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(07-E-1015SA1)

NOTICE OF ADOPTION

Annual Reconciliation of Gas Expenses and Gas Cost Recoveries

I.D. No. PSC-41-07-00012-A

Filing date: Dec. 21, 2007

Effective date: Dec. 21, 2007

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

Action taken: The commission, on Dec. 12, 2007, adopted an order concerning the filings by various local gas distribution companies (LDC) and municipalities regarding their annual reconciliation of gas expenses and gas cost recoveries.

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

Subject: Annual reconciliation of gas expenses and gas cost recoveries.

Purpose: To consider the filings of various LDCs and municipalities regarding their annual reconciliation of gas expenses and gas cost recoveries.

Substance of final rule: The Commission adopted an order concerning the filings made by various local gas distribution companies and municipi-

palties regarding their Annual Reconciliation of Gas Expenses and Gas Cost Recoveries, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(07-G-1101SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Main Street Lofts, LLC

I.D. No. PSC-43-07-00018-A

Filing date: Dec. 20, 2007

Effective date: Dec. 20, 2007

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

Action taken: The commission, on Dec. 12, 2007, adopted an order in Case 07-E-1160 approving the petition of Main Street Lofts, LLC, to submeter electricity at 66 Main St., Yonkers, NY, located in the territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of Main Street Lofts, LLC, to submeter electricity at 66 Main St., Yonkers, NY.

Substance of final rule: The Commission approved the petition of Main Street Lofts, LLC, to submeter electricity at 66 Main Street, Yonkers, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(07-E-1160SA1)

NOTICE OF ADOPTION

Gas Rates by KeySpan Energy Delivery New York

I.D. No. PSC-44-07-00036-A

Filing date: Dec. 21, 2007

Effective date: Dec. 21, 2007

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

Action taken: The commission, on Dec. 19, 2007, adopted an order approving a new gas rate plan for The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York.

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

Subject: To establish gas rates.

Purpose: To establish a new gas rate plan for KeySpan Energy Delivery New York.

Substance of final rule: The Public Service Commission approved a new gas rate plan for The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-

1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(06-G-1185SA2)

NOTICE OF ADOPTION

Gas Rates by KeySpan Energy Delivery Long Island

I.D. No. PSC-44-07-00037-A

Filing date: Dec. 21, 2007

Effective date: Dec. 21, 2007

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

Action taken: The commission, on Dec. 19, 2007, adopted an order approving a new gas rate plan for KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island.

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

Subject: To establish gas rates.

Purpose: To establish a new gas rate plan for KeySpan Energy Delivery Long Island.

Substance of final rule: The Public Service Commission approved a new gas rate for KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(06-G-1186SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Additional Central Office Codes in the 315 Area Code Region

I.D. No. PSC-02-08-00006-P

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

Proposed action: The commission is considering options for making additional central office codes available in the 315 area code region.

Statutory authority: Public Service Law, section 97(2)

Subject: Options for making additional central office codes available in the 315 area code region.

Purpose: To consider options for making additional central office codes available in the 315 area code region.

Substance of proposed rule: The Commission is considering options for making additional central office codes available in the 315 area code region.

The North American Numbering Plan administrator (NANPA) advised the Commission in September 2007 that the 315 area code, serving all or part of eighteen northern and central New York counties is running out of assignable telephone numbers. NANPA's projected date for 315 area code exhaust is the third quarter of 2010. As a result, a Numbering Plan Area Code Relief Plan needs to be developed and implemented prior to that date in order to ensure code continued availability of telephone numbers in the 315 area code region beyond 2010.

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. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-C-1486SA1)

Department of State

EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

Installation of Pool Alarms and Carbon Monoxide Alarms

I.D. No. DOS-02-08-00001-EP

Filing No. 1399

Filing date: Dec. 19, 2007

Effective date: Dec. 19, 2007

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

Action taken: Repeal of section 1225.2 and addition of new Part 1228 to Title 19 NYCRR.

Statutory authority: Executive Law, sections 377 and 378

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

Specific reasons underlying the finding of necessity: This rule is adopted as an emergency measure to preserve public safety. This rule implements the provisions of paragraphs (b) and (c) of subdivision (14) of section 378 of the Executive Law, which requires that the New York State Uniform Fire Prevention and Building Code (the Uniform Code) provide that any residential or commercial swimming pool constructed or substantially modified after December 14, 2006 (except hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers) shall be equipped with an acceptable pool alarm capable of detecting a child entering the water and of giving an audible alarm. This rule also implements the amendment of subdivision (5-a) of section 378 of the Executive Law made by Chapter 438 of the Laws of 2005, which requires that the Uniform Code provide that every multiple dwelling constructed or offered for sale after August 9, 2005 shall have installed an operable carbon monoxide alarm.

The Introducer's Memorandum in Support of the bill that added paragraph (b) of subdivision (14) of section 378 of the Executive Law (Chapter 450 of the Laws of 2006) states, in pertinent part, that "drowning is the second leading cause of unintentional injury-related deaths in children between the ages of one and fourteen nation wide, and the third leading cause of injury-related deaths of children in New York. . . . (T)echnological advances have produced several different types of pool alarms designed to sound a warning if a child falls into the water. When used in conjunction with access barriers, these alarms provide greater protection against accidental pool drownings." This pool alarm provisions added by this rule are similar to the provisions added by an emergency rule which was filed on December 14, 2006 and expired on March 13, 2007, and by an emergency rule that was filed on April 5, 2007 and expired on June 21, 2007. (The exception for hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers are added by this rule pursuant to new paragraph (c) of Executive Law section 378, which was added by Chapter 75 of the Laws of 2007).

Executive Law section 378(5-a) was amended by Chapter 438 of the Laws of 2005 to require that the Uniform Code also provide for the installation of carbon monoxide alarms in multiple dwellings constructed or offered for sale after August 9, 2005. The Introducer's Memorandum in Support of Chapter 438 of the Laws of 2005 states, in pertinent part, that "(t)his legislation is aimed at preventing more unnecessary deaths due to carbon monoxide poisoning. . . . Chapter 257 of the laws of 2002 required

carbon monoxide alarms be installed in one and two family dwellings and in condominiums and cooperatives This bill requires multiple dwelling units of three or more families to install carbon monoxide alarms as well." The carbon monoxide alarm provisions to be added by this rule are similar to the provisions added by an emergency rule which was filed on December 14, 2006 and expired on March 13, 2007, and by an emergency rule that was filed on April 5, 2007 and expired on June 21, 2007. (Executive Law section 378(5-a) also requires the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002. The Uniform Code currently includes provisions [in section 1225.2 of Title 19 NYCRR] requiring the installation of carbon monoxide alarms in such occupancies. Said section 1225.2 is repealed by this rule. However, provisions requiring the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002 have been combined with the new provisions requiring the installation of carbon monoxide alarms in multiple dwellings constructed or offered for sale after August 9, 2005, and the combined carbon monoxide alarm provisions are included in a single section [section 1228.3] which is part of the new Part 1228 added by this rule.) Adoption of this rule on an emergency basis is necessary to protect public safety, to reduce the number of accidental drownings in swimming pools, the number of deaths and injuries due to carbon monoxide poisoning, and to satisfy the requirements of Executive Law section 378 (5-a) and (14)(b)-(c). At its meeting held on June 12, 2007, the State Fire Prevention and Building Code Council determined that adopting this rule on an emergency basis is necessary to preserve the public safety, and establishing the date of filing of this rule as the effective date of this rule is necessary to protect health, safety and security.

Subject: Installation of pool alarms in residential and commercial swimming pools and the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings.

Purpose: To implement Executive Law section 378(5-a) and 378(14)(b)-(c).

Public hearing(s) will be held at: 10:00 a.m. on Feb. 26, 2008 at Department of State, 10th Fl. Conference Rm., Alfred E. Smith State Office Bldg., 80 S. Swan St., Albany, NY 12210

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

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

Substance of emergency/proposed rule (Full text is posted at the following State website: http://www.dos.state.ny.us/proposed_regs/index.htm): This rule repeals section 1225.2 of Title 19 NYCRR and adds a new Part 1228 to Title 19 NYCRR.

Section 1225.2 of Title 19 NYCRR requires the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives. Said section 1225.2 is repealed by this rule. However, provisions which require the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002 have been combined with new provisions requiring the installation of carbon monoxide alarms in multiple dwellings, and the combined carbon monoxide alarm provisions are included in a single section (section 1228.3), which is part of new Part 1228 added by this rule.

New Part 1228 adds the following provisions to the State Uniform Fire Prevention and Building Code (the "Uniform Code"):

First, new section 1228.1 provides that Part 1228 is part of the Uniform Code. New section 1228.1 also specifies the relationship between new Part 1228 and the rule which was previously approved by the State Fire Prevention and Building Code Council (the "Code Council") and which amends that Uniform Code in its entirety (such rule being hereinafter referred to as the "Uniform Code Amendment"). Notice of Adoption of the Uniform Code Amendment was published in the October 3, 2007 edition of the State Register, and the Uniform Code Amendment will be effective on January 1, 2008. New section 1228.1 provides that (1) Part 1228 is not repealed by the Uniform Code Amendment; (2) Part 1228 will not be repealed by reason of the Uniform Code Amendment becoming effective (provided, however, that section new 1228.3, which contains the carbon monoxide alarm provisions, will be repealed when the Uniform Code

Amendment becomes effective); and (3) notwithstanding the fact that the Code Council has provided that during the transition period between adoption of the Uniform Code Amendment and the date on which the Uniform Code Amendment becomes effective, a person shall have the option of complying with the Uniform Code as it existed prior to the adoption of the Uniform Code Amendment or with the Uniform Code as it will be amended by the Uniform Code Amendment, such person must also comply with the provisions set forth in Part 1228.

Second, new section 1228.2 requires the installation of pool alarms in all commercial and residential swimming pools that are constructed, installed or substantially modified after December 14, 2006. New section 1228.2 provides that a hot tub or spa that is equipped with a safety cover that complies with ASTM F1346 (2003), and any other pool that is equipped with an automatic power safety cover that complies with ASTM F1346 (2003), need not be equipped with a pool alarm.

Third, new section 1228.3 requires the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling accommodations in condominiums and cooperatives constructed or offered for sale after July 30, 2002 and in multiple dwellings constructed or offered for sale after August 9, 2005. As indicated above, new section 1228.3 will be repealed when the Uniform Code Amendment becomes effective. The Uniform Code, as amended by the Uniform Code Amendment, includes provisions requiring the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling accommodations in condominiums and cooperatives constructed or offered for sale after July 30, 2002 and in multiple dwellings constructed or offered for sale after August 9, 2005, and such carbon monoxide alarm provisions will apply on and after the effective date of the Uniform Code Amendment.

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 March 17, 2008.

Text of rule and any required statements and analyses may be obtained from: Joseph Ball, Department of State, 41 State St., Albany, NY 12231-0001, (518) 474-6740, e-mail: Joseph.Ball@dos.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.

Summary of Regulatory Impact Statement

1. STATUTORY AUTHORITY.

Executive Law section 377(1) authorizes the State Fire Prevention and Building Code Council to periodically amend the provisions of the New York State Uniform Fire Prevention and Building Code ("Uniform Code").

Executive Law section 378(1) directs that the Uniform Code shall address standards for safety and sanitary conditions.

Executive Law section 378(14)(b) provides that the Uniform Code must require that residential and commercial swimming pools constructed or substantially modified after December 14, 2006 shall be equipped with an acceptable pool alarm capable of detecting a child entering the water and of giving an audible alarm.

Executive Law section 378(14)(c) provides that the Uniform Code must provide that a hot tub or spa equipped with a safety cover that complies with ASTM F1346 (2003), and any other pool equipped with an automatic power safety cover that complies with ASTM F1346 (2003), shall not be required to be equipped with a pool alarm.

Executive Law section 378(5-a), as amended by Chapter 438 of the Laws of 2005, provides that the Uniform Code must require multiple dwellings constructed or offered for sale after August 9, 2005 shall be equipped with carbon monoxide (CO) detectors.

This rule making adds provisions to the Uniform Code that (1) require the installation of pool alarms and (2) require the installation of CO alarms in multiple dwellings.

(Executive Law section 378(5-a) also provides that the Uniform Code must require the installation of CO alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002. The Uniform Code currently includes provisions [in section 1225.2 of Title 19 NYCRR] requiring the installation of CO alarms in such occupancies. Said section 1225.2 is repealed by this rule. However, provisions requiring the installation of CO alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002 and been combined with the new provisions requiring installation of CO alarms in multiple dwellings, and the combined CO alarm provisions are included in a single section [new section 1228.3] which is added by this rule.)

2. LEGISLATIVE OBJECTIVES.

The Legislative objectives sought to be achieved by this rule are (1) reducing the number of accidental drownings in swimming pools in this State and (2) reducing the number of deaths and injuries caused by CO poisoning in this State.

3. NEEDS AND BENEFITS.

This rule requires residential and commercial swimming pools (other than hot tubs and spas equipped with safety covers that comply with ASTM F1346 (2003) and other pools equipped with automatic power safety covers that comply with ASTM F1346 (2003)) installed, constructed or substantially modified after December 14, 2006 to be equipped with approved pool alarms. By requiring the use of pool alarms in swimming pools (or, in the case of hot tubs and spas, by requiring the use of safety covers), this rule should meet the objective and provide the benefit intended by the Legislature: a reduction in the number of accidental drownings.

This rule also requires the installation of CO alarms in multiple dwellings constructed or offered for sale after August 9, 2005. CO poisoning results from displacement of oxygen in the blood supply by carboxyhaemoglobin, reducing oxygen supply to the brain. In non fire situations, elevated CO levels may be caused by improperly installed or maintained fuel fired appliances, motor vehicles operated in enclosed garages, or appliances intended for outdoor use being used indoors during power failures. As CO is not detectable by the senses, its presence and concentration can only be determined by instruments.

A number of different sources, including those listed in the full Regulatory Impact Statement, were reviewed to develop an estimate of the annual number of fatalities attributable to unintentional, non fire, building source CO poisoning. Extrapolating the national data from these sources indicates that New York State (excluding New York City) could expect between 8 and 48 annual fatalities.

CO poisoning will affect the judgment and capability of persons to evacuate or take other appropriate actions well before concentrations reach fatal levels. In addition, in situations where CO poisoning does not result in death, it may cause significant injuries and long term health consequences. Extrapolating national data provided by CPSC indicates that New York State (excluding New York City) could expect approximately 400 injuries annually.

The rule provides that CO alarms shall be listed and labeled as complying with UL 2034 2002. Listing of alarm devices ensures their safety and compliance with performance standards. The sensitivity standard in UL 2034 is based on an alarm response to specified concentrations of CO (in parts per million) within specified time frames. These are based on limiting carboxyhaemoglobin saturation to 10 percent.

The rule addresses multiple dwellings constructed or offered for sale after August 9, 2005 (the date specified in the statute). While the initial benefits of installing CO alarms in the multiple dwellings specified in the statute will be limited, there will be a cumulative effect over a period of years as multiple dwellings are sold and newly constructed multiple dwellings replace older multiple dwellings.

4. COSTS.

The initial capital costs of complying with the pool alarm provisions added by this rule will include the cost of purchasing and installing the pool alarm. The cost of a typical surface wave sensor or subsurface disturbance sensor pool alarm suitable for most swimming pools (i.e., for regularly shaped pools up to 16' x 32') is estimated to be \$150 to \$200. Larger pools or irregularly shaped pools may require more than one such alarm. In the case of a large, complex shaped pool, a more sophisticated system may be required. It is estimated that a self-setting pool alarm system using invisible sonar technology and capable of protecting a large, complex shaped swimming pool would cost between \$5,000 and \$8,000. A pool alarm system for an Olympic-size pool may cost between \$35,000 and \$40,000. The annual costs of complying with the rule will include the costs of operating and maintaining the alarm. It is anticipated that these costs will be modest.

In the case of a hot tub or spa, the initial capital costs of complying with the rule will include the cost of purchasing and installing the safety cover. The Department of State estimates that the cost of a safety cover for a typical hot tub or spa is approximately \$450. The annual costs of complying with the rule will include the costs of operating and maintaining the cover. It is anticipated that these costs will be modest.

The initial costs of complying with the CO alarm provisions added by this rule include the cost of purchasing and installing the alarm. Cord or plug connected and battery operated CO alarms are available in home centers and over the internet for \$20 to \$50. Direct wired devices with

interconnection capability cost up to \$80. Installation costs in new construction are estimated to be not more than \$50 per device. The annual costs of complying with the rule will include the costs of operating and maintaining the alarms. It is anticipated that these costs will be modest.

There are no costs to the Department of State for the implementation of the rule. The Department is not required to develop any additional regulations or develop any programs to implement the rule.

There are no costs to the State of New York or to local governments for the implementation of this rule, except as follows:

First, if the State or any local government constructs, installs or substantially modifies a swimming pool, the State or such local government, as the case may be, will be required to install a pool alarm, and if the State or any local government constructs, installs or substantially modifies a hot tub or spa, the State or such local government, as the case may be, will be required to install a safety cover. Similarly, if the State or any local government constructs a new multiple dwelling or offers an existing multiple dwelling for sale, the State or such local government, as the case may be, will be required to install CO alarms.

Second, since this rule adds provisions to the Uniform Code, the authorities responsible for administering and enforcing the Uniform Code will be responsible for enforcing the provisions added by this rule, along with the other provisions of the Uniform Code. However, the need to verify the installation of required pool alarms (or, in the case of a hot tub or spa, the required safety covers) and the required CO alarms should not have a significant impact on the code enforcement process.

5. PAPERWORK.

This rule imposes no new reporting requirements. No new forms or other paperwork will be required as a result of this rule.

6. LOCAL GOVERNMENT MANDATES.

This rule does not impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district, except as follows:

First, any county, city, town, village, school district, fire district or other special district that owns or operates a swimming pool that is installed, constructed or substantially modified after December 14, 2006 will be required to comply with the pool alarm provisions added by this rule. Similarly, any county, city, town, village, school district, fire district or other special district that constructs a new multiple dwelling or sells an existing multiple dwelling will be required to comply with the CO alarm provisions added by this rule.

Second, since this rule adds provisions to the Uniform Code, cities, towns, villages and counties that are responsible for administering and enforcing the Uniform Code will be responsible for administering and enforcing the requirements of the rule, along with all other provisions of the Uniform Code.

The rule does not otherwise impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

7. DUPLICATION.

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

8. ALTERNATIVES.

Pool alarms. While the use of personal immersion alarms may provide supplemental protection in certain situations, such devices would not protect a child who was not wearing the device when he or she entered the water. Therefore, this rule provides that an alarm device which is located on person(s) or which is dependent on device(s) located on person(s) for its proper operation will not satisfy the requirements of the new provisions.

CO alarms. This rule requires installation of CO alarms in multiple dwellings constructed or offered for sale after August 9, 2005. Consideration was given to adopting a rule requiring all multiple dwellings be required to install CO detectors retroactively. This alternative was rejected at this time as it extends beyond the specific directive of the Legislature as set forth in subdivision (5) a) of Executive Law section 378.

9. FEDERAL STANDARDS.

There are no standards of the Federal Government which address the subject matter of the rule. The U.S. Consumer Product Safety Commission does recommend installation of CO alarms.

10. COMPLIANCE SCHEDULE.

Regulated persons will be able to achieve compliance with the pool alarm provisions added by this rule in the normal course of operations, either as part of the installation or construction of a new swimming pool or the substantial modification of an existing swimming pool.

Regulated persons will be able to achieve compliance with the CO provisions added by this rule in the normal course of operations, either as part of the construction process of a new multiple dwelling, as part of

routine maintenance of an existing multiple dwelling constructed after August 9, 2005, or as part of the transfer process for an existing multiple dwelling offered for sale.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The new section 1228.2 which is added to Title 19 NYCRR by this rule will apply to any small business and any local government that owns or operates a swimming pool that is installed, constructed or substantially modified after December 14, 2006. The Department of State has not been able to estimate the number of small businesses and local governments that own or operate swimming pools, but it is believed that a majority of the non-residential swimming pools in this State are owned or operated by small businesses or local governments. Small businesses that install construct or modify swimming pools and small businesses that sell swimming pool alarms will also be affected by this rule.

The new section 1228.3 which is added to Title 19 NYCRR by this rule will apply to any small business and any local government that constructs a "multiple dwelling" (as that term is defined in subdivision (5-a) of section 378 of the Executive Law) or offers a multiple dwelling for sale. The Department of State believes that the majority of multiple dwellings in this State are owned by small businesses.

The Uniform Code currently contains provisions (in section 1225.2 of Title 19 NYCRR) requiring the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives. Said section 1225.2 is repealed by this rule. However, provisions requiring the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002 have been combined with the new provisions requiring the installation of carbon monoxide alarms in multiple dwellings, and the combined carbon monoxide alarm provisions are included a single section (new section 1228.3) which is added by this rule.

Since this rule adds provisions to the Uniform Fire Prevention and Building Code (the "Uniform Code"), each local government that is responsible for administering and enforcing the Uniform Code will be affected by this rule. The Department of State estimate that approximately 1,604 local governments (mostly cities, towns and villages, as well as several counties) are responsible for administering and enforcing the Uniform Code.

2. COMPLIANCE REQUIREMENTS:

No reporting or record keeping requirements are imposed upon regulated parties by the rule. Small businesses and local governments subject to the rule will be required to install, use and maintain swimming pool alarms and carbon monoxide alarms in accordance with the rule's provisions. In cases where the installation, construction or substantial modification of a swimming pool involves the issuance of a building permit, the local government responsible for administering and enforcing the Uniform Code will be required to consider the pool alarm requirements of this rule when reviewing plans and inspecting work. When a multiple dwelling is constructed, the local government responsible for administering and enforcing the Uniform Code will be required to consider the carbon monoxide alarm requirements of this rule when reviewing plans and inspecting work.

3. PROFESSIONAL SERVICES:

No professional services will be required to comply with the rule.

4. COMPLIANCE COSTS.

Pool alarms. The initial capital costs of complying with the rule will include the cost of purchasing and installing the pool alarm. The cost of a typical surface wave sensor or subsurface disturbance sensor pool alarm suitable for most swimming pools (i.e., for regularly shaped pools up to 16' x 32') is estimated to be \$150 to \$200. Larger pools or irregularly shaped pools may require more than one such alarm. In the case of large, complex shaped pools, a more sophisticated system may be required. It is estimated that a self-setting pool alarm system using invisible sonar technology and capable of protecting a large, complex shaped swimming pool would cost between \$5,000 and \$8,000. A pool alarm system for an Olympic-size pool may cost between \$35,000 and \$40,000. The annual costs of complying with the rule will include the costs of operating and maintaining the alarm, which are anticipated to be modest.

In the case of a hot tub or spa, the initial capital costs of complying with the rule will include the cost of purchasing and installing the safety cover. The Department of State estimates the cost of a safety cover for a typical hot tub or spa is approximately \$450. The annual costs of complying with the rule will include the costs of maintaining the safety cover, which are anticipated to be modest.

Any variations in the initial capital cost of complying with the rule or in the annual cost of complying with the rule are likely to be attributable to variations in the size and configuration of the swimming pools to be protected, and not to the type or size of the small businesses and local governments that own the pools. To the extent that larger businesses and larger local governments may tend to own larger swimming pools, or more than one swimming pool, the total costs of compliance would be higher for larger entities and larger local governments.

Carbon monoxide alarms. The initial capital costs of complying with the rule will include the cost of purchasing and installing the carbon monoxide alarm(s). Cord or plug connected and battery operated carbon monoxide alarms are available in home centers and over the internet for \$20 to \$50. Direct wired devices with interconnection capability cost up to \$80. Installation costs in new construction are estimated to be not more than \$50 per device. With regard to the sale of an existing multiple dwelling, regulated parties must purchase and install a carbon monoxide alarm, with similar costs as described above. Such costs are not likely to vary for small businesses or local governments of different types and differing sizes.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

Pool alarms. It is economically and technologically feasible for regulated parties to comply with the rule. Except in the case of very large or complex shaped swimming pools, which may require a more sophisticated alarm system, this rule imposes no substantial capital expenditures. No new technology need be developed for compliance with this rule.

Carbon monoxide alarms. It is economically and technologically feasible for regulated parties to comply with the rule. No substantial capital expenditures are imposed and no new technology need be developed for compliance.

6. MINIMIZING ADVERSE IMPACT:

Pool alarms. The rule minimizes any potential adverse economic impact on regulated parties (including small businesses or local governments) by allowing several types of pool alarms on the market to be used. In the case of hot tubs and spas that fall within the Uniform Code's definition of "swimming pool," the rule minimizes any potential adverse impact by permitting providing that a hot tub or spa that is equipped with a safety cover need not be equipped with a pool alarm. Further, the rule provides that other swimming pools equipped with automatic power safety covers need not be equipped with a pool alarm.

The applicable statute (Executive Law section 378(14)(b)-(c)) requires that this rule apply to all swimming pools constructed or substantially modified after December 14, 2006 (except for hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers). The statute does not authorize the establishment of differing compliance requirements or timetables with respect to swimming pools owned or operated by small businesses or local governments. Hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers are exempt from this rule, as required by Executive Law section 378(14)(c); providing other exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(14)(b)-(c) and would endanger public safety.

Carbon monoxide alarms. The rule minimizes any potential adverse economic impact on regulated parties (including small businesses or local governments) by allowing for the installation of all types of carbon monoxide alarms, including those that are permanently connected to the building wiring system, those that are connected by cord or plug to the electrical system, and those that are battery operated. The applicable statute (Executive Law section 378(5-a)) requires that this rule apply to all multiple dwellings constructed or offered for sale after August 9, 2005. The statute does not authorize the establishment of differing compliance requirements or timetables with respect to multiple dwellings owned or operated by small businesses or local governments. Providing exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(5-a) and would endanger public safety.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department of State notified interested parties throughout the State of the adoption of the previous emergency rules that were similar to this rule by means of notices posted on the Department's website and notices published 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 which is currently distributed to approximately 5,500 subscribers, including local governments, design professionals and others involved in all aspects of the con-

struction industry. The Department of State will publish a notice of the emergency adoption of this rule and the proposed adoption of this rule on a permanent basis in a future edition of Building New York. In addition, the Department of State will post a notice of the emergency adoption of this rule and the proposed adoption of this rule on a permanent basis, and 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 the provisions of paragraphs (b) and (c) of subdivision (14) of section 378 of the Executive Law, as added by Chapter 450 of the Laws of 2006 and Chapter 75 of the Laws of 2007, respectively, by adding provisions to the Uniform Fire Prevention and Building Code ("Uniform Code") requiring that a pool alarm be installed in any residential or commercial swimming pool (other than a hot tub or spa equipped with a safety cover or other pool equipped with an automatic power safety cover) that is installed, constructed or substantially modified after December 14, 2006.

This rule also implements the provisions of subdivision (5-a) of section 378 of the Executive Law, as amended by Chapter 438 of the Laws of 2005, by adding provisions to the Uniform Code requiring that carbon monoxide alarms be installed in any "multiple dwelling" (as that term is defined in subdivision (5-a) of section 378 of the Executive Law) that is constructed or offered for sale after August 9, 2005.

Since the Uniform Code applies in all areas of the State (other than New York City), this rule will apply in all rural areas of the State.

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

The rule will not impose any reporting or recordkeeping requirements. The rule will impose the following compliance requirements:

Pool alarms. All residential and all commercial swimming pools that are installed, constructed or substantially modified after December 14, 2006 will be required to be equipped with an acceptable pool alarm that is capable of detecting a child entering the water and of giving an audible alarm, and such alarms will be required to be installed, used and maintained in accordance with the manufacturer's instructions. (Hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers will not be required to be equipped with pool alarms.) No professional services are likely to be needed in a rural area in order to comply with such requirements.

Carbon monoxide alarms. All multiple dwellings constructed or offered for sale after August 9, 2005 will be required to be equipped with one or more carbon monoxide alarms. In the case of a multiple dwelling that contains dwelling units, at least one carbon monoxide alarm must be installed in each such dwelling unit. In the case of a multiple dwelling that contains sleeping units, at least one alarm must be installed on each floor level that contains sleeping units and, in addition, at least one alarm must be installed in each sleeping unit that contains any fuel-fired or solid-fuel burning appliance, equipment or system. Since this rule permits the use of battery operated carbon monoxide alarms, no professional services that are likely to be needed in a rural area in order to comply with such requirements.

Executive Law section 378(5-a) also provides that the Uniform Code must require the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses and dwelling units constructed or offered for sale after July 30, 2002. The Uniform Code currently contains provisions (in section 1225.2 of Title 19 NYCRR) requiring the installation of carbon monoxide alarms in such occupancies. Section 1225.2 is repealed by this rule. However, provisions requiring the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002 have been combined with the new provisions requiring the installation of carbon monoxide alarms in multiple dwellings, and the combined carbon monoxide alarm provisions are included in a single section (section 1228.3) which is part of the new Part 1228 added by this rule.

3. COMPLIANCE COSTS.

Pool alarms. The initial capital costs of complying with the rule will include the cost of purchasing and installing the pool alarm. The cost of a typical surface wave sensor or subsurface disturbance sensor pool alarm suitable for most swimming pools (i.e., for regularly shaped pools up to 16' x 32') is estimated to be \$150 to \$200. Larger pools or irregularly shaped pools may require more than one such alarm. In the case of a large, complex shaped pool, a more sophisticated system may be required. It is estimated that a self-setting pool alarm system using invisible sonar technology and capable of protecting a large, complex shaped swimming pool

would cost between \$5,000 and \$8,000. A pool alarm system for an Olympic-size pool may cost between \$35,000 and \$40,000. The annual costs of complying with the rule will include the costs of operating and maintaining the alarm, which are anticipated to be modest.

A swimming pool (other than a hot tub or spa) equipped with an automatic power safety cover will not be required to be equipped with a pool alarm. However, this rule does not require the installation of an automatic power safety cover.

In the case of a hot tub or spa, the initial capital costs of complying with the rule will include the cost of purchasing and installing a safety cover. The Department of State estimates that the cost of a safety cover for a typical hot tub or spa is approximately \$450. The annual costs of complying with the rule will include the costs of maintaining the safety cover, which are anticipated to be modest.

Any variation in initial capital costs of complying and/or annual costs of complying with this rule for different types of public and private entities in rural areas will be attributable to the size and configuration of the swimming pools owned or operated by such entities, and not to nature or type of such entities or to the location of such entities in rural areas.

Carbon monoxide alarms. The initial capital costs of complying with the rule will include the cost of purchasing and installing the carbon monoxide alarm(s). Cord or plug connected and battery operated carbon monoxide alarms are available in home centers and over the internet for \$20 to \$50. Direct wired devices with interconnection capability cost up to \$80. Installation costs in new construction are estimated to be not more than \$50 per device. With regard to the sale of an existing multiple dwelling, regulated parties must purchase and install a carbon monoxide alarm, with similar costs as described above. Such costs are not likely to vary for different types of public and private entities in rural areas.

4. MINIMIZING ADVERSE IMPACT.

Pool alarms. Executive Law section 378(14)(b) makes no distinction between swimming pools located in rural areas and swimming pools located in non-rural areas. However, the economic impact of this rule in rural areas will be no greater than the economic impact of this rule in non rural areas, and the ability of individuals or public or private entities located in rural areas to comply with the requirements of this rule should be no less than the ability of individuals or public or private entities located in non-rural areas. Executive Law section 378(14)(b)-(c) requires that this rule apply to all swimming pools (other than hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers) constructed or substantially modified after the effective date of section 378(14)(b), which is December 14, 2006. The statute does not authorize the establishment of differing compliance requirements or timetables in rural areas. Providing exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(14)(b)-(c) and would endanger public safety.

Carbon monoxide alarms. Executive Law section 378(5-a) makes no distinction between multiple dwellings located in rural areas and multiple dwellings located in non-rural areas. However, the impact of this rule in rural areas will be no greater than the impact of this rule in non rural areas, and the ability of individuals or public or private entities located in rural areas to comply with the requirements of this rule should be no less than the ability of individuals or public or private entities located in non-rural areas. Executive Law section 378(5-a) requires that this rule apply to all multiple dwellings constructed or offered for sale after August 9, 2005. The statute does not authorize the establishment of differing compliance requirements or timetables in rural areas. Providing exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(5-a) and would endanger public safety.

5. RURAL AREA PARTICIPATION.

The Department of State notified interested parties throughout the State of the adoption of the previous emergency rules that were similar to this rule by means of notices posted on the Department's website and notices published 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 which is currently distributed to approximately 5,500 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry. The Department of State will publish a notice of the emergency adoption of this rule and the proposed adoption of this rule on a permanent basis in a future edition of Building New York. In addition, the Department of State will post a notice of the emergency adoption of this rule and the proposed adoption of this rule on a permanent basis, and the full text of this rule, on the Department's website.

Job Impact Statement

The Department of State has concluded after reviewing the nature and purpose of the rule that it will not have a "substantial adverse impact on jobs and employment opportunities" (as that term is defined in section 201-a of the State Administrative Procedures Act) in New York.

1. Pool alarms. The rule adds a new Part 1228 to Title 19 NYCRR. Part 1228 adds two new provisions to the Uniform Fire Prevention and Building Code ("Uniform Code"), one of which requires that residential and commercial swimming pools installed, constructed or substantially modified after December 14, 2006 be equipped with an pool alarm that is capable of detecting a child entering the water and giving an audible alarm. The pool alarms must be installed, used and maintained in conformance with the manufacturer's instructions. These provisions are added to satisfy the requirements of paragraphs (b) and (c) of subdivision (14) of section 378 of the Executive Law.

Pool alarms that satisfy the requirements of this rule are currently available. The cost of a typical surface wave sensor or subsurface disturbance sensor pool alarm suitable for most swimming pools (i.e., for regularly shaped pools up to 16' x 32') is estimated to be \$150 to \$200. Larger pools or irregularly shaped pools may require more than one such alarm. The cost of providing the appropriate surface wave sensor or subsurface disturbance sensor pool alarm(s) is considered to be modest, particularly when considered in relation to the cost of the typical swimming pool. It is anticipated that requiring pool alarms will have no significant adverse impact on jobs or employment opportunities in businesses that manufacture, install or construct the types of swimming pools that can be protected by such surface wave sensor or subsurface disturbance sensor pool alarm(s). It is also anticipated that requiring pool alarms may have a positive impact on employment opportunities in businesses that sell, install and service pool alarms.

In the case of a large, complex shaped swimming pool, a more sophisticated system may be required. At least one manufacturer produces a pool alarm system, using sonar technology, which is claimed to be suitable for pools of virtually any size or shape. The cost of such a system is estimated to be between \$5,000 and \$8,000. A sonar-based pool alarm system for an Olympic-size pool may cost between \$35,000 and \$40,000. In these cases, the cost of providing the appropriate pool alarm system may add between 5% and 10% to the cost of the pool to be protected. This may have some negative impact on the segment of the swimming pool industry that constructs large, complex shaped swimming pools that require the more expensive sonar pool alarm systems. However, based on information provided on the International Aquatic Foundation website (http://www.iafh2o.org/IAF_Statistics.asp), of the estimated 8,349,000 swimming pools in the United States, only 270,000, or less than 3.25%, are "commercial" swimming pools. Based on this information, it is estimated that less than 3.25% of swimming pools that will be installed, constructed or substantially modified after December 14, 2006 will be "commercial" swimming pools. It is also anticipated that many such "commercial" swimming pools will be of a size and shape that can be protected by the less expensive surface wave sensor or subsurface disturbance sensor pool alarms mentioned above and, accordingly, it is estimated that the percentage of new swimming pools that will require the more expensive sonar pool alarm systems will be much less than 3.25%. Therefore, it is anticipated that this rule will not have a substantial adverse impact on jobs and employment opportunities.

Hot tubs and spas equipped with safety covers and other pools equipped with automatic power safety covers are exempted from the pool alarm requirement by this rule.

2. Carbon monoxide alarms. The new Part 1228 added by this rule also adds a provision to the Uniform Code requiring that multiple dwellings constructed or offered for sale after August 9, 2005 be equipped with carbon monoxide alarms. The carbon monoxide alarm requirements were extended to multiple dwellings to satisfy the requirements of subdivision (5-a) of section 378 of the Executive Law, as amended by Chapter 438 of the Laws of 2005.

Executive Law section 378(5-a) also provides that the Uniform Code must require the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses, and dwelling units in condominiums and cooperatives constructed after July 30, 2002. The Uniform Code currently contains provisions (in section 1225.2 of Title 19 NYCRR) requiring the installation of carbon monoxide alarms in such occupancies. Said section 1225.2 is repealed by this rule. However, provisions requiring the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses and dwelling units in condominiums and cooperatives constructed or offered for sale after July 30, 2002 have been combined with the new

provisions requiring the installation of carbon monoxide alarms in multiple dwellings, and the combined carbon monoxide alarm provisions are set forth in a single section (section 1228.3) in new Part 1228 added by this rule.

For newly constructed multiple dwellings, the carbon monoxide alarms will be installed as part of the construction process. Carbon monoxide alarms must also be installed in existing multiple dwellings constructed after August 9, 2005. In existing multiple dwellings constructed on or before August 9, 2005, carbon monoxide alarms may be installed at any time after the rule takes effect, or installation may be postponed until the multiple dwelling is offered for sale. Any potential adverse economic impact on regulated parties is minimized by the provisions of the rule that allow the installation of all types of carbon monoxide alarms, including those that are permanently connected to the building wiring system, those that are connected by cord or plug to the electrical system, and those that are battery operated.

Once installed, the carbon monoxide alarms must be used and maintained in accordance with manufacturer's instructions.

The costs of purchasing, installing and maintaining the alarms is insignificant in comparison to the cost of construction of a typical new multiple dwelling and the sale price of a typical existing multiple dwelling that is offered for sale. Therefore, this rule should have no impact on jobs and employment opportunities related to the construction of new multiple dwellings or the sale of existing multiple dwellings.

AMENDED NOTICE OF ADOPTION

Uniform Fire Prevention and Building Code

I.D. No. DOS-02-07-00010-AA

Filing No. 1406

Filing date: Dec. 21, 2007

Effective date: Jan. 9, 2008

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

Action taken: Repeal of Parts 1220-1226 and addition of new Parts 1219-1227 to Title 19 NYCRR.

Amended action: This action amends the rule that was filed with the Secretary of State on September 14, 2007, to be effective January 1, 2008, File No. 1005. The notice of adoption, I.D. No. DOS-02-07-00010-A, was published in the October 3, 2007, issue of the *State Register*.

Statutory authority: Executive Law, sections 377 and 378

Subject: Standards for the construction and maintenance of buildings and structures and for protection from the hazards of fire (the New York State Uniform Fire Prevention and Building Code).

Purpose: To amend the New York State Uniform Fire Prevention and Building Code to assure that it effectuates the purposes of article 18 of the Executive Law and the specific objectives and standards set forth in such article.

Substance of amended rule: This Amended Notice of Adoption amends a previously adopted rule which amended and undated the State Uniform Fire Prevention and Building Code (the "Uniform Code"). Notice of Adoption of the previously adopted rule was published in the *State Register* on October 3, 2007. The previously adopted rule will become effective on January 1, 2008. The previously adopted rule, as amended by this Amended Notice of Adoption, is summarized as follows:

Section 377 of the Executive Law directs the State Fire Prevention and Building Code Council (the "Code Council") to review the entire New York State Uniform Fire Prevention and Building Code (the "Uniform Code") from time to time to assure that it effectuates the purposes of the Law, and authorizes the Code Council to amend the Uniform Code from time to time to achieve that end. The rule making would repeal the existing version of the Uniform Code (which is now found in 19 NYCRR Parts 1220 to 1226, inclusive, and in the publications incorporated by reference therein) and replace it with a new version of the Uniform Code, to be contained in new 19 NYCRR Parts 1219 to 1227, inclusive, and the new publications to be incorporated therein by reference.

The new version of the Uniform Code will include eight components: the Residential Code (Part 1220), the Building Code (Part 1221), the Plumbing Code (Part 1222), the Mechanical Code (Part 1223), the Fuel Gas Code (Part 1224), the Fire Code (Part 1225), the Property Maintenance Code (Part 1226), and the Existing Building Code (Part 1227).

The Residential Code addresses one-and two-family dwellings and townhouses not more than three stories in height with a separate means of egress and their accessory structures.

The Building Code establishes life safety construction requirements for assembly, business, educational, factory industrial, high hazard, institutional, mercantile, multi-family residential, storage and utility and miscellaneous buildings.

The Plumbing Code, Mechanical Code and Fuel Gas Code address the erection, installation, alteration, repair, relocation, replacement, addition to, use or maintenance of plumbing systems, mechanical systems and fuel gas systems.

The Fire Code provides requirements for life safety and property protection from the hazards of fire, explosion or dangerous conditions in new and existing buildings.

The Property Maintenance Code provides minimum requirements to safeguard public safety, health and general welfare insofar as they are affected by the occupancy and maintenance of structures and premises.

The Existing Building Code provides minimum requirements to safeguard public safety, health and general welfare insofar as they are affected by the repair, alteration, change of occupancy, addition and relocations of existing buildings.

The Uniform Code will also include additional provisions not included in Parts 1220 to 1227 and in the publications incorporated therein by reference. Those additional provisions will be contained in 19 NYCRR Part 1228. Part 1228 will be added by separate rule makings.

Amended rule as compared with adopted rule: Nonsubstantive revisions were made in sections 1219.1, 1220.1, 1221.1, 1221.2(a), 1222.1, 1222.2(b), 1223.1, 1223.2(a), 1224.1, 1224.2(a), 1225.1, 1226.1, 1227.1 and 1227.2(c).

Additional matter required by statute: At its meeting held at Albany, New York on December 12, 2007, the Code Council found and determined that making this rule amending the previously adopted rule effective immediately upon publication of the Amended Notice of Adoption in the *State Register* is necessary to protect health, safety and security.

Text of amended rule and any required statements and analyses may be obtained from: Raymond Andrews, Department of State, 41 State St., Albany, NY 12231, (518) 474-4073, e-mail: Raymond.Andrews@dos.state.ny.us

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

This rule amends a previously adopted rule that amended the State Uniform Fire Prevention and Building Code (the "Uniform Code") by repealing Parts 1220, 1221, 1222, 1223, 1224, 1225 and 1226 and adding new Parts 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226 and 1227 to Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York. Notice of Adoption of the previously adopted rule was published in the *State Register* on October 3, 2007. The effective date of the previously adopted rule is January 1, 2008.

The previously adopted rule incorporates by reference a number of publications, including the 2007 edition of the Residential Code of New York State (the "2007 RCNYS"), the 2007 edition of the Building Code of New York State (the "2007 BCNYS"), the 2007 edition of the Plumbing Code of New York State (the "2007 PCNYS"), the 2007 edition of the Mechanical Code of New York State (the "2007 MCNYS"), the 2007 edition of the Fire Code of New York State (the "2007 FCNYS"), the 2007 edition of the Property Maintenance Code of New York State (the "2007 PMCNYS"), and the 2007 edition of the Existing Building Code of New York State (the "2007 EBCNYS"). This rule makes nonsubstantive changes to the previously adopted rule, including nonsubstantive changes to certain provisions in the publications that were incorporated by reference in the previously adopted rule.

The nonsubstantive changes made to the rule text since publication of the Notice of Adoption include the following:

(1) 19 NYCRR section 1219.1 was amended to clarify that the Uniform Code includes the additional provisions set forth in part 1228, as well as the provisions set forth in Parts 1220 to 1227.

(2) 19 NYCRR sections 1220.1(a)(1), 1221.2(a), 1222.2(b), 1223.2(a), 1224.2(a), and 1227.2(c) were amended to clarify that the 2007 RCNYS applies to detached one- and two-family dwellings not more than three stories in height above grade with a separate means of egress, and their accessory structures.

(3) 2007 RCNYS Table R502.5(2), which was inadvertently omitted from the 2007 RCNYS, was added in 19 NYCRR section 1220.1(d)(1).

(4) Two erroneous entries in 2007 RCNYS Table R802.5.1(4) were corrected in 19 NYCRR section 1220.1(d)(2).

(5) An error in the caption of 2007 RCNYS section G2433 was corrected in 19 NYCRR section 1220.1(d)(3).

(6) An error in 2007 RCNYS section P2602.1.1 was corrected in 19 NYCRR section 1220.1(d)(4).

(7) Exceptions from the requirements of provision of a supply of potable water and provision of electrical power for owner occupied one-family dwellings, provided that the code enforcement official shall have approved such exceptions, which were inadvertently omitted from 2007 RCNYS sections P2901.1 and E3301.5, were added in 19 NYCRR sections 1220.1(d)(5) and 1220.1(d)(6).

(8) To provide uniform definitions of the term "swimming pool" throughout the Uniform Code, the definition in section AG102.1 of the 2007 RCNYS was amended in 19 NYCRR section 1220.1(d)(7); the definition in section 3109.2 of the 2007 BCNYS was amended in 19 NYCRR section 1221.1(d)(2); and the definition in section 202 of the 2007 PCNYS was amended in 19 NYCRR section 1222.1(c)(1).

(9) To provide provisions regarding gates in swimming pool enclosures as required by Executive Law section 378(14)(a), the provisions in section AG105.2 of 2007 RCNYS were amended in 19 NYCRR section 1220.1(d)(8); the provisions in section 3109.4.1.7 of the 2007 BCNYS were amended in 19 NYCRR section 1221.1(d)(3); and the provisions in section 303.3.8 of the 2007 PCNYS were amended in 19 NYCRR section 1226.1(e)(1).

(10) An erroneous entry in Table 601 in the 2007 BCNYS was corrected in 19 NYCRR section 1221.1(d)(1).

(11) An error in section 411.1 of the 2007 PCNYS was corrected in 19 NYCRR section 1222.1(c)(2).

(12) Provisions relating to approved portable kerosene heaters, which were inadvertently omitted from the 2007 MCNYS, were added in 19 NYCRR section 1223.1(c)(1).

(13) An error in Table 503.4 in the 2007 FCNYS was corrected in 19 NYCRR section 1224.1(c)(1).

(14) A reference to standard NFPA 1142-2001 was added to the 2007 FCNYS in 19 NYCRR section 1225.1(c)(4).

(15) A reference to standard NFPA 96-2004 was added to the 2007 FCNYS in 19 NYCRR section 1225.1(c)(5).

(16) An error in section 508.2 of the 2007 FCNYS was corrected in 19 NYCRR section 1225.1(d)(1).

(17) An error in section 1028.11.3.1 of the 2007 FCNYS was corrected in 19 NYCRR section 1225.1(d)(2).

(18) An error in section 706.1 of the 2007 EBCNYS was corrected in 19 NYCRR section 1227.1(e)(1).

The original Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, Rural Area Flexibility Analysis, and Job Impact Statement, or summaries thereof, relating to the previously filed rule were published in the State Register on January 10, 2007. A Revised Regulatory Impact Statement was previously prepared, and a Summary of the Revised Regulatory Impact Statement was published in the State Register on February 28, 2007. None of the non-substantive changes made to the previously adopted rule by this rule affects the issues addressed in the Regulatory Impact Statement, the Revised Regulatory Impact Statement, the Regulatory Flexibility Analysis for Small Businesses and Local Governments, the Rural Area Flexibility Analysis, or the Job Impact Statement; therefore, no further revision of the Regulatory Impact Statement is necessary and no revision of the Regulatory Flexibility Analysis for Small Businesses and Local Governments, Rural Area Flexibility Analysis, or Job Impact Statement is necessary.

fied exception to the consumptive use approval requirements for agricultural water use projects. Also, an error in the "Authority" citation for Part 808 is corrected.

DATES: These rules shall be effective March 15, 2008.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, 717-238-0423; Fax: 717-238-2436; e-mail: rcairo@srbc.net. Also, for further information on the final rulemaking, visit the Commission's web site at www.srbc.net.

SUPPLEMENTARY INFORMATION:

Background and Purpose of Amendments

Since 1995, SRBC has continued to suspend the application of its consumptive use regulation to agricultural water uses pending the implementation of a mitigation method that is more suited to agriculture's unique circumstances.

The Commission's member states have taken definitive steps to support projects that will provide storage and release of water to mitigate agricultural water use in their jurisdictions and thus satisfy the standards for consumptive use mitigation set forth in 18 CFR § 806.22. The final rulemaking will amend 18 CFR § 806.4 (a)(1) to provide an exception for agricultural water use projects from the consumptive use review and approval requirements of 18 CFR § 806.4 (a)(1) & (3), unless water is diverted for use beyond lands that are at least partially in the basin, and provided the Commission makes a determination that the state-sponsored projects are sufficient to meet the consumptive use mitigation standards contained in 18 CFR § 806.22.

A second amendment clarifies the definition of "agricultural water use" in 18 CFR §§ 806.3, 806.4 and 806.6 by inserting the word "products" after the word "turf." This will clarify that the maintenance of turf grass as part of a project or facility, such as a golf course, does not constitute an agricultural water use. Only the raising of turf products for sale such as sod would constitute an agricultural water use with this clarification.

A third amendment corrects an error made as part of the December 5, 2006 rulemaking in the "Authority" citation to Part 808 by replacing the erroneous Sec. 3.5(9) with the correct Sec. 3.4(9).

The Commission convened a public hearing on November 7, 2007 in Williamsport, PA and held the comment period open until November 15, 2007. No public comments were received.

List of Subjects in 18 CFR Parts 806 and 808: Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, under the authority of secs. 3.4, 3.5 (5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 *et seq.*, 18 CFR Parts 806 and 808 are amended as follows:

PART 806—REVIEW AND APPROVAL OF PROJECTS

Subpart A—General Provisions

1. The authority citation for Part 806 continues to read as follows: Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 *et seq.*

2. In § 806.3, revise the definition of "agricultural water use" to read as follows:

§ 806.3 Definitions.

Agricultural water use. A water use associated primarily with the raising of food, fiber or forage crops, trees, flowers, shrubs, turf products, livestock and poultry. The term shall include aquaculture.

3. In § 806.4, revise paragraph (a)(1) & (3) introductory text and paragraph (b)(3), to read as follows:

§ 806.4 Projects requiring review and approval

(a) ***

(1) *Consumptive use of water.* Any consumptive use project described below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.22, and, to the extent that it involves a withdrawal from groundwater or surface water, shall also be subject to the standards set forth in § 806.23. Except to the extent that they involve the diversion of the waters of the basin, public water supplies shall be exempt from the requirements of this section regarding consumptive use; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply from the requirements of this section. Provided the commission determines that low flow augmentation projects sponsored by the commission's member states provide sufficient mitigation for agricultural water use to meet the standards set forth in § 806.22, and except as otherwise provided below, agricultural water use projects

Susquehanna River Basin Commission

Susquehanna River Basin Commission

18 CFR Parts 806 & 808

Review and Approval of Projects

AGENCY: Susquehanna River Basin Commission (SRBC)

ACTION: Final Rule.

SUMMARY: This document contains amendments to project review regulations found at 18 CFR Part 806, Subpart A, General Provisions, §§ 806.3, 806.4 and 806.6. These amendments include language: 1) clarifying the definition of "agricultural water use;" and 2) providing a quali-

shall not be subject to the requirements of this paragraph (a)(1). Notwithstanding the foregoing, an agricultural water use project involving a diversion of the waters of the basin shall be subject to such requirements unless the property, or contiguous parcels of property, upon which the agricultural water use project occurs is located at least partially within the basin.

(3) *Diversions.* Except with respect to agricultural water use projects not subject to the requirements of paragraph (a)(1), the projects described below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.24. The project sponsors of out-of-basin diversions shall also comply with all applicable requirements of this part relating to consumptive uses and withdrawals.

(b) ***

(3) Transfer of land used primarily for the raising of food, fiber or forage crops, trees, flowers, shrubs, turf products, livestock, or poultry, or for aquaculture, to the extent that, and for so long as, the project's water use continues to be for such agricultural water use purposes.

3. In § 806.6, revise paragraph (b)(3) to read as follows:
§ 806.6 Transfers of approval

(b) ***

(3) A project involving the transfer of land used primarily for the raising of food, fiber or forage crops, trees, flowers, shrubs, turf products, livestock or poultry, or for aquaculture, to the extent that, and for so long as, the project's water use continues to be for such agricultural water use purposes.

PART 808—HEARINGS AND ENFORCEMENT ACTIONS

5. Revise the authority citation for Part 808 to read as follows:

Authority: Secs. 3.4 (9), 3.5 (5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 *et seq.*

Office of Temporary and Disability Assistance

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Recertification of Public Assistance Recipients

I.D. No. TDA-02-08-00002-P

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

Proposed action: Amendment of sections 351.21(b), (c) and (f)(5) and 351.22(a), (b), (c)(1) and (f) and addition of section 351.22(b)(3) to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 131(1), 134-a(3) and 355(3)

Subject: Recertification of public assistance recipients.

Purpose: To provide local social services districts the opportunity to request waivers from the New York State Office of Temporary and Disability Assistance of certain face-to-face recertification interviews for public assistance recipients.

Text of proposed rule: Subdivision (b) of section 351.21 is amended to read as follows:

(b) All variable factors of need and eligibility shall be reconsidered, reevaluated and verified at least once in every:

(1) three months, in cases of [Aid to Dependent Children] *Family Assistance (FA)* when eligibility is based on the unemployment of a parent; and

(2) six months, in cases of [Aid to Dependent Children] *FA* when eligibility is not based on the unemployment of a parent and in cases of [Home Relief] *Safety Net Assistance (SNA)*.

Subdivision (c) of section 351.21 is amended to read as follows:

(c) *Unless the social services district has an Office approved alternative recertification requirement,* [The social services] *the* district [shall] *must* use the State-prescribed form in the recertification process and [shall] *must* require:

(1) a face-to-face interview with the recipient for each recertification; and

(2) a face-to-face interview by the end of the third calendar month following the month of acceptance for all new and reopened [ADC] *FA* and [HR] *SNA* cases.

Paragraph (5) of subdivision (f) of section 351.21 is amended to read as follows:

(5) Special categorical requirements. There shall be review of factors of categorical eligibility which are subject to change, such as further impairment, recovery or improvement in the condition of an incapacitated parent, return of an absent parent, termination of eligibility of children because of age or leaving school, and obtaining employment. In review of a [Home Relief] *SNA* case, entitlement to assistance under a federally aided category shall be considered.

Subdivision (a) of section 351.22 is amended to read as follows:

(a) In all programs of public assistance, there shall be face-to-face recertification interviews, and contacts as needed in excess of the minimum required by [department] *Office* regulations shall be made in cases where there is indication of change in need or resources.

Subdivision (b) of section 351.22 is amended to read as follows:

(b) Failure to appear at the face-to-face interviews *or comply with an Office approved alternative recertification requirement.* If a recipient fails to appear *or comply with an Office approved alternative recertification requirement,* without good cause, the social services official [shall] *must* send a 10-day notice of proposed discontinuance of assistance on a form required by the [department] *Office.*

(1) If the recipient does not respond within this 10-day period, the case shall be closed as of the end of the 10-day notice period. Any request for assistance made after a case is closed [shall] *must* be considered a new application.

(2) If the recipient appears for a face-to-face interview during the 10-day notice period, an interview [shall] *must* be arranged. If it is determined that [he] *the recipient* is eligible for continued assistance, the 10-day notice of proposed discontinuance [shall] *must* be nullified.

Paragraph (3) of subdivision (b) of section 351.22 is added to read as follows:

(3) *If the recipient complies with an Office approved alternative recertification requirement during the 10-day notice period, the recipient's eligibility information must be reviewed. If it is determined that the recipient is eligible for continued assistance, the 10-day notice of proposed discontinuance must be nullified.*

Paragraph (1) of subdivision (c) of section 351.22 is amended to read as follows:

(1) Social services districts which use eligibility mailout questionnaires must develop plans outlining the eligibility mailout process which is to be used, consistent with the provisions of paragraph (2) of this subdivision. Such plans must be submitted to and approved by this [department] *Office* before a social services district's mailout process can be implemented. Concurrently with the submission of the plan, or anytime thereafter, a social services district may request, and the [department] *Office* may approve, a waiver of the provisions set forth in subparagraphs (i) and (ii) of paragraph (2) of this subdivision. The [department] *Office* may rescind the approval of any eligibility mailout plan or suspend such process when circumstances make such action appropriate.

Subdivision (f) of section 351.22 is amended to read as follows:

(f) When a social services district verifies ineligibility or a change which results in a decrease in need, it shall immediately initiate action to reduce the grant for the appropriate payment month and to notify the recipient of the proposed change in his assistance grant in accordance with [department] *Office* regulations. When the verified data indicates an increase in need, action shall be taken immediately to increase the grant for the next payment period possible under the existing payment procedure. An appropriate entry shall be made in the case record of any such change in grant, and the basis for it. Such reduction or increase in grant involves a reauthorization for a continuing grant in a different amount, while a discontinued grant may involve the following action:

Text of proposed rule and any required statements and analyses may be obtained from: Jeanine Stander Behuniak, Office of Temporary and Disability Assistance, 40 N. Pearl St., 16C, Albany, NY 12243-0001, (518) 474-9779, e-mail: Jeanine.Behuniak@otda.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:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Department of Social Services to establish rules, regulations and policies to carry out its powers and duties. Section 122 of Part B of Chapter 436 of the Laws of 1997 reorganized the Department of Social Services into the Department of Family Assistance with two distinct offices, the Office of Children and Family Services and the Office of Temporary and Disability Assistance (OTDA). The functions of the former Department of Social Services concerning the public assistance programs were transferred by Chapter 436 to OTDA.

Section 34(3)(f) of the SSL requires the Commissioner of the Department of Social Services to establish regulations for the administration of public assistance and care within the State. Section 122 of Part B of Chapter 436 of the Laws of 1997 provided that the Commissioner of the Department of Social Services would serve as the Commissioner of OTDA.

Section 131(1) of the SSL requires local social services districts, insofar as funds are available, to provide adequately for those unable to maintain themselves, in accordance with the provisions of the SSL.

Section 134-a(3) of the SSL requires that applicants and recipients of public assistance and care be interviewed personally at a time and in a manner provided by the regulations of OTDA.

Section 355(3) of the SSL requires OTDA to promulgate regulations necessary to carry out the provisions of the SSL concerning family assistance.

2. Legislative objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that eligible individuals and families are provided with opportunities for sustained economic stability and for growth through gainful employment.

3. Needs and benefits:

State regulations generally require local districts to recertify Public Assistance (PA) recipients at face-to-face recertification interviews once every six months. The proposed amendments provide for a potential district waiver of face-to-face recertification requirements subject to OTDA approval.

These waivers will not be individually based, instead they will be category/grouping based. OTDA has developed some parameters to exclude cases that are generally considered error prone under quality control standards. Local districts will then have general discretion outside of the initial parameter exclusions to design waiver requests. Local districts will be able to use their local experience and knowledge to design waiver requests that best suit their unique circumstances. The waiver requests designed by the local districts will then be submitted to OTDA, reviewed and, if appropriate, approved by OTDA.

There are a number of benefits to allowing local districts to recertify PA recipients using methods other than face-to-face interviews once every six months. First and foremost, the use of other recertification methods allows districts to maximize their staff resources so that staff can remain focused upon the recipients who are most in need of face-to-face interviews. Those recipients with the greatest likelihood of changes would be called in for face-to-face interviews, and those with the least likelihood of changes could be evaluated by other methods, such as mail-in recertifications or telephone recertifications. By utilizing alternative methods that are equally effective, this approach reduces waiting times and eases security concerns in the local agencies, and it benefits recipients who have difficulties traveling to and from the local agencies. The amendments still will require local districts to see all recipients at face-to-face recertification interviews, but some not as frequently as others.

Based on prior contacts with the local districts, it is anticipated that their waiver requests often will seek the waiver of one of the two annual face-to-face recertification interviews. Thus, if a district obtains an OTDA approved waiver pursuant to the proposed regulations, the district usually will have at least one face-to-face recertification interview each year with the PA recipient who is subject to the waiver, and it still will require documentation of eligibility every six months. The proposed amendments are intended to ease the burdens on local districts and recipients, yet, at the same time, maintain local district and recipient accountability.

The proposed amendments also update the names of programs and the references to OTDA to reflect current terminology.

4. Costs:

It is anticipated that there will be no fiscal impact as a result of these regulatory changes. These amendments codify current practice and policy and will improve administrative efficiency.

5. Local government mandates:

These amendments will not impose any programs, services, duties or responsibilities upon the local districts because this alternative recertification approach is district optional.

6. Paperwork:

Local districts that have been approved for a waiver may use the State prescribed recertification form (DSS-3174), which recipients currently complete and bring to face-to-face recertifications. In addition, such districts will have the ability to use the Welfare Management System (WMS) to generate a State designed model mail-in recertification form.

Also local districts have options other than the mail-in process (e.g., telephone recertifications), and any districts choosing to develop alternative forms to facilitate their processes must request and receive approval to use additional new forms.

7. Duplication:

These proposed amendments do not duplicate, overlap or conflict with any existing State or Federal laws and regulations.

8. Alternatives:

The alternative is not to adopt these amendments and to unduly burden local districts and all PA recipients with two annual face-to-face recertification interviews that may not be necessary or the most efficient method to determine continuing eligibility for all PA recipients.

9. Federal standards:

These proposed amendments do not conflict with federal standards for public assistance.

10. Compliance schedule:

There is no compliance schedule because local districts may choose to request a waiver pursuant to the proposed amendments. They are not required to do so.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed amendments will have no impact on small businesses, but they will have an impact on the 58 local social services districts in the State. The proposed amendments will enable all local districts to request waivers of face-to-face recertification requirements for Public Assistance (PA) recipients. If a waiver request is approved by the Office of Temporary and Disability Assistance (OTDA), the local district will implement an alternative PA recertification process. This alternative recertification approach is district optional and will provide the local districts greater flexibility in the implementation of the PA recertification process.

2. Compliance requirements:

The proposed amendments will not impose any additional reporting, recordkeeping or other affirmative acts on small businesses or local districts because this alternative recertification approach is district optional.

3. Professional services:

The proposed amendments will not require small businesses or local districts to hire additional professional services.

4. Compliance costs:

It is anticipated that there will be no fiscal impact as a result of these regulatory changes. These amendments codify current practice and policy and will improve administrative efficiency.

5. Economic and technological feasibility:

Local districts have the economic and technological ability to comply with these regulations.

6. Minimizing adverse impact:

Since the waiver requests are optional, the proposed amendments will have no adverse impact on local districts and small businesses. For the local districts that receive waivers to use a mail-in recertification process, OTDA has developed a model mail-in recertification form. Such districts will have the ability to use the Welfare Management System (WMS) to generate the model mail-in recertification forms. This WMS form was developed by OTDA to ensure that the mail-in recertification forms contain all required information to assist recipients and to ease the local districts, timely dissemination of such forms.

7. Small business and local government participation:

A number of local districts already have OTDA approved waiver requests which allow them to substitute mail-in recertification forms for one of the two annual face-to-face recertification interviews for PA recipients. These districts have found the waivers to be an effective administrative tool in targeting select segments of the PA caseload that do not need to be seen for face-to-face recertification interviews twice each year. These amendments would not only allow the local districts to continue the prac-

tice of requesting waivers, but also provide them greater flexibility to propose recertification requirements that would best meet their needs.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed amendments will have an impact on the 44 rural social services districts in the State. The proposed amendments will enable these rural districts to request waivers of face-to-face recertification requirements for Public Assistance (PA) recipients. If a waiver request is approved by the Office of Temporary and Disability Assistance (OTDA), the rural district will implement an alternative PA recertification process. This alternative recertification approach is district optional and will provide the rural districts greater flexibility in the implementation of the PA recertification process.

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

Because the waiver requests are optional, the proposed amendments will not impose any additional reporting, recordkeeping, or other compliance requirements on the rural districts. Rural districts will not be required to hire additional professional services to comply with the proposal.

3. Costs:

The proposed amendments will not impose any initial or annual costs on the rural districts.

4. Minimizing adverse impact:

The proposed amendments will not have any adverse impact on rural districts. This proposal provides the rural districts an opportunity to propose PA recertification requirements that will better meet the districts needs. In addition, for rural districts which receive waivers to use a mail-in recertification process, OTDA has developed a model mail-in recertification form to help ensure that all forms contain the required information to assist recipients and to help ease the rural districts' administrative obligations.

5. Rural area participation:

A number of rural districts already have OTDA approved waiver requests which allow them to substitute mail-in recertification forms for one of the two annual face-to-face recertification interviews for PA recipients. These rural districts have found the waivers to be an effective administrative tool in targeting select segments of the PA caseload that do not need to be seen for face-to-face recertification interviews twice each year. These proposed amendments will allow the rural districts to continue the practice of requesting waivers and provide them greater flexibility in developing their alternative recertification processes.

Job Impact Statement

A job impact statement has not been prepared for the proposed regulatory amendments. It is evident from the nature and purpose of these amendments that they will not have an impact on jobs and employment opportunities in the State. The proposed amendments codify current practice and policy. The jobs of the workers in the local social services districts with existing waivers will not be impacted in any real way. The jobs of the workers in the districts which seek and obtain first-time waivers will not be impacted in a substantial manner.

Triborough Bridge and Tunnel Authority

NOTICE OF ADOPTION

New Crossing Charge Schedule for Use of Bridges and Tunnels

I.D. No. TBA-43-07-00005-A

Filing No. 1404

Filing date: Dec. 20, 2007

Effective date: Dec. 20, 2007

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

Action taken: Amendment of section 1021.1 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 553(5)

Subject: Establishment of a new crossing charge schedule for use of bridges and tunnels operated by Triborough Bridge and Tunnel Authority.

Purpose: To raise additional revenue.

Text or summary was published in the notice of proposed rule making, I.D. No. TBA-43-07-00005-P, Issue of October 24, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Joyce Mulvaney, Director of Public Affairs, Triborough Bridge and Tunnel Authority, 2 Broadway, 22nd Fl., New York, NY 10004, (646) 252-7416, e-mail: jmulvane@mtabt.org

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Workers' Compensation Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Health Insurers Matching Program

I.D. No. WCB-02-08-00003-P

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

Proposed action: Amendment of section 325-5.2 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117(1), 13(d) and (h) and 110-a(2)(g)

Subject: Health Insurers Matching Program.

Purpose: To clarify who may participate in the HIMP Program and to define the term collection agency.

Text of proposed rule: Section 325-5.2 of Title 12 NYCRR is hereby amended to read as follows: Only a health insurer or health benefits plan, as defined by paragraph (1) of subsection (d) of section 13 of the workers' compensation law, and its legal representatives, agents and contractors, shall be eligible to participate in this program. Collection agencies, and other like entities, are not eligible to participate in the match program, as defined in this Subpart. For the purpose of this Subpart, collection agencies and other like entities are defined as those agencies and entities that seek to recoup medical and hospital payments directly from the claimant.

Text of proposed rule and any required statements and analyses may be obtained from: Melissa R. Richburg, Workers' Compensation Board, 20 Park St., Rm. 401, Albany, NY 12207, (518) 486-9564, e-mail: OfficeofGeneralCounsel@wcb.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:

The Workers' Compensation Board (Board) is authorized to amend 12 NYCRR 325-5.2. Workers' Compensation Law (WCL) section 117(1) authorizes the Board to adopt reasonable rules and regulations consistent with, and supplemental to, the provisions of the WCL and Labor Law. WCL section 13(h)(3) authorizes the Chair of the Board to adopt rules and regulations to carry out the provisions of WCL sections 13(d)(1) and (2) and WCL section 13(h). WCL section 110-a(2)(g) allows health insurers or health benefit plans, including officers, employees, legal representatives, agents and contractors to have access to workers' compensation records which contain individually identifiable information. Such individuals must be acting within the scope of their duties in evaluating compensation records for the purpose of determining entitlement to reimbursement for payments made for medical and/or hospital services pursuant to subdivisions (d) and (h) of section thirteen of this chapter.

2. Legislative Objective:

By Chapter 924 of the Laws of 1990, and amended by Chapter 364 of the Laws of 1992, the Legislature created a mechanism whereby health insurers and health benefits plans that made payments for medical and/or hospital services are entitled to reimbursement for such payments. Payments must be made within the limits of the medical and hospital fee schedules if the Board determines that the claim is compensable. Pursuant

to WCL section 13(h) the Board is required to perform computer searches to identify injured employees who, with respect to the same injury or illness, have filed claims under the WCL and made claims to a health insurer eligible for reimbursement under WCL section 13(d). This program is known as the Health Insurers Matching Program (HIMP).

There are now a total of 26 health insurers and health benefits plans that participate in HIMP. All but one of the health insurers that participate in HIMP use a contractor or agent to perform computer matching with the Board and seek reimbursement from workers' compensation carriers or self-insured employers. The proposed rule would amend one provision of the regulations adopted in 1993 to implement Chapters 924 and 364, to make clear that agents and/or contractors of health insurers and health benefit plans are allowed to participate in the matching program, and to define what the Board considers "collection agencies" and other entities that are not allowed to participate in the matching program.

3. Needs and Benefits:

The purpose of the regulation is to define collection agencies and other like entities for the purpose of the matching program, and to make clear that agents and contractors of health insurers and health benefit plans are able to participate in the matching program.

The amendment is necessary because almost all of the health insurers and health benefits plans that participate in the matching process with the Board have agents or contractors. Some workers' compensation carriers object to reimbursing health insurers and health benefit plans on the basis that the health insurer's and health benefit plan's agents and contractors are collection agencies who are not allowed to participate in the matching process based on 325-5.2.

On June 11, 2007, the City of New York was granted a preliminary injunction in New York County Supreme Court against HealthCare Subrogation Group (HCSG), an agent of various health insurers, on the basis that HCSG is a collection agency and cannot participate in the matching program. The Justice in the case reserved decision until September 2007.

325-5.2 was never meant to bar agents and contractors of health insurers from participating in the matching program. WCL § 110-a(2)(g) specifically allows agents and contractors of health insurers access to workers' compensation files for the purpose of the matching program. The regulation needs to be amended so that it conforms to WCL § 110-a(2)(g), and to the reality of the matching program which is that most health insurers have agents and contractors performing work on their behalf for the purposes of the matching program.

When a workers' compensation claim is controverted, the potentially liable carrier is not required to pay any medical bills. Many times when a claim is controverted the provider will submit the bill to the claimant's health insurer while the controversy is ongoing. If the HIMP program is unwieldy and not a workable way for health insurers to receive reimbursement from compensation carriers, health insurers will deny payment whenever it appears that a claim is possibly work related. This situation will result higher medical costs for all insurers because claimants conditions will deteriorate and cause the need for additional and more expensive care at a later date.

Among the benefits expected from the amendment of this regulation are clarity and uniformity. A change to the regulation lets all participants in the matching program know that agents and contractors of health insurers are allowed to participate in the matching program.

Amending the regulation also places the regulation in conformance with WCL section 110-a(2)(g), which allows agents and contractors of health insurers access to workers' compensation files for the purpose of the matching program. Amending the regulation will drastically reduce disputed claims for reimbursement based on the argument that the agent/contractor of the health insurer is a collection agency. The amendment will allow health insurers to retain trust in the process which will allow claimants to continue to receive much needed medical treatment while their workers' compensation cases are pending.

4. Costs:

There are no additional costs for the Board envisioned for the amendment to 325-5.2. However, there may be additional costs for workers' compensation carriers, including self insured employers who rely on 325-5.2 to deny reimbursement to health insurers on the basis that their agents are collection agencies barred from participating in HIMP. Costs should not be significant because most workers' compensation carriers and self insured employers recognize that agents and contractors of health insurers are allowed to participate in HIMP. Furthermore, total costs for medical and hospital services are not actually increasing under the proposed regulation, but rather are being allocated in a different and more appropriate manner. It is possible that costs may actually be reduced as it is anticipated

that the amended rule will decrease the number of disputed reimbursement requests, which often result in filing for arbitration by the agent/contractor on behalf of the health insurer, and the payment of arbitration fees.

5. Local Government Mandates:

There are approximately 2300 local governments that are self insured for workers' compensation purposes. The proposed amendment to 525-5.2 will eliminate the inconsistency between the regulation and WCL section 110-a(2)(g), and as a result will bar self-insured local governments from arguing that agents and contractors of health insurers are collection agencies and are prohibited from participating in the matching program.

Most self insured local governments already recognize that WCL section 110-a(2)(g) gives agents and contractors of health insurers the legal right to participate in the matching program. Therefore, it is anticipated that the burden on self-insured local government will be minimal.

6. Paperwork:

No additional paper. In fact, paperwork should be reduced since there should be fewer applications filed for arbitration.

7. Duplication:

The matching program is a unique program administered solely by the Board.

8. Alternatives:

An alternative to amending 525-5.2 would be to keep the current regulation in place and rely on WCL section 110-a(2)(b). The Board has pursued this course since WCL section 110-a(2)(b) was enacted in October 2000. However, this course has proved unsatisfactory because some compensation carriers have consistently argued that agents and contractors of health insurers are not able to participate in the matching program. Some arbitrators have accepted this argument, and as of June 11, 2007, there is preliminary injunction in place in New York County which enjoins an agent of a health insurer from participating in arbitration under the matching program on the basis of 525-5.2. Doing nothing is no longer a viable option for the Board.

9. Federal Standards:

There are no federal standards applicable.

10. Compliance Schedule:

Affected parties will be able to achieve compliance with the rule upon its adoption.

Regulatory Flexibility Analysis

1. Effect of Rule:

Twenty-six health insurers and six agents representing multiple health insurers currently participate in the Health Insurers Matching Program (HIMP), which provides access to Workers' Compensation records for the purpose of determining a health insurer's entitlement to reimbursement from a Workers' Compensation carrier. Two of the six agents are small businesses. There are approximately 2300 local governments that are self insured for workers' compensation purposes.

The new 325-5.2 makes clear that agents and contractors of health insurers are allowed to participate in HIMP, and defines collection agencies as entities that seek to recoup medical and hospital payments directly from the claimant. The rule will benefit the small businesses participating in HIMP because they will no longer have to waste resources arguing that they be allowed to participate in HIMP.

The amendment of 325-5.2 will bring the regulation in line with WCL section 110-a(2)(g) which specifically allows agents and contractors access to workers' compensation files for the purposes of HIMP. As a result of the change, workers' compensation carriers including self insured local governments will no longer be able to argue that agents of health insurers are collection agencies and not allowed to participate in HIMP. Most self insured local governments recognize an agent's ability to participate in HIMP on behalf of a health insurer, and the proposed change should have a minimal effect on self insured local governments.

2. Compliance Requirements:

There are no reporting or recordkeeping requirements associated with the new 325-5.2.

3. Professional Services:

It is believed that no additional professional services will be needed to comply with the amendment to 325-5.2. Both small businesses and self insured local governments are already set up to process reimbursement requests under HIMP.

4. Compliance Costs:

The proposal to amend 325-5.2 will not impose any compliance costs on small businesses participating in HIMP. Self insured local governments who have used the old 325-5.2 to deny reimbursement may incur costs to the extent that they will have to reimburse health insurers, unless a substantive objection to reimbursement is raised. Only a few self insured local

governments use 325-5.2 to deny reimbursement, so compliance costs should be minimal.

5. Economic and Technological Feasibility:

The economic costs for the rule change are negligible and small businesses and local governments will be able to comply with the changes.

6. Minimizing Adverse Impact:

The proposal to amend 325-5.2 will not cause an adverse impact on any small business or local government. Currently, 325-5.2 conflicts with WCL section 110-a(2)(g) and has caused small businesses participating in HIMP economic hardships in the form of unnecessary court costs and arbitration fees. Amending 325-5.2 to conform to WCL section 110-a(2)(g) greatly reduces the adverse economic impact on small businesses participating in HIMP.

There is an adverse impact on self insured local governments who use 325-5.2 to deny reimbursement requests, and will now potentially have to make the appropriate reimbursement to the health insurer. Where a case has been established for a work related injury and reimbursement to the health insurer is otherwise proper, a self insured local government is not so much experiencing an adverse economic impact but rather is paying what it rightly owes pursuant to the workers' compensation law.

7. Small Business and Local Government Participation:

The Board is in regular contact with Health Insurers and their agents as well as several major workers' compensation carriers and self insured local governments regarding HIMP. On several occasions the Board has shared copies of proposed HIMP rule changes and invited comments, questions and concerns. As for the proposed change to 325-5.2, the Board has received comments from the two agents which are small businesses. Both agents are in favor of amending 324-5.2 to make clear that agents and contractors of health insurers are able to participate in HIMP. The Board has been in contact with a self insured local government regarding this amendment. The local government is of the opinion that the regulation does not require an amendment.

Rural Area Flexibility Analysis

1. Types and estimated numbers in rural areas:

The changes in the rule apply to all 26 health insurers and 6 agents who participate in HIMP, and to all workers' compensation carriers, including self insured employers throughout the state.

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

There are no reporting or recordkeeping requirements associated with the new 325-5.2.

No additional professional services will be needed to comply with the amendment to 325-5.2. Health insurers and their agents and workers' compensation carriers throughout the state are already set up to process reimbursement requests under HIMP.

3. Costs:

The proposal to amend 325-5.2 will not impose any compliance costs on health insurers and their agents that participate in HIMP. Workers' compensation carriers and self insured employers who use 325-5.2 to deny reimbursement may incur costs to the extent that they will have to reimburse health insurers for hospital and medical payments made unless a substantive objection to reimbursement is raised. Very few workers' compensation carriers use 325-5.2 to deny reimbursement, and compliance costs across the state should be minimal.

4. Minimizing adverse impact:

Health insurers and their agents, where ever located in the state, should not experience an adverse impact as a result of this rule change. In fact the amendment to 325-5.2 should minimize the adverse impact on agents caused by 325-5.2 which does not define collection agency and does not specifically indicate that agents and contractors of health insurers can participate in HIMP.

The adverse impact of workers' compensation carriers across the state should be minimal. Most workers' compensation carriers already recognize that WCL section 110-a(2)(g) allows agents and contractors of health insurers to participate in HIMP.

5. Rural area participation:

The Board is in regular contact with Health Insurers and their agents and contractors regarding HIMP. On several occasions the Board has shared copies of proposed HIMP rule changes and invited comments, questions and concerns. HIMP participants are not located in the rural areas of the state.

Job Impact Statement

The amendment to 325-5.2 will make clear that agents and/or contractors of insurers are allowed to access the information in the Health Insurers Matching Program (HIMP). It is apparent from the nature and purpose of

the rule that it will not have a substantial adverse impact on jobs or employment, and therefore a job impact statement is not required.