

RULE MAKING ACTIVITIES

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

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

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

Adirondack Park Agency

NOTICE OF ADOPTION

Official Map, Minor Corrections to Existing Regulations, Implement Existing Practice Regarding Permit Applications

I.D. No. APA-05-09-00003-A

Filing No. 548

Filing Date: 2009-05-19

Effective Date: 2009-06-03

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

Action taken: Amendment of sections 570.3, 572.4 and 575.4(c) of Title 9 NYCRR.

Statutory authority: Adirondack Park Agency Act, Executive Law, art. 27; Wild, Scenic and Recreational Rivers System Act, Environmental Conservation Law, section 15-2709; Freshwater Wetlands Act, Environmental Conservation Law, section 24-0801

Subject: Official Map, minor corrections to existing regulations, implement existing practice regarding permit applications.

Purpose: Define Official Map as electronic map at Agency, correct minor errors in existing regulations, and implement existing practice.

Text or summary was published in the February 4, 2009 issue of the Register, I.D. No. APA-05-09-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: John S. Banta, Counsel, NYS Adirondack Park Agency, PO Box 99, Ray Brook, NY 12977, (518) 891-4050, email: jsbanta@gw.dec.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Office of Children and Family Services

EMERGENCY RULE MAKING

Child Care Stimulus Regulations

I.D. No. CFS-22-09-00006-E

Filing No. 509

Filing Date: 2009-05-15

Effective Date: 2009-05-15

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

Action taken: Amendment of sections 404.5(b)(6), 415.2(a)(3)(vii)(c) and 415.9(j)(1); renumbering of section 415.9(j)(2) to 415.9(j)(3); and addition of new section 415.9(j)(2) to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 410 and title 5-C

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

Specific reasons underlying the finding of necessity: The emergency adoption of these regulations is necessary to protect the public health, safety and general welfare by allowing social services districts to address the expanded need for child care services by families affected by the extensive loss of jobs and employment opportunities as a result in the economic downturn of the State and national economy.

Subject: Child Care Stimulus Regulations.

Purpose: To revise the market rates and address the expanded need for child care services caused by the economic downturn.

Text of emergency rule: Subparagraphs (xviii) and (xix) of subparagraph (6) of paragraph (b) of section 404.5 of Title 18 are amended, and a new subparagraph (xx) is added to such paragraph, to read as follows:

(xviii) veterans' assistance payments made to or on behalf of certain Vietnam veterans' natural adult or minor children for any disability resulting from spina bifida suffered by such children; [and]

(xix) veterans' assistance payments made for covered birth defects to or on behalf of the adult or minor children of women Vietnam veterans in service in the Republic of Vietnam during the period beginning on February 28, 1961 and ending on May 7, 1975. Covered birth defects means any birth defect identified by the Veterans' Administration as a birth defect that is associated with the service of women Vietnam veterans in the Republic of Vietnam during the period on February 28, 1961 and ending on May 7, 1975, and that has resulted or may result in permanent physical or mental disability[.]; and

(xx) one-time \$250 payments made under the American Recovery and Reinvestment Act of 2009 to Social Security, Supplemental Security Income (SSI), Railroad Retirement Benefits and Veterans Disability Compensation or Pension Benefits recipients for 10 months from the date the payment was received, including the month payment was received.

A new subparagraph (c) of subparagraph (vii) of subparagraph (3) of paragraph (a) of section 415.2 of Title 18 is added to read as follows:

(c) a program to train workers in an employment field that currently is or is likely to be in demand in the near future, if the caretaker documents that he or she is a dislocated worker and is currently registered in such a program, provided that child care services are only used for the

portion of the day the caretaker is able to document is directly related to the caretaker engaging in such a program. For the purposes of this provision, a dislocated worker is any person who: has been terminated or laid off from employment; has received a notice of termination or layoff from employment that will occur within six months of such notice; or was self-employed but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters.

Subparagraph (1) of paragraph (j) of section 415.9 of Title 18 is amended and reads as follows:

(1) Effective [October 1, 2007] May 15, 2009, the following are the local market rates for each social services district set forth by the type of provider, the age of the child and the amount of time the child care services are provided per week.

Subparagraph (2) of paragraph (j) of section 415.9 of Title 18 is renumbered as subparagraph (3) and a new subparagraph (2) is added to read as follows:

(2) Upon the effective date of these regulations, there will be two market rates for the legally-exempt family child care and in-home child care categories, a standard market rate and an enhanced market rate. The standard market rate for legally-exempt family child care and in-home child care categories will be 65 percent of the applicable registered family day care market rate. The enhanced market rate for legally-exempt family child care and in-home child care categories will be 70 percent of the applicable registered family day care market rate. The enhanced market rate will apply to those caregivers of legally-exempt family child care and in-home child care who have provided notice to, and have been verified by, the applicable legally-exempt caregiver enrollment agency or by the district for those portions of the district that are not covered by a legally-exempt caregiver enrollment agency, as having completed ten or more hours of training annually in the areas set forth in section 390-a(3)(b) of the social services law. A social services district has the option, if it so chooses in the child care portion of its child and family services plan, to increase the enhanced market rate for eligible legally-exempt family child care and in-home child care categories to up to 75 percent of the applicable registered family day care market rate: (i) for all such providers; (ii) for those providers who were receiving the enhanced rate on the date of the regulations but only for the remainder of their current one-year enrollment period; or (iii) for those providers who were receiving the enhanced rate on the date of the regulations for the remainder of the time they remain enrolled and continue to meet the ten hour annual training requirement. The standard market rate will apply to all other caregivers of legally-exempt family child care and in-home child care.

Re-numbered subparagraph (3) of paragraph (j) of section 415.9 of Title 18 is amended and reads as follows:

[(2)] (3) The market rates are established in five groupings of social services districts. Except for districts noted as an exception in the market rate schedule, the rates established for a group apply to all districts in the designated group. The district groupings are as follows:

- Group A: Nassau, Putnam, Rockland, Suffolk, Westchester
- Group B: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins, Warren
- Group C: Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, Yates
- Group D: Albany, Dutchess, Orange, Ulster
- Group E: Bronx, Kings, New York, Queens, Richmond

GROUP A COUNTIES:
Nassau, Putnam, Rockland, Suffolk, and Westchester
DAY CARE CENTER

	Age of Child			
	Under 1½	1½-2	3-5	6-12
WEEKLY	\$314	\$280	\$250	\$262
Exceptions:				
Westchester	\$378	\$331	\$274	—
DAILY	\$70	\$62	\$55	\$54
Exceptions:				
Nassau	\$75	\$77	—	—
Suffolk	\$80	\$70	—	—
Westchester	\$75	\$70	\$58	—

PART-DAY	\$47	\$41	\$37	\$36
Exceptions:				
Nassau	\$50	\$51	—	—
Suffolk	\$53	\$47		
Westchester	\$50	\$47	\$39	—
HOURLY	\$8.88	\$9.48	\$8.81	\$9.17

	REGISTERED FAMILY DAY CARE AGE OF CHILD			
	Under 1½	1½-2	3-5	6-12
WEEKLY	\$250	\$250	\$250	\$250
Exceptions:				
Putnam	\$300	\$275	\$278	—
Suffolk	\$260	\$263	—	—
Westchester	\$300	—	\$331	—
DAILY	\$56	\$56	\$55	\$50
PART-DAY	\$37	\$37	\$37	\$33
HOURLY	\$8.00	\$8.89	\$7.75	\$8.00

	GROUP FAMILY DAY CARE AGE OF CHILD			
	Under 1½	1½-2	3-5	6-12
WEEKLY	\$260	\$255	\$250	\$250
Exceptions:				
Rockland	—	—	\$261	—
Westchester	\$275	\$275	\$266	\$276
DAILY	\$58	\$56	\$55	\$56
Exceptions:				
Westchester	—	\$60	\$60	\$60
PART-DAY	\$39	\$37	\$37	\$37
Exceptions:				
Westchester	—	\$40	\$40	\$40
HOURLY	\$8.00	\$8.00	\$8.00	\$8.00

	SCHOOL AGE CHILD CARE AGE OF CHILD			
	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$262
DAILY	\$0	\$0	\$0	\$54
PART-DAY	\$0	\$0	\$0	\$36
HOURLY	\$0	\$0	\$0	\$9.17

	LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE STANDARD RATE AGE OF CHILD			
	Under 1½	1½-2	3-5	6-12
WEEKLY	\$163	\$163	\$163	\$163
DAILY	\$36	\$36	\$36	\$33
PART-DAY	\$24	\$24	\$24	\$22
HOURLY	\$5.20	\$5.78	\$5.04	\$5.20

	LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE ENHANCED RATE AGE OF CHILD			
	Under 1½	1½-2	3-5	6-12
WEEKLY	[\$188]	[\$188]	[\$188]	[\$188]

	\$175	\$175	\$175	\$175
DAILY	[\$42]	[\$42]	[\$41]	[\$38]
	\$39	\$39	\$39	\$35
PART-DAY	[\$28]	[\$28]	[\$27]	[\$25]
	\$26	\$26	\$26	\$23
HOURLY	[\$6.00]	[\$6.67]	[\$5.81]	[\$6.00]
	\$5.60	\$6.22	\$5.43	\$5.60

GROUP B COUNTIES:
Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga,
Schenectady, Tompkins and Warren
DAY CARE CENTER

	AGE OF CHILD			
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$210	\$200	\$183	\$177
Exceptions:				
Saratoga	—	\$211	\$196	—
DAILY	\$50	\$48	\$43	\$38
Exceptions:				
Erie	—	—	\$44	—
Monroe	\$55	\$52	\$48	—
PART-DAY	\$33	\$32	\$29	\$25
Exceptions:				
Monroe	\$37	\$35	\$32	—
HOURLY	\$7.74	\$7.78	\$6.89	\$7.74

REGISTERED FAMILY DAY CARE
AGE OF CHILD

	AGE OF CHILD			
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$150	\$150	\$145	\$136
Exceptions:				
Erie	—	\$161	—	—
Ontario	\$164	\$169	—	—
Saratoga	\$169	\$165	\$160	\$143
Schenectady	\$170	\$160	\$150	\$150
DAILY	\$34	\$35	\$31	\$31
Exceptions:				
Columbia	\$35	—	—	—
Erie	\$38	\$38	\$34	\$34
Saratoga	\$35	—	—	\$33
Warren	—	—	—	\$33
PART-DAY	\$23	\$23	\$21	\$21
Exceptions:				
Erie	\$25	\$25	\$23	\$23
Saratoga	—	—	—	\$22
Warren	—	—	—	\$22
HOURLY	\$5.00	\$5.17	\$5.00	\$4.45

GROUP FAMILY DAY CARE
AGE OF CHILD

	AGE OF CHILD			
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$170	\$165	\$160	\$160
Exceptions:				
Erie	—	\$175	\$165	—
Schenectady	\$195	\$188	\$186	—
DAILY	\$38	\$35	\$35	\$33
Exceptions:				

Erie	—	—	—	\$34
PART-DAY	\$25	\$23	\$23	\$22
Exceptions:				
Erie	—	—	—	\$23
HOURLY	\$5.00	\$5.14	\$5.14	\$5.00

SCHOOL AGE CHILD CARE
AGE OF CHILD

	AGE OF CHILD			
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$177
DAILY	\$0	\$0	\$0	\$38
PART-DAY	\$0	\$0	\$0	\$25
HOURLY	\$0	\$0	\$0	\$7.74

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME
CHILD CARE STANDARD RATE

	AGE OF CHILD			
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$98	\$98	\$94	\$88
DAILY	\$22	\$23	\$20	\$20
PART-DAY	\$15	\$15	\$13	\$13
HOURLY	\$3.25	\$3.36	\$3.25	\$2.89

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME
CHILD CARE ENHANCED RATE

	AGE OF CHILD			
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	[\$113]	[\$113]	[\$109]	[\$102]
	\$105	\$105	\$102	\$95
DAILY	[\$26]	[\$26]	[\$23]	[\$23]
	\$24	\$25	\$22	\$22
PART-DAY	[\$17]	\$17	\$15	\$15
	\$16			
HOURLY	[\$3.75]	[\$3.88]	[\$3.75]	[\$3.34]
	\$3.50	\$3.62	\$3.50	\$3.12

GROUP C COUNTIES:

Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung,
Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee,
Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison,
Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie,
Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington,
Wayne, Wyoming, and Yates

DAY CARE CENTER

	AGE OF CHILD			
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$171	\$165	\$155	\$136
Exceptions:				
Niagara	—	—	—	\$138
DAILY	\$40	\$37	\$34	\$31
Exceptions:				
Broome	—	\$40	\$38	—
PART-DAY	\$27	\$25	\$23	\$21
Exceptions:				
Broome	—	\$27	\$25	—
HOURLY	\$5.44	\$5.06	\$5.25	\$5.23

REGISTERED FAMILY DAY CARE
AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$135	\$130	\$125	\$125
Exceptions:				
Clinton	—	—	—	\$135
Oneida	—	—	\$130	—
DAILY	\$31	\$31	\$30	\$30
Exceptions:				
Clinton	—	—	—	\$34
Sullivan	—	—	—	\$31
PART-DAY	\$21	\$21	\$20	\$20
Exceptions:				
Clinton	—	—	—	\$23
Sullivan	—	—	—	\$21
HOURLY	\$3.18	\$3.00	\$3.00	\$3.00

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$140	\$130	\$126	\$125
Exceptions:				
Oneida	\$150	\$150	\$135	—
Steuben	—	—	\$135	\$138
Washington	—	—	\$145	\$130
DAILY	\$34	\$33	\$31	\$30
PART-DAY	\$23	\$22	\$21	\$20
HOURLY	\$4.00	\$4.00	\$4.00	\$4.00

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$136
Exceptions:				
Niagara	—	—	—	\$138
DAILY	\$0	\$0	\$0	\$31
PART-DAY	\$0	\$0	\$0	\$21
HOURLY	\$0	\$0	\$0	\$5.23

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE *STANDARD RATE*

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$88	\$85	\$81	\$81
DAILY	\$20	\$20	\$20	\$20
PART-DAY	\$13	\$13	\$13	\$13
HOURLY	\$2.07	\$1.95	\$1.95	\$1.95

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE *ENHANCED RATE*

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	[\$101] \$95	[\$98] \$91	[\$94] \$88	[\$94] \$88
DAILY	[\$23] \$22	[\$23] \$22	[\$23] \$21	[\$23] \$21
PART-DAY	\$15	\$15	[\$15] \$14	[\$15] \$14
HOURLY	[\$2.39]	[\$2.25]	[\$2.25]	[\$2.25]

GROUP D COUNTIES:
Albany, Dutchess, Orange, and Ulster
DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$227	\$210	\$195	\$185
Exceptions:				
Dutchess	\$250	\$225	\$197	\$223
Orange	—	\$220	—	—
DAILY	\$51	\$47	\$44	\$44
Exceptions:				
Albany	—	\$50	\$45	—
PART-DAY	\$34	\$31	\$29	\$29
Exceptions:				
Albany	—	\$33	\$30	—
HOURLY	\$7.75	\$7.46	\$7.24	\$7.34

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$191	\$185	\$175	\$175
Exceptions:				
Dutchess	—	—	—	\$180
Orange	\$200	\$200	\$200	\$200
DAILY	\$44	\$41	\$38	\$38
Exceptions:				
Dutchess	—	\$45	\$44	\$45
Orange	—	—	\$40	\$44
PART-DAY	\$29	\$27	\$25	\$25
Exceptions:				
Dutchess	—	\$30	\$29	\$30
Orange	—	—	\$27	\$29
HOURLY	\$7.00	\$6.00	\$6.00	\$6.10

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$200	\$194	\$180	\$178
Exceptions:				
Orange	\$225	—	—	\$189
DAILY	\$45	\$45	\$43	\$40
Exceptions:				
Orange	\$54	—	\$45	\$44
PART-DAY	\$30	\$30	\$29	\$27
Exceptions:				
Orange	\$36	—	\$30	\$29
HOURLY	\$7.50	\$7.00	\$7.00	\$7.00

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$185
Exceptions:				
Dutchess	—	—	—	\$223
DAILY	\$0	\$0	\$0	\$44

PART-DAY	\$0	\$0	\$0	\$29
HOURLY	\$0	\$0	\$0	\$7.34

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE *STANDARD RATE*

	AGE OF CHILD			
	Under 1 ¹ / ₂	1 ¹ / ₂ -2	3-5	6-12
WEEKLY	\$124	\$120	\$114	\$114
DAILY	\$29	\$27	\$25	\$25
PART-DAY	\$19	\$18	\$17	\$17
HOURLY	\$4.55	\$3.90	\$3.90	\$3.98

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE *ENHANCED RATE*

	AGE OF CHILD			
	Under 1 ¹ / ₂	1 ¹ / ₂ -2	3-5	6-12
WEEKLY	[\$143] \$134	[\$139] \$130	[\$131] \$123	[\$131] \$123
DAILY	[\$33] \$31	[\$31] \$29	[\$29] \$27	[\$29] \$27
PART-DAY	[\$22] \$21	[\$21] \$19	[\$19] \$18	[\$19] \$18
HOURLY	[\$5.25] \$4.90	[\$4.50] \$4.20	[\$4.50] \$4.20	[\$4.59] \$4.27

GROUP E COUNTIES:
Bronx, Kings, New York, Queens, and Richmond
DAY CARE CENTER

	AGE OF CHILD			
	Under 1 ¹ / ₂	1 ¹ / ₂ -2	3-5	6-12
WEEKLY	\$370	\$255	\$224	\$185
DAILY	\$67	\$67	\$50	\$50
PART-DAY	\$45	\$45	\$33	\$33
HOURLY	\$17.64	\$17.00	\$16.21	\$12.18

REGISTERED FAMILY DAY CARE
AGE OF CHILD

	AGE OF CHILD			
	Under 1 ¹ / ₂	1 ¹ / ₂ -2	3-5	6-12
WEEKLY	\$160	\$150	\$150	\$141
DAILY	\$36	\$39	\$35	\$31
PART-DAY	\$24	\$26	\$23	\$21
HOURLY	\$16.00	\$11.11	\$13.20	\$13.06

GROUP FAMILY DAY CARE
AGE OF CHILD

	AGE OF CHILD			
	Under 1 ¹ / ₂	1 ¹ / ₂ -2	3-5	6-12
WEEKLY	\$175	\$175	\$160	\$150
DAILY	\$38	\$38	\$36	\$35
PART-DAY	\$25	\$25	\$24	\$23
HOURLY	\$16.41	\$15.17	\$11.73	\$17.14

SCHOOL AGE CHILD CARE
AGE OF CHILD

	AGE OF CHILD			
	Under 1 ¹ / ₂	1 ¹ / ₂ -2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$185
DAILY	\$0	\$0	\$0	\$50
PART-DAY	\$0	\$0	\$0	\$33

HOURLY	\$0	\$0	\$0	\$12.18
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LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE *STANDARD RATE*

	AGE OF CHILD			
	Under 1 ¹ / ₂	1 ¹ / ₂ -2	3-5	6-12
WEEKLY	\$104	\$98	\$98	\$92
DAILY	\$23	\$25	\$23	\$20
PART-DAY	\$15	\$17	\$15	\$13
HOURLY	\$10.40	\$7.22	\$8.58	\$8.49

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE *ENHANCED RATE*

	AGE OF CHILD			
	Under 1 ¹ / ₂	1 ¹ / ₂ -2	3-5	6-12
WEEKLY	[\$120] \$112	[\$113] \$105	[\$113] \$105	[\$106] \$99
DAILY	[\$27] \$25	[\$29] \$27	[\$26] \$25	[\$23] \$22
PART-DAY	[\$18] \$17	[\$19] \$18	\$17	\$15
HOURLY	[\$12.00] \$11.20	[\$8.33] \$7.78	[\$9.90] \$9.24	[\$9.80] \$9.14

SPECIAL NEEDS CHILD CARE

The rate of payment for child care services provided to a child determined to have special needs is the actual cost of care up to the statewide limit of the highest weekly, daily, part-day or hourly market rate for child care services in the State, as applicable, based on the amount of time the child care services are provided per week regardless of the type of child care provider used or the age of the child.

The highest full time market rate in the State is:

WEEKLY	\$378
DAILY	\$80
PART-DAY	\$53
HOURLY	\$17.64

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 12, 2009.

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

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (Office) to establish rules, regulations and policies to carry out the Office's powers and duties under the SSL.

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

Section 410 of the SSL authorizes a social services official of a county, city or town to provide day care for children at public expense and authorizes the Office to establish criteria for when such day care is to be provided.

Title 5-C (sections 410-u through 410-z) of the SSL governs the New York State Child Care Block Grant (NYSCCBG). It includes provisions regarding the use of funds by local social services districts, the types of families eligible for services, the amount of local funds that must be spent on child care services, and reporting requirements. OCFS is required to specify certain NYSCCBG requirements in regulation. Section 410-w(1)(e) permits social services districts to provide child care subsidies to those families with incomes up to 200 percent of the state income standard that the social services district designates in its Child and Family Services Plan as eligible for child care assistance in accordance with criteria established by OCFS. Section 410-x(4) of the SSL requires the Office to

establish, in regulation, the applicable market-related payment rate that will establish a ceiling for State and federal reimbursement for payments made under the NYSCCBG.

2. Legislative objectives:

The regulations support the legislative objectives underlying the child care subsidy programs to provide child care services to public assistance recipients and low income families when necessary to promote self-sufficiency and protect children. In addition, the regulations provide each social services district with greater local flexibility to provide child care services in the manner that best meets its needs during the current difficult fiscal times.

3. Needs and benefits:

The regulations address the federal requirement that one-time payments disbursed under the American Recovery and Reinvestment Act of 2009 (ARRA) to recipients of Social Security, Supplemental Security Income (SSI), Railroad Retirement Benefits and Veterans Disability Compensation or Pension Benefits be excluded as income for determining eligibility for any programs in receipt of federal funds.

The changes also address the expanded need for child care services by families affected by the extensive loss of jobs and employment opportunities resulting from the significant economic downturns of the state and national economies. The regulations benefit needy families by providing social services districts with an additional option to provide child care services to low-income families where the caretaker(s) is displaced from work and is participating in a training program needed to obtain employment in a new field. Social services districts may choose to provide subsidies to these dislocated workers so that they can obtain safe and affordable child care while they are retrained in skills that will enable them to rejoin the workforce in new employment.

Additionally, some districts have indicated that, in these difficult economic times, more families could be served without a negative impact on family access to child care if the enhanced child care market rate for legally-exempt family and in-home child care providers was lowered. Currently, there are two child care market rates established for legally-exempt family and in-home child care providers. One, the enhanced market rate, based on a 75 percent differential applied to the child care market rates established for registered family day care. The 75 percent reflects an incentive to legally-exempt providers to pursue a minimum of ten hours of approved training. Two, the standard market rate, based on a 65 percent differential applied to the child care market rates established for registered family day care. The 65 percent applies to legally-exempt family and in-home child care providers that have not obtained ten hours of training annually.

These regulations establish the enhanced market rate for legally-exempt family and in-home providers at a 70 percent differential applied to the child care market rates established for registered family day care so that social services districts have an ability to serve more families. However, the regulations allow those social services districts that want to pay a higher enhanced market rate the option to pay up to 75 percent of the applicable registered family day care market rate: (i) for all legally-exempt family and in-home providers; (ii) for those providers who were receiving the enhanced rate on the date of the regulations but only for the remainder of their current one-year enrollment period; or (iii) for those providers who were receiving the enhanced rate on the date of the regulations for the remainder of the time they remain enrolled and continue to meet the ten hour annual training requirement.

Neither social services districts nor child care providers should have to hire additional professional staff to implement these regulations.

4. Cost:

It is not anticipated that these regulations will result in any additional costs to the State or social services districts. All the social services districts received their allocations for federal and State funds under the New York State Child Care Block Grant for State fiscal year 2009-10. These funds are available to each district and the district may choose to serve optional categories of eligible individuals with the funds allocated to them. Social services districts are required to provide child care services to the optional categories of low-income families only to the extent that they have funds available to provide such services. Some social services districts also received preliminary estimates of their allocations of the additional federal child care subsidy funds made available under AARA.

5. Local government mandates:

All social services districts must not consider the one-time federal AARA payment when considering whether a family is eligible for services. In addition, a social services district that chooses to provide child care services to dislocated workers and/or to pay an enhanced market rate for legally-exempt providers of family child care or in-home child care above 70 percent of the registered family child care rate will have to amend the child care portion of its Child and Family Services Plan. If a district does not choose to pay 75 percent of the registered family child care rate for legally-exempt providers that are currently receiving the enhanced

market rate, the district must send a notice of the change in the payment rate to the families receiving services from such providers.

6. Paperwork:

A social services district that chooses to implement either of the new options provided under the regulations must submit an amendment to its Child and Family Services Plan. The Office has developed a template that a district may use if it chooses to amend its Plan.

7. Duplication:

The new requirements do not duplicate any existing State or federal requirements.

8. Alternatives:

The only alternative would be to not expand the delivery of child care services to needy families. This would adversely impact federal and State initiatives to support needy families affected by the recession and to stimulate the economy.

9. Federal standards:

The regulations are consistent with applicable federal regulations. The State remains in compliance with 45 CFR 98.43(a) and (b)(2) and (3) which require that the State establish payment rates that are sufficient to ensure equal access to comparable care received by unsubsidized families.

10. Compliance schedule:

These provisions must be implemented on the effective date of the regulations.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments:

The exclusion of the one-time payment of \$250 under the federal American Recovery and Reinvestment Act of 2009 (ARRA) to certain recipients for the determination of eligibility for social services programs, which receive federal funds, will not impact small businesses or local governments.

The expansion of categories of families that can be provided with child care subsidies would benefit employers including small businesses, as more families would be able to seek and accept employment. Also, local governments would benefit in the decreased dependence on temporary assistance as more families become or remain employed.

Legally-exempt family and in-home providers that have obtained ten hours of training and currently are receiving the enhanced rate of 75 percent of the registered family rate represent only a small fraction of legally-exempt providers caring for children whose families receive child care subsidies. These providers would be minimally impacted to the extent that a social services district does not select to continue to provide them with the enhanced rate of 75 percent of the registered family rate.

2. Compliance requirements:

All social services districts must not consider the one-time federal AARA payment when considering whether a family is eligible for services. In addition, a social services district that chooses to provide child care services to dislocated workers and/or to pay an enhanced market rate for legally-exempt providers of family child care or in-home child care above 70 percent of the registered family child care rate will have to amend the child care portion of its Child and Family Services Plan. The Office has developed a template that a district may use if it chooses to amend its Plan. If a district does not choose to pay 75 percent of the registered family child care rate for legally-exempt providers that are currently receiving the enhanced market rate, the district will need to send notice of the change in the payment rate to the families receiving services from such providers.

3. Professional services:

Neither social services districts nor legally-exempt family or in-home child care providers should have to hire additional professional staff in order to implement these regulations.

4. Compliance costs:

It is not anticipated that these regulations will result in any additional costs to the State or social services districts. All the social services districts received their allocations for federal and State funds under the New York State Child Care Block Grant for State fiscal year 2009-10. These funds are available to each district and the district may choose to serve optional categories of eligible individuals with the funds allocated to them. Social services districts are required to provide child care services to the optional categories of low-income families only to the extent that they have funds available to provide such services. Some social services districts also received preliminary estimates of their allocations of the additional federal child care subsidy funds made available under AARA.

5. Economic and technological feasibility:

The social services districts affected by the regulations have the economic and technological ability to comply with the regulations.

6. Minimizing adverse impact:

The regulations recognize that there may be differences in the needs among social services districts. To the extent allowed by statute, the regulations provide districts with flexibility in designing their child care subsidy programs in a manner that will best meet the needs of their communities.

7. Small business and local government participation:
 The regulatory changes were discussed with a workgroup of local social services districts, including rural districts, for advice on potential impact.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:
 The regulations will affect the 44 social services districts (districts) located in rural areas of the State and the child care providers located in those districts.

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

All social services districts must not consider the one-time federal AARA payment when considering whether a family is eligible for services. In addition, a social services district that chooses to provide child care services to dislocated workers and/or to pay an enhanced market rate for legally-exempt providers of family child care or in-home child care above 70 percent of the registered family child care rate will have to amend the child care portion of its Child and Family Services Plan. The Office has developed a template that a district may use if it chooses to amend its Plan. If a district does not choose to continue to pay 75 percent of the registered family child care rate for legally-exempt providers that are currently receiving the enhanced market rate, the district must send a notice of the change in the payment rate to the families receiving services from such providers.

Neither social services districts nor legally-exempt family or in-home child care providers should have to hire additional professional staff in order to implement these regulations.

3. Costs:
 It is not anticipated that these regulations will result in any additional costs to the State or social services districts. All the social services districts received their allocations for federal and State funds under the New York State Child Care Block Grant for State fiscal year 2009-10. These funds are available to each district and the district may choose to serve optional categories of eligible individuals with the funds allocated to them. Social services districts are required to provide child care services to the optional categories of low-income families only to the extent that they have funds available to provide such services. Some social services districts also received preliminary estimates of their allocations of the additional federal child care subsidy funds made available under AARA.

4. Minimizing adverse impact:
 The regulations recognize that there may be differences in the needs among social services districts. To the extent allowed by statute, the regulations provide districts with flexibility in designing their child care subsidy programs in a manner that will best meet the needs of their communities.

5. Rural area participation:
 The regulatory changes were discussed with a workgroup of local social services districts, including rural districts, for advice on potential impact.

Job Impact Statement

Section 201-a of the State Administrative Procedures Act requires a job impact statement to be filed if proposed regulations will have an adverse impact on jobs and employment opportunities in the State. A full job impact statement has not been prepared for these regulations, due to the fact that these amendments will not result in the loss or creation of any jobs.

These regulations will have a positive impact on jobs or employment opportunities. The regulations will improve the ability of low-income workers who have been displaced from the workforce to search for and be eligible for employment.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-08-00005-A
Filing No. 517
Filing Date: 2009-05-15
Effective Date: 2009-06-03

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the November 5, 2008 issue of the Register, I.D. No. CVS-45-08-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-08-00026-A
Filing No. 520
Filing Date: 2009-05-15
Effective Date: 2009-06-03

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the November 5, 2008 issue of the Register, I.D. No. CVS-45-08-00026-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-08-00027-A
Filing No. 521
Filing Date: 2009-05-15
Effective Date: 2009-06-03

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the November 5, 2008 issue of the Register, I.D. No. CVS-45-08-00027-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-08-00028-A
Filing No. 522
Filing Date: 2009-05-15
Effective Date: 2009-06-03

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the November 5, 2008 issue of the Register, I.D. No. CVS-45-08-00028-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-08-00029-A

Filing No. 524

Filing Date: 2009-05-15

Effective Date: 2009-06-03

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from the exempt class.

Text or summary was published in the November 5, 2008 issue of the Register, I.D. No. CVS-45-08-00029-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-45-08-00030-A

Filing No. 529

Filing Date: 2009-05-15

Effective Date: 2009-06-03

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the November 5, 2008 issue of the Register, I.D. No. CVS-45-08-00030-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-50-08-00006-A

Filing No. 523

Filing Date: 2009-05-15

Effective Date: 2009-06-03

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the December 10, 2008 issue of the Register, I.D. No. CVS-50-08-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-50-08-00007-A

Filing No. 526

Filing Date: 2009-05-15

Effective Date: 2009-06-03

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the December 10, 2008 issue of the Register, I.D. No. CVS-50-08-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-50-08-00008-A

Filing No. 516

Filing Date: 2009-05-15

Effective Date: 2009-06-03

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the December 10, 2008 issue of the Register, I.D. No. CVS-50-08-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-50-08-00009-A

Filing No. 530

Filing Date: 2009-05-15

Effective Date: 2009-06-03

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

Action taken: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete positions from the exempt and to delete positions from the non-competitive classes.
Text or summary was published in the December 10, 2008 issue of the Register, I.D. No. CVS-50-08-00009-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-01-09-00009-A
Filing No. 518
Filing Date: 2009-05-15
Effective Date: 2009-06-03

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete a position from the exempt class.
Text or summary was published in the January 7, 2009 issue of the Register, I.D. No. CVS-01-09-00009-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-01-09-00010-A
Filing No. 514
Filing Date: 2009-05-15
Effective Date: 2009-06-03

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the January 7, 2009 issue of the Register, I.D. No. CVS-01-09-00010-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-01-09-00011-A
Filing No. 519
Filing Date: 2009-05-15
Effective Date: 2009-06-03

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text or summary was published in the January 7, 2009 issue of the Register, I.D. No. CVS-01-09-00011-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-01-09-00012-A
Filing No. 515
Filing Date: 2009-05-15
Effective Date: 2009-06-03

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete a position from and classify a position in the exempt class.
Text or summary was published in the January 7, 2009 issue of the Register, I.D. No. CVS-01-09-00012-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-01-09-00013-A
Filing No. 527
Filing Date: 2009-05-15
Effective Date: 2009-06-03

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete positions from the non-competitive class.
Text or summary was published in the January 7, 2009 issue of the Register, I.D. No. CVS-01-09-00013-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Supplemental Military Leave Benefits

I.D. No. CVS-07-09-00001-A
Filing No. 531
Filing Date: 2009-05-15
Effective Date: 2009-06-03

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

Action taken: Amendment of sections 21.15 and 28-1.17 of Title 4 NYCRR.

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

Subject: Supplemental military leave benefits.

Purpose: To extend the availability of supplemental military leave benefits for certain New York State employees until December 31, 2009.

Text or summary was published in the February 18, 2009 issue of the Register, I.D. No. CVS-07-09-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-07-09-00003-A

Filing No. 525

Filing Date: 2009-05-15

Effective Date: 2009-06-03

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from the non-competitive class.

Text or summary was published in the February 18, 2009 issue of the Register, I.D. No. CVS-07-09-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-07-09-00004-A

Filing No. 533

Filing Date: 2009-05-15

Effective Date: 2009-06-03

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the February 18, 2009 issue of the Register, I.D. No. CVS-07-09-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-07-09-00005-A

Filing No. 528

Filing Date: 2009-05-15

Effective Date: 2009-06-03

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the February 18, 2009 issue of the Register, I.D. No. CVS-07-09-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-07-09-00006-A

Filing No. 532

Filing Date: 2009-05-15

Effective Date: 2009-06-03

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the February 18, 2009 issue of the Register, I.D. No. CVS-07-09-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-07-09-00007-A

Filing No. 535

Filing Date: 2009-05-15

Effective Date: 2009-06-03

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the February 18, 2009 issue of the Register, I.D. No. CVS-07-09-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-07-09-00008-A
Filing No. 534
Filing Date: 2009-05-15
Effective Date: 2009-06-03

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the February 18, 2009 issue of the Register, I.D. No. CVS-07-09-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Correctional Services

NOTICE OF ADOPTION

Inmate Correspondence Program

I.D. No. COR-09-09-00001-A
Filing No. 513
Filing Date: 2009-05-15
Effective Date: 2009-06-03

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

Action taken: Amendment of section 720.8(a)(5) of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Inmate Correspondence Program.

Purpose: To clarify Department policy regarding postage “stamp buys” for inmates admitted to Special Housing Units.

Text or summary was published in the March 4, 2009 issue of the Register, I.D. No. COR-09-09-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, New York State Department of Correctional Services, 1220 Washington Avenue - Building 2 - State Campus, Albany, NY 12226-2050, (518) 457-4951, email: Maureen.Boll@DOCS.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Earned Eligibility Program

I.D. No. COR-09-09-00013-A
Filing No. 512
Filing Date: 2009-05-15
Effective Date: 2009-06-03

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

Action taken: Amendment of sections 2100.1 and 2100.4(b) of Title 7 NYCRR.

Statutory authority: Correction Law, sections 112 and 805

Subject: Earned Eligibility Program.

Purpose: To update the regulation consistent with Correction Law and to update the name of an inmate program.

Text or summary was published in the March 4, 2009 issue of the Register, I.D. No. COR-09-09-00013-P.

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

Text of rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, New York State Department of Correctional Services, 1220 Washington Avenue, Building 2 - State Campus, Albany, NY 12226-2050, (518) 457-4951, email: Maureen.Boll@DOCS.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Crime Victims Board

NOTICE OF ADOPTION

Providing Award Caps and Eligibility for Burial Expenses

I.D. No. CVB-13-09-00004-A
Filing No. 547
Filing Date: 2009-05-19
Effective Date: 2009-06-03

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

Action taken: Amendment of section 525.12(g)(1) of Title 9 NYCRR.

Statutory authority: Executive Law, sections 624, 626 and 631

Subject: Providing award caps and eligibility for burial expenses.

Purpose: To enumerate the caps and those eligible for burial expenses for homicide victims at certain periods in history.

Text or summary was published in the April 1, 2009 issue of the Register, I.D. No. CVB-13-09-00004-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Education Department

**EMERGENCY
 RULE MAKING**

Museum Collections Management Policies

I.D. No. EDU-01-09-00004-E
Filing No. 537
Filing Date: 2009-05-18
Effective Date: 2009-05-18

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

Action taken: Amendment of section 3.27 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 216(not subdivided), 217(not subdivided), 233-aa(1), (2) and (5); and L. 2008, ch. 220

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Regents policy to protect the public’s interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

- (1) the item or material is not relevant to the mission of the institution;
- (2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;
- (3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or
- (4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections. The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

In the current financial downturn, collections held by museums and historical societies could be threatened by inappropriate deaccessioning by sale, disposal or transfer. Currently, some 37 institutions in New York in 2006 reported deficits of \$100,000 or more. The Department is concerned that, in the absence of an express prohibition in Regents rule section 3.27, museums and historical societies in financial distress will deaccession items or materials for purposes of paying their outstanding debt. Consistent with generally accepted professional and ethical standards within the museum and historical society communities, the proposed amendment would expressly prohibit proceeds from deaccessioning from being used for the payment of outstanding debt or capital expenses. The proposed amendment would also restrict when an institution may deaccession its collections to the instances listed in (1) through (4) above. This specific language was added in response to museums which sought clarity on what constitutes proper and acceptable grounds for deaccessioning.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to protect the public's interest in collections held by a chartered museum or historical society by immediately clarifying the limited circumstances under which an item or material in a collection may be deaccessioned, in order to deter institutions in financial distress in the current fiscal crisis from selling or otherwise disposing of collection items and materials, in a manner inconsistent with accepted museological standards and State law, such as using the proceeds from the deaccessioning for payment of outstanding debt or operating expenses, and to prospectively limit the ability of museums and historical societies to designate a historic building as a collection item, so that institutions in financial distress will not make such designation for the purpose of justifying the sale of other items in their collections in order to pay capital expenses associated with the building.

The proposed amendment was adopted as an emergency rule at the December 2008 Regents meeting and readopted as a second emergency rule at the March 2009 Regents meeting. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on January 7, 2009.

State Education Department staff have worked with the Legislature and with museum constituents to develop revised standards for museum deaccessioning that have been incorporated into recently introduced legislation (A.6959) applicable to all museums. Now that legislation has been introduced, further revisions to the proposed rule are necessary to conform to the legislation. Pursuant to the State Administrative Procedure Act, a revised rule cannot be permanently adopted until after publication of a Notice of Revised Rule Making and expiration of a 30-day public comment period. Because the Board of Regents meets at fixed intervals, the earliest the proposed revised rule could be presented for permanent adoption, after publication of the Notice and expiration of the 30-day public comment period, would be the June 22-23, 2009 Regents meeting. However, the emergency rule adopted at the March Regents meeting is only effective for 60 days and will expire on May 17, before the May 18-19, 2009 Regents meeting. If the rule were to lapse, collections held by museums and historical societies could be threatened by inappropriate deaccessioning by sale, disposal or transfer. To avoid the adverse effects of a lapse in the emergency rule, a third emergency action is necessary at the April Regents meeting to readopt the rule, effective May 18, 2009.

It is anticipated that the proposed revised rule will be presented for per-

manent adoption at the June or July Regents meeting, after publication of a Notice of Revised Rule Making in the State Register and expiration of the 30-day public comment period prescribed for revised rule makings in the State Administrative Procedure Act.

Subject: Museum collections management policies.

Purpose: To clarify restrictions on the deaccessioning of items and materials in collections held by museums and historical societies.

Text of emergency rule: 1. Paragraph (7) of subdivision (a) of section 3.27 of the Rules of the Board of Regents is amended, effective May 18, 2009, to read as follows, provided that such amendment shall expire and be deemed repealed July 16, 2009:

(7) Collection means one or more original tangible objects, artifacts, records or specimens, including art generated by video, computer or similar means of projection and display, that have intrinsic historical, artistic, cultural, scientific, natural history or other value that share like characteristics or a common base of association and are accessioned; for purposes of this section, historic structures owned by an institution shall be considered as part of a collection *only* when so designated by the *board of trustees of the institution by vote conducted on or before December 19, 2008*;

2. Paragraphs (6) and (7) of subdivision (c) of section 3.27 of the Rules of the Board of Regents are amended, effective May 18, 2009, to read as follows, provided that such amendment shall expire and be deemed repealed July 16, 2009:

(6) Collections Care and Management. The institution shall:

(i) own, maintain and/or exhibit original tangible objects, artifacts, records, specimens, buildings, archeological remains, properties, lands and/or other tangible and intrinsically valuable resources that are appropriate to its mission;

(ii) ensure that the acquisition and deaccessioning of its collection is consistent with its corporate purposes and mission statement, *including that deaccessioning of items or material in its collection is limited to the circumstances prescribed in paragraph (7) of this subdivision*;

(iii) have a written collections management policy providing clear standards to guide institutional decisions regarding the collection, that is in regular use, available to the public upon request, filed with the commissioner for inspection by anyone wishing to examine it; and which, at a minimum, satisfactorily addresses the following subject areas:

(a) acquisition. The criteria and processes used for determining what items are added to the collections;

(b) loans. The criteria and processes used for borrowing items owned by other institutions and individuals, and for lending items from the collections;

(c) preservation. A statement of intent to ensure the adequate care and preservation of collections;

(d) access. A statement indicating intent to allow reasonable access to the collections by persons with legitimate reasons to access them; and

(e) deaccession. The criteria and process (including levels of permission) used for determining what items are to be removed from the collections, *which shall be consistent with paragraph (7) of this subdivision*, and a statement limiting the use of any funds derived therefrom in accordance with subparagraph [(vii)] (vi) of this paragraph;

(iv) ensure that collections or any individual part thereof and the proceeds derived therefrom shall not be used as collateral for a loan;

(v) ensure that collections shall not be capitalized; and

(vi) ensure that proceeds derived from the deaccessioning of any property from the institution's collection be restricted in a separate fund to be used only for the acquisition, preservation, protection or care of collections. In no event shall proceeds derived from the deaccessioning of any property from the collection be used for operating expenses, *for the payment of outstanding debt, or for capital expenses other than such expenses incurred to preserve, protect or care for an historic building which has been designated part of its collections in accordance with paragraph (7) of subdivision (a) of this section*, or for any purposes other than the acquisition, preservation, protection or care of collections.

(7) *Deaccessioning of collections. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:*

(i) *the item or material is not relevant to the mission of the institution;*

(ii) *the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;*

(iii) *the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or*

(iv) *the institution is unable to conserve the item or material in a responsible manner.*

(8) Education and Interpretation. The institution shall offer program-

matic accommodation for individuals with disabilities to the extent required by law.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-01-09-00004-EP, Issue of January 7, 2009. The emergency rule will expire July 16, 2009.

Text of rule and any required statements and analyses may be obtained from: Chris Moore, Office of Counsel, State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234, (518) 473-4921, email: legal@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

Education Law section 215 authorizes the Regents, the Commissioner, or their representatives, to visit, examine and inspect education corporations and other institutions admitted to the University of the State of New York, as defined in Education Law section 214, and to require, as often as desired, duly verified reports giving such information and in such form as they shall prescribe.

Education Law section 216 authorizes the Board of Regents to incorporate educational institutions, including museums and other institutions for the promotion of science, literature, art, history or other department of knowledge, with such powers, privileges and duties, and subject to such limitations and restrictions, as they Regents may prescribe.

Education Law section 217 empowers the Board of Regents to grant a provisional charter to an institution, which shall be replaced by an absolute charter when the conditions for such absolute charter have been fully met.

Education Law section 233-aa, as added by Chapter 220 of the Laws of 2008, enacts provisions governing the ownership and management of properties owned by or lent to museums, requires that the acquisition of property by a museum pursuant to section 233-aa must be consistent with the mission of the museum, and specifies that proceeds derived from the sale of any property title to which was acquired by a museum pursuant to section 233-aa shall be used only for the acquisition of property for the museum's collection or for the preservation, protection, and care of the collection and shall not be used to defray ongoing operating expenses of the museum.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the statutes by clarifying criteria regarding the deaccessioning of items and materials in the collections of chartered museums or historical societies, consistent with generally accepted professional and ethical standards within the museum and historical society communities.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

- (1) the item or material is not relevant to the mission of the institution;
- (2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;
- (3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or
- (4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but

keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

4. COSTS:

- (a) Costs to the State: None.
- (b) Costs to local governments: None.
- (c) Costs to private, regulated parties: None.
- (d) Costs to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, and does not impose any costs on such institutions, the State, local governments or the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment applies to museums and historical societies with collections chartered by the Board of Regents, and does not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

6. PAPERWORK:

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, and does not impose any additional paperwork requirements on such institutions.

7. DUPLICATION:

The proposed amendment duplicates no existing state or federal requirements.

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

There are no applicable federal standards regarding the chartering and registration of museums and historical societies by the Board of Regents.

10. COMPLIANCE SCHEDULE:

The proposed amendment clarifies criteria regarding the deaccessioning of items and materials in the collections of chartered museums or historical societies, consistent with generally accepted professional and ethical standards within the museum and historical society communities. It is anticipated that regulated parties can achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

The proposed amendment applies to museums and historical societies authorized to hold collections chartered by the Board of Regents and does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse financial impact, on small businesses or local governments. Because it is evident from the nature of the rules that it does not affect small businesses or local governments, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to all of the 644 museums and 884 historical societies in New York State (source: New York State Museum chartering database as of November 2008), including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 persons per square mile or less.

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

The purpose of the proposed amendment is to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

- (1) the item or material is not relevant to the mission of the institution;
- (2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;
- (3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or
- (4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

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

3. COMPLIANCE COSTS:

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, and does not impose any costs on such institutions, the State, local governments or the State Education Department.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies. The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, consistent with generally accepted professional and ethical standards within the museum and historical society communities, and does not impose any additional compliance requirements or costs on such institutions. Since these requirements must have State-wide application in order to ensure uniform, consistent practices relating to museum and historical society collections management, it is not feasible to impose a lesser standard on, or otherwise exempt, institutions located in rural areas.

5. RURAL AREA PARTICIPATION:

The State Education Department consulted with the Museum Association of New York in the development of the proposed amendment.

In addition, the Department asked its museum and historical society constituents to comment on the proposed amendment through announcements on web sites, and copies sent to listservs and electronic mailing lists. All areas of the state, including rural areas, received the announcements.

Job Impact Statement

The proposed amendment applies to museums and historical societies with collections, chartered by the Board of Regents and will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further measures were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

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

State Board of Elections

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Disclosure of Campaign Financial Statements

I.D. No. SBE-22-09-00004-P

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

Proposed Action: Amendment of section 6200.1 of Title 9 NYCRR.

Statutory authority: Election Law, section 3-102(1)

Subject: Disclosure of Campaign Financial Statements.

Purpose: To prevent duplicate filing of qualifying campaign financial statements.

Text of proposed rule: Subtitle V of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended to read as follows:

PART 6200 "Filing Statements of Campaign Receipts and Expenditures"

§ 6200.1 "Places for filing statements of campaign receipts and expenditures."

(d)(1) Pursuant to the provisions of this section, any candidate and/or political committee which is required to file statements with a county board of elections or with the Board of Elections of the City of New York, which raises or spends or expects to raise or spend more than one thousand dollars (\$1,000) during any calendar year, in addition to filing such statements with said boards of elections in the filing format required thereby, shall also file such statements electronically with the State Board of Elections pursuant to its electronic report system, established pursuant to Election Law § 3-102(9-A), or on paper if an exemption from the electronic filing requirement has been granted by the State Board pursuant to Election Law §§ 14-102(4) or 14-104(2).

(2) Notwithstanding the provisions of § 6200.1(d)(1), any statements filed electronically, or on paper if exempted, with the State Board of Elections by a candidate and/or political committee which is required to file such statements electronically with the State Board pursuant to paragraph (d)(1) of this section, shall satisfy the filing requirements of this section with regards to filing with the applicable county or city board of elections. The county and city boards of elections shall make statements filed with the State Board, which would have otherwise have been filed specifically with their individual board pursuant to paragraph (d)(1) of this section, available for public inspection and copying via electronic connection to the State Board's web site, which will contain such statements, or by such other mode of electronic communication that is available and approved by the State Board for such purposes.

(3) Any candidate and/or political committee which is required to file statements with a county board of elections or with the Board of Elections of the City of New York pursuant to the provisions of this section, which is not required to file such statements with the State Board of Elections pursuant to paragraph (d)(1) of this section, may not elect to file such statements with the State Board of Elections pursuant to paragraph (d)(2) of this section in substitution for, or in satisfaction of, the requirement to file with the applicable county or city board of elections.

Text of proposed rule and any required statements and analyses may be obtained from: William J. McCann, Jr., New York State Board of Elections, 40 Steuben Street, Albany, NY 12207, (518) 474-2063, email: wmccann@elections.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 3-201 of the Election Law authorizes the State Board of Elections to "promulgate rules and regulations relating to . . . campaign financing practices. . . ."

Sections 14-102 (Political Committees) and 14-104 (Candidates) requires that sworn statements be filed, at the times prescribed by 14-108, disclosing all campaign receipts and expenditures.

Section 14-110 sets forth the place where the statements have to be filed. This section requires that the statements of a candidate for election to state-wide office (e.g. - Governor), member of the state legislature, delegate to a constitutional convention, justice of the supreme court, and of any committee aiding or taking part in the designation, nomination, election or defeat of such candidates, or taking part in promoting the success or defeat of a state-wide ballot proposition, must file with the State Board of Elections. All others file as directed by the State Board pursuant to regulation. Presently, the regulation (§ 6200.1) requires all others to file with the appropriate county or city board of elections, or the village clerk, as the case may be. Pursuant to Chapter 406 of the Laws of 2005, effective January 1, 2006, Sections 14-102 and 14-104 also require that any candidate or committee required to file with a county or city board of elections who raises or spends, or expects to raise or spend, more than \$1,000 in any calendar year, must, in addition to filing with the county board of elections, file with the State Board of Elections.

2. Legislative Objectives:

By vesting the State Board of Elections with this rule-making authority, the legislature intended the board to promulgate such rules and regulations pertaining to the submission of campaign financial statements. Campaign financial disclosure serves a critical governmental purpose. It allows for an informed electorate, whereby the public, as well as those seeking office, are timely informed as to who is raising and spending money relative to elections. It also informs as to who is seeking to influence candidates for office through political contributions. From an administrative standpoint, these disclosures allow for the monitoring of contributions relative to the limits established by statute.

Chapter 406 of the Laws of 2005, amended section 14-102 and 14-104,

to require any candidate or committee required to file with a county or city board of elections who raises or spends, or expects to raise or spend, more than \$1,000 in any calendar year, in addition to filing with the county board of elections, to also file with the State Board of Elections. The main purpose of this amendment was to provide for greater public disclosure by having this local information filed with the State Board so that the Board could disseminate it through its web-site. The amendment would also lead to better monitoring of compliance by the State.

3. Needs and Benefits:

The purpose of this rule is to prevent unnecessary duplicate filing of campaign financial statements. Presently, a filer with a county or city board of elections must also file with the State Board of Elections. This means that they must file on paper locally (with the exception of Suffolk County), and then file electronically with the State Board, unless granted an exemption from filing electronically. Under this proposed regulation change, any local filer who is also required to file with the State Board, and who does file with the State Board, would not have to also make the filing with the applicable county or city board of elections. The filing with the State Board would satisfy their local filing requirement. There would be a direct benefit to the filer who would save the time and cost of printing, completing, and mailing or delivering the report to the county or city board of elections. The county or city board of elections would directly benefit because there would be a significant reduction in paperwork that would have to be processed and filed/stored by staff. There would be a likely reduction in staff time presently dedicated to such filings.

4. Costs:

a. To private parties: none. In fact, there would be a cost reduction to the public. Local filers would save the time and cost of printing, completing, and mailing or delivering the campaign finance disclosure report to the county or city board of elections.

b. To local governments: There would be a minimal cost for local boards of elections who would be required to have an Internet connection and monitor available to the public to allow viewing of the disclosure reports that would otherwise be available at the county or city board of elections for viewing. All county boards and the city board of elections presently have Internet connectivity to the State Board. More importantly, there would be a significant cost savings due to the reduction in paperwork that would have to be processed and filed/stored by county and city board staff.

c. To the State Board of Elections: Chapter 406 of the Laws of 2005 caused a significant increase in costs to the State Board of Elections in that it significantly increased the number of filers that the Board had to process. However, this proposed regulation does not add to the costs of that legislative mandate.

5. Local Government Mandates:

This rule will require that county and city boards of elections connect, electronically, to the State Board's website in order to make affected statements available for public inspection and copying. These are disclosure reports that would otherwise be available at the county or city board of elections for public viewing and copying. All county boards and the city board of elections presently have Internet connectivity to the State Board.

6. Paperwork:

This proposal would not require any new or additional paperwork. In fact, it would have a significant reduction on paperwork. Under this proposed regulation change, any local filer who is also required to file with the State Board, and who does file with the State Board, would not have to also make a duplicate filing with the applicable county or city board of elections. The filing with the State Board would satisfy their local filing requirement.

There would be a direct benefit to the filer who would save the time and cost of printing, and mailing or delivering the report to the county or city board of elections. Furthermore, with limited exceptions, filers with the State Board are required to file electronically. This causes there to be a significant reduction in paperwork, in its own right. The county or city board of elections would directly benefit because there would be a significant reduction in paperwork that would have to be processed and filed/stored by staff.

7. Duplication:

This proposed amendment does not duplicate any existing State or Federal requirement.

8. Alternatives:

There were no significant alternatives. One alternative was to take no action, and leave the process "as is." The system does work in its present configuration. However, the significant benefits to the public and the county and city boards of elections warranted the amendment to the regulations in question.

9. Federal Standards:

There are no minimum standards of the Federal government for this or a similar subject area. There is a distinction between candidates for state and local office and candidates for Federal Office. Candidates for Federal

Office, and the committees that support or oppose them, file with the Federal Elections Commission and are subject to Federal laws and regulations.

10. Compliance Schedule:

Candidates, political committees and local boards of elections will comply with this proposed rule upon adoption. The State Board of Elections will do a significant amount of outreach to candidates, political committees and local boards of elections concerning the proposed regulation both prior to and upon adoption. The State Board will also update its training materials, including its annual campaign finance handbook to incorporate information about the regulation. The State Board will conduct its annual series of campaign finance seminars, held throughout the state. It will also mail a filer update to all of our active filers, which will include a notice of the proposed regulation and its provisions. Additionally, the State Board will engage in its usual outreach to county boards of elections concerning policies and procedures relative to regulations. Information will also be made available via the Board's website.

Regulatory Flexibility Analysis

1. Effect of the rule: The proposed rule does not have an adverse economic affect or impact on small businesses defined by Section 102(8) of the State Administrative Procedure Act or local governments, including the 57 county boards of elections and the New York City Board of Elections for the five boroughs incorporated therein. There is no impact on small businesses.

2. Compliance requirements: It will have a positive impact on local governments, as is outlined below. While the proposed regulation does deal with reporting compliance requirements relative to campaign finances, the proposed rule does not add additional requirements to those that are already longstanding in place. In fact, it reduces the compliance requirements of filers with county or city boards of elections, by reducing duplicate filing if they are required to file with the State Board of Elections, and do so.

Prior to the amendments made by Chapter 406 of the Laws of 2005, the State Board had approximately 1,400 filers. Presently, the State Board has in excess of 9,000. The increase is attributable to local filers now required to also file with the State Board of Elections.

3. Professional services: Local boards of elections are not going to need professional services to comply with the regulation.

4. Compliance costs: The regulation would significantly reduce county and city board of elections costs in paperwork processing and staff time relative to the filings processed. There would be minimal initial cost for a computer monitor for public viewing of reports via the State Board's web site. All county and city boards of elections presently have Internet connectivity to the State Board.

5. Economic and technological feasibility: For county and city boards of elections, there would be minimal initial cost for a computer monitor for public viewing of reports via the State Board's web site. All county and city boards of elections presently have Internet connectivity to the State Board. Importantly, the regulation would significantly reduce county and city board of elections costs in paperwork processing and staff time relative to the filings processed.

6. Minimizing adverse impacts: This rule greatly reduces required record filings that need to be processed by the local boards of elections and as a whole reduces any previous adverse impact.

7. Small business and local government participation: It is important to note that the State Board of Elections has worked closely with local boards of elections in the conceptualization and drafting of the amended regulations. This has been done over the course of several years in dialogues had at the Annual Conference of the State Board, as well as at the Summer and Winter Conferences of the New York State Election Commissioners Association. This Association is the professional organization that is comprised of the Election Commissioners from each county in New York State. Local Boards have long desired for the State Board to assume more of the filing burden and to eliminate local filing. While this amended regulation would not totally eliminate local filing, it would significantly decrease the burden on local boards of elections as well as a large portion of local filers. It should also be noted that the State Board has received numerous comments from local filers at the series of Campaign Finance Seminars it conducts throughout the State each year, as well as on calls from filers to the State Board's Call Center, asking that the State Board address duplicate filing in a meaningful way.

Rural Area Flexibility Analysis

1. Types and estimated numbers in rural areas: This rule will impact all 53 county boards of elections whose jurisdiction includes rural areas. It will also impact candidates and political committees in these counties.

2. Reporting, recordkeeping and other compliance requirement; and professional services: This proposal does not have an adverse economic impact on public or private entities in rural areas and does not affect or impact rural areas as defined by Section 102(13) of the State Administra-

tive Procedure Act. Furthermore, while the proposed regulation does deal with reporting compliance requirements relative to campaign finances, the proposed rule does not add additional requirements to those that are already longstanding in place. In fact, it reduces the compliance requirements of filers with county or city boards of elections, by reducing duplicate filing if they are required to file with the State Board of Elections, and do so. The proposed regulation change would eliminate the duplicate filing of these local filers with a county or city board of elections when they file with the State Board of Elections. It would become easier for local filers to comply with the law and regulations. There would be no change in the amount of expertise required to complete the disclosures in question. It would take less time to comply.

3. Costs: There would be no change in the length or complexity of the reports. There would be no professional services required to be engaged to comply with the regulatory requirements. There would be no additional capitol or annual costs for local filers. In fact there would be a reduction of costs for printing and mailing/delivery. For county boards of elections, there would be minimal initial cost for a computer monitor for public viewing of reports via the State Board's web site. All county and city boards of elections presently have Internet connectivity to the State Board. The regulation would reduce county and city board of elections costs in paperwork processing and staff time relative to the filings processed.

4. Minimizing adverse impact: This rule reduces required record filing and as a whole reduces any previous adverse impact, which was already negligible.

5. Rural area participation: Over a period of several years the State Board of elections consulted with elections commissioners from throughout the state, including those in rural areas. The proposed regulation has been positively received.

Job Impact Statement

A job impact statement is not submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities. This proposal merely alters the way in which some campaign financial statements are reported.

Department of Health

EMERGENCY RULE MAKING

Criminal History Record Check

I.D. No. HLT-41-08-00005-E

Filing No. 511

Filing Date: 2009-05-15

Effective Date: 2009-05-15

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

Action taken: Addition of Part 402 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2899-a(4); and Executive Law, section 845-b(12)

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

Specific reasons underlying the finding of necessity: Emergency agency action is necessary for preservation of the public health, public safety and general welfare.

The regulation is needed on an emergency basis to implement the Department of Health's statutory duty to act on requests for criminal history record checks which are required by law. The law is intended to protect patients, residents, and clients of nursing homes and home health care providers from risk of abuse or being victims of criminal activity. These regulations are necessary to implement the law as of its effective date so that the Department of Health can fulfill its statutory duty of ensuring that the health, safety and welfare of such patients, residents and clients are not unnecessarily at risk.

Subject: Criminal History Record Check.

Purpose: Criminal background checks of certain prospective employees of NHs, CHHAs, LHCSAs & long term home health care programs.

Substance of emergency rule: This regulation adds a new Part 402 to Title 10 NYCRR, which relates to prospective unlicensed employees of nursing homes, certified home health agencies, licensed home care ser-

vices agencies and long term home health care programs who will provide direct care or supervision to patients, residents or clients of such providers.

The regulation establishes standards and procedures for criminal history record checks required by statute. Provisions govern the procedures by which fingerprints will be obtained and describe the requirements and responsibilities of the Department and the affected providers with regard to this process. The regulations address the identification of provider staff responsible for requesting the criminal history checks, supervision of temporary employees, notice to the Department when an employee is no longer employed, the content and procedure for obtaining consent and acknowledgment for finger printing from prospective employees. The Department's responsibilities for reviewing requests are set forth and specify time frames and sufficient information to process a request.

The proposed rule also describes the extent to which reimbursement is available to such providers to cover costs associated with criminal history record checks and obtaining the fingerprints necessary to obtain the criminal history record check.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-41-08-00005-P, Issue of October 8, 2008. The emergency rule will expire July 13, 2009.

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

Regulatory Impact Statement

Statutory Authority:

Section 2899-a (4) of the Public Health Law requires the State Commissioner of Health to promulgate regulations implementing new Article 28-E of the Public Health Law which requires all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs ("the providers") to request, through the Department of Health ("the Department"), a criminal history record check for certain unlicensed prospective employees of such providers.

Subdivision (12) of section 845-b of the Executive Law requires the Department to promulgate rules and regulations necessary to implement criminal history information requests.

Legislative Objectives:

Chapter 769 of the Laws of 2005 as amended by Chapters 331 and 673 of the Laws of 2006 establish a requirement for all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs to obtain criminal history record checks of certain unlicensed prospective employees who will provide direct care or supervision to patients, residents or clients of such providers. This is intended to enable such providers to identify and employ appropriate individuals to staff their facilities and programs and to ensure patient safety and security.

Needs and Benefits:

New York State has the responsibility to ensure the safety of its most vulnerable citizens who may be unable to protect and defend themselves from abuse or mistreatment at the hands of the very persons charged with providing care to them. While the majority of unlicensed employees in all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs are dedicated, compassionate workers who provide quality care, there are cases in which criminal activity and patient abuse by such employees has occurred. While this proposal will not eliminate all instances of abuse, it will eliminate many of the opportunities for individuals with a criminal record to provide direct care or supervision to those most at risk. Pursuant to Chapter 769 of the laws of 2005 as amended by Chapters 331 and 673 of the Laws of 2006 ("the Chapter Laws"), this proposal requires the providers to request the Department to obtain criminal history information from the Division of Criminal Justice Services ("the Division") and a national criminal history check from the FBI, concerning each prospective unlicensed employee who will provide direct care or supervision to the provider's patients, residents or clients.

Each provider subject to these requirements must designate "authorized persons" who will be empowered to request, receive, and review this information. Before a prospective unlicensed employee who will provide direct care or supervision to patients, residents or clients can be permanently hired, he or she must consent to having his/her fingerprints taken and a criminal history record check performed. Two sets of fingerprints will be taken and sent to the Department, which will then submit them to the Division. The Division will provide criminal history information for each person back to the Department.

The Department will then review the information and will advise the provider whether or not the applicant has a criminal history, and, if so, whether the criminal history is of such a nature that the Department disap-

proves the prospective employee's eligibility for employment, (e.g., the person has a felony conviction for a sex offense or a violent felony or for any crime specifically listed in section 845-b of the Executive Law and relevant to the prospective unlicensed employees of such providers). In some cases, a person may have a criminal background that does not rise to the level where the Department will disapprove eligibility for employment. The proposed regulations allow the provider, in such cases, to obtain sufficient information to enable it to make its own determination as to whether or not to employ such person. There will also be instances in which the criminal history information reveals a felony charge without a final disposition. In those cases, the Department will hold the application in abeyance until the charge is resolved. The prospective employee can be temporarily hired but not to provide direct care or supervision to patients, residents or clients of such providers.

The proposal implements the statutory requirement of affording the individual an opportunity to explain, in writing, why his or her eligibility for employment should not be disapproved before the Department can finally inform a provider that it disapproves eligibility for employment. If the Department maintains its determination to disapprove eligibility for employment, the provider must notify the person that the criminal history information is the basis for the disapproval of employment.

The proposed regulations establish certain responsibilities of providers in implementing the criminal history record review required by the law. For example, a provider must notify the Department when an individual for whom a criminal history has been sought is no longer subject to such check. Providers also must ensure that prospective employees who will be subject to the criminal history record check are notified of the provider's right to request his/her criminal history information, and that he or she has the right to obtain, review, and seek correction of such information in accordance with regulations of the Division, as well as with the FBI with regard to federal criminal history information.

COSTS:

Costs to State Government:

The Department estimates that the new requirements will result in approximately 108,000 submissions for a criminal history record check on an annual basis. This number of submissions for an initial criminal history record check will decrease overtime as the criminal history record check database (CHRC) is populated. The Department will allow providers to access any prior Department determination about a prospective employee at such time as the prospective employee presents himself or herself to such provider for employment. In the event that the prospective employee has a permanent record already on file with the Department, this information will be made available promptly to the provider who intends to hire such prospective employee.

The provider will forward with the request for the criminal history review, \$75 to cover the projected fee established by the Division for processing a State criminal history record check, and a \$19.25 fee for a national criminal history record check. The Department estimates that the provider's administrative costs for obtaining the fingerprints will be \$13.00 per print. The total annual cost to providers is estimated to be approximately \$12 million.

Requests by licensed home care services agencies (LHCSAs) are estimated to constitute approximately 50% of the estimated 108,000 requests on an annual basis. The total annual cost to LHCSAs is estimated to be approximately \$6 million. Reimbursement shall be made available to LHCSAs in an equitable and direct manner for the above fees and costs subject to funds being appropriated by the State Legislature in any given fiscal year for this purpose. Costs to State government will be determined by the extent of the appropriations.

The Department estimates that nursing homes, certified home health agencies and long term home health care programs will constitute approximately 50% of the estimated 108,000 requests on an annual basis. The total annual costs to nursing homes, certified home health agencies and long term home health care programs is estimated to be approximately \$6 million. These providers may, subject to federal financial participation, claim the above fees and costs as reimbursable costs under the medical assistance program (Medicaid) and may recover the Medicaid percent of such fees and costs. Reimbursement to such providers will be determined by the percent of Medicaid days of care to total days of care. Therefore, approximately \$6 million of the total costs for these providers will be subject to a 50 percent federal share and approximately \$2.3 million will be borne entirely by the State.

Costs to Local Governments:

There will be no costs to local governments for reimbursement of the costs of the criminal history record check paid by LHCSAs. LHCSAs will receive reimbursement from the State subject to an appropriation (See "Costs to State Government").

Costs to local governments for reimbursement of the costs of the criminal history record check paid by nursing homes, certified home health agencies, and long term home health care programs will be the local

government share of Medicaid reimbursement to such providers which is estimated to be annual additional cost to local governments of approximately \$700,000 (See "Costs to State Government").

Costs to Private Regulated Parties:

Costs to LHCSAs will be determined by the extent of annual appropriations by the State Legislature (See "Costs to State Government").

Costs to nursing homes, certified home health agencies and long term home health care programs will be determined by their Medicaid percentage of total costs (See "Costs to State Government").

Costs to the Department of Health:

Estimated start-up costs for the Department of Health which includes the purchase of equipment, activities and systems and staffing costs are approximately \$2.8 million.

Local Government Mandates:

The required criminal history record check is a statutory requirement, which does not impose any new or additional duties or responsibilities upon county, city, town, village, school or fire districts. The Chapter Laws state that they supercede any local laws or laws of any political subdivision of the state to the extent provided for in such Chapter Laws.

Paperwork:

Chapter 769 of the Laws of 2005 as amended by Chapters 331 and 673 of the Laws of 2006 require that new forms be developed for use in the process of requesting criminal history record information. The forms are, for example, an informed consent form to be completed by the subject party and the request form to be completed by the authorized person designated by the provider. Temporarily approved employees are required to complete an attestation regarding incidents/abuse. Provider supervision of temporary employees must be documented. In addition, other forms will be required by the department such as a form to designate an authorized party or forms to be completed when someone who has had a criminal history record check is no longer subject to the check.

The regulations also contain a requirement to keep a current roster of subject parties.

Duplication:

This regulatory amendment does not duplicate existing State or federal requirements. The Chapter Laws state that they supercede and apply in lieu of any local laws or laws of any political subdivision of the state to the extent provided for in such Chapter Laws.

Alternatives:

No significant alternatives are available. The Department is required by the Chapter Laws to promulgate implementing regulations.

Federal Standards:

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

Small Business Guide:

A small business guide as required by section 102-a of the State Administrative Procedure Act is unnecessary at this time. The Department provided an intensive orientation of program operations to those providers affected by criminal history record program.

Information was provided and continues to be provided to providers about implementation; process and procedures; and compliance with rules and regulations through a message board, staff attendance at trade association meetings, dear administrator letters, a training script or frequently asked questions document, and a dedicated e-mail log.

Compliance Schedule:

The Chapter Laws mandate that the providers request criminal history record checks for certain unlicensed prospective employees on and after September 1, 2006. These regulations are proposed to be effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Effect of Rule on Small Businesses and Local Governments:

For the purpose of this Regulatory Flexibility Analysis, small businesses are considered any nursing home or home care agency within New York State which is independently owned and operated, and employs 100 individuals or less. Approximately 100 nursing homes and 200 home care services agencies would therefore be considered "small businesses," and would be subject to this regulation.

For purposes of this regulatory flexibility analysis, small businesses were considered to be long term home health care programs with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the long term home health care program cost report 77 out of 110 long term home health care programs were identified as employing fewer than 100 employees. Twenty-eight local governments have been identified as operating long term home health care programs.

Compliance Requirements:

Providers must, by statute, on and after September 1, 2006, request criminal history information concerning prospective unlicensed employees who will provide direct care or supervision to patients, residents or clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record check must be

obtained through the Department. Providers must inform prospective unlicensed employees of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State and the FBI. Although prospective employees cannot be permanently hired before a determination is received from the Department about whether or not the prospective employee's eligibility for employment must be disapproved, providers can give temporary approval to prospective employees and permit them to work so long as they meet the supervision requirements imposed on providers by the regulations.

Professional Services:

No additional professional services will be required by small businesses or local governments to comply with this rule.

Compliance Costs:

For programs eligible for Medicaid funding, fees and costs will be considered an allowable cost in the Medicaid rates for such providers (See "Regulatory Impact Statement - Costs to State Government").

For LHCSAs which are unable to access reimbursement from state and/or federally funded programs, reimbursement will be provided on a direct and equitable basis subject to an appropriation by the State Legislature (See "Regulatory Impact Statement - Costs to State Government").

There will be costs to local governments only to the extent such local governments are providers subject to the regulations.

Economic and Technological Feasibility:

The proposed regulations do not impose on regulated parties the use of any technological processes. Fingerprints will be taken generally by the traditional "ink and roll" process. Under the "ink and roll" method, a trained individual rolls a person's fingers in ink and then manually places the fingers on a card to leave an ink print. Two cards would then need to be mailed to the Division by the Department. However, before the Department could submit the card, demographic information would need to be filled in on the card (such as the person's name, address, etc.) into the Department databases. Additional time delays may be encountered if it is determined that the fingerprint has been smudged and must be taken again, or when the handwriting on the fingerprint cards is difficult to read.

The Department hopes to move in the future to Live Scan. Live Scan is a technology that captures fingerprints electronically and would transmit the fingerprints directly to the Department to obtain criminal history information.

Minimizing Adverse Impact:

The Department considered the approaches for minimizing adverse economic impact listed in SAPA Section 202-b (1) and found them inapplicable. The requirements in this proposal are statutorily required. Compliance with them is mandatory.

Small Businesses and Local Government Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with industry associations representing nursing homes and home care providers and comments were solicited from all affected parties. Informational briefings were held with such associations. There will be informational letters to providers prior to the effective date of the regulations.

Rural Area Flexibility Analysis

Effect of Rule:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population of greater than 200,000 includes towns with population densities of 150 persons or less per square mile. The following 42 counties have a population less than 200,000.

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Seneca	Chemung	Livingston
Steuben	Chenango	Madison
Sullivan	Clinton	Montgomery
Tioga	Columbia	Ontario
Tompkins	Cortland	Orleans
Ulster	Delaware	Oswego
Warren	Essex	Otsego
Washington	Franklin	Putnam
Wayne	Fulton	Rensselaer
Wyoming	Genesee	St. Lawrence
Yates	Greene	Saratoga

The following nine counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Reporting, Recordkeeping and Other Compliance Requirements:

Providers, including those in rural areas, must, by statute, request criminal history information concerning prospective unlicensed employees who will provide direct care or supervision to patients, residents or clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record check must be obtained through the Department. Providers must inform covered unlicensed prospective employees of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State. Although prospective employees cannot be permanently hired before a determination is received from the Department about whether or not eligibility for employment must be disapproved, providers can give temporary approval to prospective employees and permit them to work so long as they meet the supervision requirements imposed on providers by the regulations.

Professional Services:

No additional professional services will be necessary to comply with the proposed regulations.

Compliance Costs:

For programs located in rural areas eligible for Medicaid funding, fees and costs will be considered an allowable cost in the Medicaid rates for such providers. (See "Regulatory Impact Statement - Costs to State Government").

For LHCSAs located in rural areas which are unable to access reimbursement from state/and/or federally funded programs, reimbursement will be provided on a direct and equitable basis subject to appropriation by the State Legislature. (See "Regulatory Impact Statement - Costs to State Government").

Minimizing Adverse Impact:

The Department considered the approaches for minimizing adverse economic impact listed in SAPA section 202-bb (2) and found them inapplicable. The requirements in this proposal are statutorily required. Compliance with them is mandatory.

Rural Area Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with industry associations representing nursing homes and home care providers and comments solicited from all affected parties. Such associations include members from rural areas. Informational briefings were held with such associations. There will be informational letters to providers to include rural area providers prior to the effective date of the regulations.

Job Impact Statement

A Job Impact statement is not necessary for this filing. Proposed new 10 NYCRR Part 402 does not have any adverse impact on the unlicensed employees hired before September 1, 2006 as they apply only to future prospective unlicensed employees. The number of all future prospective unlicensed employees of providers who provide direct care or supervision to patients, residents or clients will be reduced to the degree that the criminal history record check reveals a criminal record barring such employment.

Since the inception of the program approximately 14% of all unlicensed employees applying for positions with nursing homes or home health care providers were found to have a criminal record barring such employment.

Assessment of Public Comment

The agency received no public comment

Insurance Department

EMERGENCY RULE MAKING

Financial Statement Filings and Accounting Practices and Procedures

I.D. No. INS-22-09-00007-E

Filing No. 510

Filing Date: 2009-05-15

Effective Date: 2009-05-15

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

Action taken: Amendment of Part 83 (Regulation 172) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 107(a)(2), 201, 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law, sections 4403, 4403-a, 4403-c and 4408-a; and L. 2002, ch. 599; L. 2008, ch. 311

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

Specific reasons underlying the finding of necessity: Certain provisions of the Insurance Law require that insurers file financial statements annually and quarterly with the superintendent. These insurers are subject to the provisions of Sections 307 and 308 of the Insurance Law and are required to file what are known as annual and quarterly statement blanks on forms prescribed by the superintendent. The superintendent has prescribed forms and annual and quarterly statement instructions that are adopted from time to time by the National Association of Insurance Commissioners ("NAIC"), as supplemented by additional New York forms and instructions. To assist in the completion of the financial statements, the NAIC also adopts and publishes from time to time certain policy procedure and instruction manuals. The latest edition of one of the manuals, the "Accounting Practices and Procedures Manual as of March 2009" ("Accounting Manual") includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles ("SSAPs"). This regulation incorporates by reference the Accounting Manual adopted by the NAIC in March, 2009.

The Accounting Manual represents a codification of statutory accounting principles. The purpose of the codification of statutory accounting principles is to produce a comprehensive guide for regulators, insurers and auditors. The preamble to the Accounting Manual states that "this Manual is not intended to preempt states' legislative and regulatory authority. It is intended to establish a comprehensive basis of accounting recognized and adhered to if not in conflict with state statutes and/or regulations." Section 83.4 of the proposed regulation sets out the "Conflicts and Exceptions" to the Accounting Manual, and makes clear that in instances of conflict or deviation, New York statutes and regulations control.

Chapter 311 of the Laws of 2008, effective July 21, 2008, amended the Insurance Law relating to the treatment of certain assets in the filing of quarterly and annual financial statements by certain regulated insurers. Insurance Law Section 1302 provides a listing of non-admitted assets. Chapter 311 removed "goodwill" from non-admitted assets listed in the statute. Insurance Law Section 1301 provides a listing of admitted assets. Chapter 311 established a new Insurance Law Section 1301(a)(14) that allows an insurer to take positive goodwill up to 10% of the insurer's capital and surplus (adjusted for certain items) as an admitted asset. Chapter 311 also modified certain limitations on the ability of regulated insurers to take credit for electronic data processing (EDP) equipment as an admitted asset. Chapter 311 made the changes regarding the treatment of goodwill and EDP equipment subject to such limitations and conditions as may be established in regulations promulgated by the superintendent.

Under the proposed rule, accident and health insurance companies, Article 43 corporations, Public Health Law Article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV Special Needs Plans (collectively, "health insurers") will not be permitted to take credit for goodwill as an admitted asset in financial statements, because goodwill is not a tangible asset available for paying claims on an ongoing basis. As compared to other regulated insurers, health insurers must pay claims on a constant and ongoing basis, which requires a higher degree of asset liquidity for the payment of claims. In addition, because there is no guarantee fund for health insurers, liquidity of assets for health insurers is more important than for other regulated insurers.

The proposed rule allows health insurers to amortize EDP equipment over a ten-year period, rather than the three-year period required of other regulated insurers, because many health companies are relatively small, certified to operate only in New York State, or in a limited number of counties in New York. The Department is concerned that such companies might find a three-year requirement to be financially burdensome.

Absent the amendment being effective immediately, health insurers would be allowed to treat goodwill and EDP equipment, for financial statement purposes, as other regulated insurers do. In other words, the Department is concerned that absent an amendment, the financial statements that health insurers must file with the Department on an annual and quarterly basis may not reflect with sufficient accuracy the true financial condition of such companies.

For the reasons stated above, this rule must be promulgated on an emergency basis for the furtherance of the general welfare.

Subject: Financial statement filings and accounting practices and procedures.

Purpose: To update the regulation to conform to NAIC guidelines, statutory amendments, and to clarify existing provisions.

Substance of emergency rule: Subdivision (c) of Section 83.2 of Part 83 is amended to update the publication dates for the *Accounting Practices and Procedures Manual* ("Accounting Manual"), which is incorporated by reference in Regulation 172. The Accounting Manual includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles ("SSAPs").

Subdivision (c) of Section 83.3 is repealed and a new subdivision (c) is adopted to clarify the fact that the Accounting Manual is adopted in its entirety, subject to such conflicts and exceptions as found in Section 83.4 of this part.

Section 83.4 is amended to conform to updates to the Accounting Manual and the provisions of Chapter 311 of the Laws of 2008. Section 83.4 sets out "Conflicts and Exceptions" to the Accounting Manual, and makes clear that in instances of conflict or deviation, New York statutes and regulations control. Section 83.4 is amended as follows:

Subdivision (b) is amended so that the admitted value of gross deferred tax assets is in accordance with SSAP No. 10.

Subdivision (c) is repealed and a new subdivision (c) is added to require insurers other than accident and health insurance companies, Article 43 corporations, Public Health Law Article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV special needs plans to depreciate electronic data processing equipment and operating system software over three years.

Paragraph (3) of subdivision (e), which permitted insurers to take credit for aircraft as admitted assets, has been deleted.

Subdivision (h) is amended so that insurers may no longer take credit for certain prepaid real estate taxes as admitted assets.

Subdivision (i), which set forth rules different from the rules set forth in the Accounting Manual for valuing investments in common shares of insurers which are not subsidiaries, has been deleted.

Subdivision (j), which set forth rules different from the rules set forth in the Accounting Manual for the calculation of investment income due and accrued has been deleted.

Subdivision (k) is relettered (i).

Subdivision (l), which set forth rules different from the rules set forth in the Accounting Manual for limitations on accrued mortgage loan interest, has been deleted.

Paragraph (1) of subdivision (m), which set forth rules different from the rules set forth in the Accounting Manual, for depreciation of life insurers' investments in real estate, has been deleted.

Paragraph (2) of subdivision (m) has been relettered 83.4(j).

Paragraphs (1) and (3) of subdivision (n) have been renumbered paragraphs (1) and (2) of subdivision (k) respectively.

Paragraph (2) of subdivision (n), which set forth rules different from the rules set forth in the Accounting Manual for valuing investments in common shares of insurers which are subsidiaries, has been deleted.

Subdivision (o) is relettered (l).

Subdivision (p), which required all goodwill from assumption reinsurance transactions pertaining to life, deposit-type and accident and health reinsurance to be non-admitted, has been deleted.

Subdivision (q) is relettered (m).

Subdivision (r) is relettered (n).

Subdivision (s) is relettered (o).

Subdivision (t) has been relettered (p), and has been amended to permit insurers, other than accident and health insurance companies, Article 43 corporations, Public Health Law Article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV special needs plans, to admit goodwill in accordance with the Accounting Manual.

Subdivision (u), which set forth rules for declaring and distributing dividends, in the case of the quasi-reorganization of a domestic stock property/casualty insurer, has been deleted.

Subdivision (v) is relettered (q).

Subdivision (w) is relettered (r).

Subdivision (x) is relettered (s).

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 12, 2009.

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

Regulatory Impact Statement

1. Statutory authority: Insurance Law Sections 107(a)(2), 201, 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404 of the Insurance Law; Sections 4403, 4403-a, 4403-(c)(12) and 4408-a of the Public Health Law; and Chapter 599 of the Laws of 2002 and Chapter 311 of the Laws of 2008.

Insurance Law Section 107(a)(2) defines the term “accredited reinsurer”, which is used in sections 83.2, 83.3, and 83.5 of Part 83, to mean an assuming insurer not authorized to do an insurance business in this state but which (i) presents satisfactory evidence to the superintendent that it meets the applicable standards of solvency required in this state, (ii) is in compliance with the conditions prescribed by regulation under which a ceding insurer may be allowed credit for reinsurance recoverable from an insurer not authorized in this state, and (iii) has received a certificate of recognition as an accredited reinsurer issued by the superintendent pursuant to such regulation; provided that no insurer shall be an accredited reinsurer with respect to any kind of insurance not provided for in such certificate.

Insurance Law Sections 201 and 301 authorize the superintendent to prescribe forms and regulations interpreting the Insurance Law, and to effectuate any power granted to the superintendent under the Insurance Law.

Insurance Law Sections 307 and 308 require insurers to file annual and quarterly statements on forms prescribed by the superintendent and in accordance with instructions prescribed by the superintendent. Section 307(a)(1) of the Insurance Law requires every insurer authorized in New York to file an annual statement showing its financial condition in such form as prescribed by the superintendent. Section 307(a)(2) permits the use of the annual statement form adopted from time to time by the National Association of Insurance Commissioners (NAIC).

Insurance Law Section 1109(a) provides that an organization complying with the provisions of Article 44 of the Public Health Law is subject to various specified sections of the Insurance Law, including section 308. Section 1109(e) provides that the superintendent may promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law.

Insurance Law Article 13 specifies the requirements regarding the treatment of assets and deposits in determining the financial condition of insurers for the purposes of the Insurance Law.

Insurance Law Sections 1301 and 1302 define which assets are “admitted” or “not admitted” (only “admitted” assets are included in determining an insurer’s solvency).

Insurance Law Section 1308 (in conjunction with Insurance Law Section 1301(a)(14)) allows for an authorized insurer to reduce the amount that it must hold in its reserves through the use of reinsurance with another authorized insurer or an accredited reinsurer.

Insurance Law Article 14 establishes the investments that may be used by insurers to satisfy minimum capital, surplus and reserve requirements. It further governs those classes of investments in which insurance companies may invest after satisfying minimum capital, surplus and reserve requirements, and establishes allocation or diversification limits among assets classes. Article 14 also sets forth provisions concerning the valuation of various assets of insurers.

Insurance Law Section 1404 establishes the types of reserve investments that may be used by non-life insurers to satisfy reserve requirements.

Insurance Law Section 1405 establishes the types of surplus investments that may be used by life insurers, after minimum capital and reserve requirements have been satisfied.

Insurance Law Section 1407 establishes the types of surplus investments that may be used by property/casualty and certain other insurers, after minimum capital and reserve requirements have been satisfied.

Insurance Law Section 1411 establishes the types of investments that domestic insurers are prohibited from making.

Insurance Law Section 1415 sets forth provisions concerning the valuation of various assets of insurers.

Insurance Law Article 15 contains provisions that govern the establishment and operation of holding company systems, including controlled insurers. Insurance Law Section 1501 provides for an administrative determination of the existence or absence of control to determine whether the insurer is a member of a holding company system. Insurance Law Section 1505 establishes standards for transactions between a controlled insurer and other members of the holding company system to safeguard the interests of the insurer and policyholders.

Insurance Law Section 3233 sets forth provisions concerning stabilization of health insurance markets and premium rates.

Insurance Law Section 4117 sets forth provisions concerning loss reserves and loss expense reserves of property/casualty insurance companies.

Insurance Law Section 4233 sets forth provisions concerning the annual statements of life insurance companies, including a provision that in addition to any other matter that may be required to be stated therein, either by law or by the superintendent pursuant to law, every annual statement of every life insurer doing business in New York shall conform substantially to the form of statement adopted from time to time for such purpose by, or by the authority of, the NAIC, together with such additions, omissions or modifications, similarly adopted from time to time, as may be approved by the superintendent.

Insurance Law Section 4239 sets forth provisions concerning allocation and reporting of income and expenses of life insurers.

Insurance Law Article 43 establishes organizational requirements, investment and reserve requirements for non-profit medical and dental indemnity, or health and hospital service corporations organized in this state. The article also establishes “stop loss” funds, from which health maintenance organizations, corporations or insurers may receive reimbursement for claims paid by such entities for members covered under certain contracts.

Insurance Law Section 4301 establishes requirements applicable to the formation and operation of the corporate entity, including composition and term limits of the corporation’s board of directors.

Insurance Law Section 4310 sets forth requirements applicable to investments, reserves and the financial condition of not-for-profit health insurers and health maintenance organizations (HMOs).

Insurance Law Sections 4321-a, 4322-a, and 4327 establish state-funded stop loss pools to subsidize claim payments made by HMOs pursuant to policies issued in the individual market and the Healthy NY market.

Insurance Law Section 6404 sets forth provisions concerning the investments that may be used by title insurance corporations. It also sets forth provisions concerning the valuation of various assets of title insurers.

Insurance Law Sections 1109(e) and 4301(e)(5), respectively, provide that the superintendent may promulgate regulations to effectuate the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law pertaining to health maintenance organizations. Public Health Law Article 44 authorizes the superintendent to establish standards governing the fiscal solvency of integrated delivery systems, and requires the filing of financial reports by prepaid health service plans and comprehensive HIV special needs plans.

Pursuant to the above provisions, the superintendent is authorized to implement the NAIC’s *Accounting Practices and Procedures Manual* (“Accounting Manual”), subject to any provisions in New York law that conflict with particular points in the Accounting Manual. The Accounting Manual includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles (“SSAPs”). The Accounting Manual represents a codification of Statutory Accounting Principles.

Chapter 599 of the Laws of 2002 amended the Insurance Law relating to the treatment of deferred tax assets in the filing of quarterly and annual financial statements by certain insurers.

Chapter 311 of the Laws of 2008, effective July 21, 2008, amended the Insurance Law relating to the treatment of certain assets in the filing of quarterly and annual financial statements by certain insurers. Insurance Law Section 1302 provides a listing of non-admitted assets. Chapter 311 removed “goodwill” from non-admitted assets listed in the statute. Insurance Law Section 1301 provides a listing of admitted assets. Chapter 311 established a new Insurance Law Section 1301(a)(14) that allows an insurer to take positive goodwill up to 10% of the insurer’s capital and surplus (adjusted for certain items) as an admitted asset, subject to such limitations and conditions as may be established in regulations promulgated by the superintendent.

Chapter 311 also modified the limitations on the ability of insurers to take credit for electronic data processing (EDP) equipment as an admitted asset.

2. Legislative objectives: Certain provisions of the Insurance Law provide that authorized insurers, accredited reinsurers, authorized fraternal benefit societies, and Public Health Law Article 44 health maintenance organizations and integrated delivery systems shall file financial statements annually and quarterly with the superintendent. These entities are subject to the provisions of Insurance Law Sections 307 and 308 of the Insurance Law, which require the filing of what are known as Annual and Quarterly Statement Blanks on forms prescribed by the superintendent. Except with regard to filings made by Underwriters at Lloyd’s, London, the superintendent has prescribed forms and Annual and Quarterly Statement Instructions that have been adopted from time to time by the NAIC, as supplemented by additional New York forms and instructions. To assist in the completion of the financial statements, the NAIC also adopts and publishes from time to time certain policy, procedure and instruction manuals. One of these manuals, the Accounting Manual, sets forth Statements of Statutory Accounting Principles. The Accounting Manual is incorporated by reference into this regulation.

The preamble to the Accounting Manual states that “this Manual is not intended to preempt states’ legislative and regulatory authority. It is intended to establish a comprehensive basis of accounting recognized and adhered to if not in conflict with state statutes and/or regulations.” Section 83.4 of the proposed regulation sets out the “Conflicts and Exceptions” to the Accounting Manual, and makes clear that in instances of conflict or deviation, New York statutes and regulations control.

3. Needs and benefits: Section 83.3 of the regulation provides that the financial statements of all authorized insurers, accredited reinsurers (except Underwriters at Lloyd’s, London), authorized fraternal benefit so-

cieties, and Public Health Law Article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV special needs plans (collectively, to as "regulated insurers") shall be completed in accordance with statutory accounting practices and procedures as prescribed by applicable provisions of the Insurance Law and regulations.

The purpose of this Part is to enhance the consistency of the accounting treatment of assets, liabilities, reserves, income and expenses by regulated insurers, by clearly setting forth the accounting practices and procedures to be followed in completing annual and quarterly financial statements that must be filed with the Department.

The NAIC has most recently adopted a new Accounting Manual as of March 2009. The Accounting Manual represents a codification of statutory accounting principles, presented in the form of the SSAPs. The purpose of the codification of statutory accounting principles is to produce a comprehensive guide for regulators, insurers and auditors. Codification provides examiners and analysts with uniform accounting rules against which insurers' financial statements can be evaluated.

Chapter 311 of the Laws of 2008, effective July 21, 2008, amended the Insurance Law relating to the treatment of certain assets in the filing of quarterly and annual financial statements by certain regulated insurers. Section 1302 provides a listing of non-admitted assets. Chapter 311 removed "goodwill" from non-admitted assets listed in the statute. Insurance Law Section 1301 provides a listing of admitted assets. Chapter 311 established a new Insurance Law Section 1301(a)(14) that allows an insurer to take positive goodwill up to 10% of the insurer's capital and surplus (adjusted for certain items) as an admitted asset, subject to such limitations and conditions as may be established in regulations promulgated by the superintendent.

Under the proposed rule, accident and health insurance companies, Article 43 corporations, Public Health Law Article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV Special Needs Plans (collectively, "health insurers") will not be permitted to take credit for goodwill as an admitted asset in financial statements, because goodwill is not a tangible asset available for paying claims on an ongoing basis. As compared to other regulated insurers, health insurers must pay claims on a constant and ongoing basis, which requires a higher degree of asset liquidity for the payment of claims. In addition, because there is no guarantee fund for health insurers, liquidity of assets for health insurers is more important than for other regulated insurers.

Chapter 311 also modified the limitations on the ability of regulated insurers to take credit for electronic data processing (EDP) equipment as an admitted asset. The proposed rule allows health insurers to amortize EDP equipment over a ten-year period, rather than the three-year period required of other regulated insurers, because many health companies are relatively small, certified to operate only in New York State, or in a limited number of counties in New York. The Department is concerned that such companies might find a three-year requirement to be financially burdensome.

4. Costs: Direct cost to regulated entities as a result of implementing Part 83 is the acquisition of the Accounting Manual from the NAIC. The Accounting Manual costs \$465 for a hard copy, or \$395 for a CD-ROM, plus shipping charges. The Department estimates that an insurer with 2,000 employees would require between 15 and 20 copies, for a total cost of between \$5,925 and \$9,300 (exclusive of shipping charges). However, the Department believes that most regulated insurers will purchase the Accounting Manual to comply with other states' requirements as much as New York's.

There is no cost to the Insurance Department for the Accounting Manual, since the Department may obtain it free of charge from the NAIC.

5. Paperwork: To the extent that this rule makes changes in accounting principles, regulated insurers will need to familiarize themselves with this regulation. To the extent that the rule conforms New York's requirements to those of other states, the need for separate New York filings will be reduced.

6. Local government mandates: This rule does not impose any obligations on local governments.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: None. The rule ensures conformance with New York statutes and regulations that preclude implementation of particular rules found in the Accounting Manual.

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

10. Compliance schedule: Regulated insurers already should be aware of the need to comply with the provisions of the Accounting Manual, since the NAIC issued the most recent version of the accounting Manual in March, 2009. Regulated insurers use the Accounting Manuals in preparing their Quarterly Statements and the Annual Statements for 2007, 2008, 2009, and beyond.

Regulatory Flexibility Analysis

The Insurance Department finds that this rule will have no adverse economic impact on local governments, and will not impose reporting, recordkeeping or other compliance requirements on local governments. The basis of this finding is that this rule is directed at regulated insurers, as defined under section 83.3 of this regulation, none of which are local governments.

The Insurance Department is not aware of any adverse impact that this rule will have on small businesses or of any reporting, recordkeeping or other compliance requirements that it will impose on small businesses. This rule is directed at regulated insurers, most of which do not come within the definition of "small business" found in Section 102(8) of the State Administrative Procedure Act, because none is independently owned and operated, and employs less than one hundred individuals.

The Accounting Manual represents a codification of statutory accounting principles, presented in the form of Statement of Statutory Accounting Principles ("SSAPs"). The purpose of the codification of statutory accounting principles is to produce a comprehensive guide for regulators, regulated insurers and auditors. Codification provides examiners and analysts with uniform accounting rules against which the Department can evaluate the financial statements filed by insurers. In those cases where the Accounting Manual will supplement the Insurance Law, it should simplify the process for both regulators and regulated insurers.

Chapter 311 of the Laws of 2008, effective July 21, 2008, amended the Insurance Law relating to the treatment of certain assets in the filing of quarterly and annual financial statements by certain insurers. Insurance Law Section 1301 provides a listing of admitted assets. Chapter 311 amended Insurance Law Section 1301, thereby modifying certain limitations on the ability of regulated insurers to take credit for electronic data processing (EDP) equipment as an admitted asset. This rule allows health insurers to amortize EDP equipment over a ten-year period, rather than the three-year period required of other insurers, because many health companies are relatively small, certified to operate only in New York State, or in a limited number of counties in New York.

Recently enacted Insurance Law Section 1301(a)(14) also enables a regulated insurer to take positive goodwill up to 10% of an insurer's capital and surplus (adjusted for certain items) as an admitted asset, subject to such limitations and conditions as may be established in regulations promulgated by the superintendent. Under the proposed rule, accident and health insurance companies, Article 43 corporations, Public Health Law Article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV Special Needs Plans (collectively, "health insurers"), will not be permitted to take credit for goodwill as an admitted asset in financial statements, because goodwill is not a tangible asset available for paying claims on an ongoing basis. As compared to other regulated insurers, health insurers must pay claims on a constant and ongoing basis, which requires a higher degree of asset liquidity for the payment of claims. In addition, because there is no guarantee fund for health insurers, liquidity of assets for health insurers is more important than for other regulated insurers.

All insurers are subject to the Insurance Law and regulations promulgated by the superintendent. As the rule itself states, the Accounting Manual shall not be effective "where the Accounting Manual conflicts with any provision of the Insurance Law or this Title..." The rule is intended to make the financial reporting process more uniform on a state-to-state basis, and to simplify the process for both regulators and insurers. The Insurance Department has no reason to anticipate that the rule will result in any adverse impact on regulated insurers of any size.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: This rule applies to regulated insurers doing business or resident in every county in the state, including those that are, or contain, rural areas, as defined under Section 102(13) of the State Administrative Procedure Act. Some of the home offices of these insurers are located within rural areas.

2. Reporting, recordkeeping and other compliance requirements, and professional services: This amendment does not impose new reporting or recordkeeping requirements. To the extent that the rule conforms New York filings to other states' requirements, the need for separate New York filings will be reduced. To the extent that the rule renders changes in accounting principles, insurers will need to familiarize themselves with the principles themselves.

3. Costs: Direct cost to regulated entities as a result of implementing Part 83 is the acquisition of the Accounting Manual from the NAIC. The Accounting Manual costs \$465 for a hard copy, or \$395 for a CD-ROM, plus shipping charges. The Department estimates that an insurer with 2,000 employees would require between 15 and 20 copies, for a total cost of between \$5,925 and \$9,300 (exclusive of shipping charges). However, the Department believes that most regulated insurers will purchase the Accounting Manual to comply with other states' requirements as much as New York's.

These costs are likely to be minimized or offset by the fact that the rule will enhance efficiencies for regulated insurers by establishing a consistent accounting treatment of assets, liabilities, reserves, income and expenses.

The Accounting Manual specifies substantive changes to eight of the ninety-six "Statements of Statutory Accounting Principles" contained therein. Affected parties will have the opportunity to assess the changes and provide comments to the Department.

4. Minimizing adverse impact: This rule applies to regulated insurers that do business in New York State. It does not impose any unique adverse impact on rural areas.

Job Impact Statement

Nature of Impact: The Insurance Department has no reason to believe that this rule will have any impact on jobs and employment opportunities. The rule codifies numerous accounting practices and procedures that had not previously been organized in such a unified and coherent manner. The rule changes the publication date references to a manual incorporated by reference in the regulation, and clarifies the relationship of the provisions of the Accounting Manual to corresponding provisions of the Insurance Law and regulations. The Accounting Manual specifies that there are substantive changes to eight of the ninety-six "Statements of Statutory Accounting Principles" contained therein. Affected parties will have the opportunity to assess the changes and provide comments to the Department.

Categories and number affected: The Department has no reason to believe that this rule will have any adverse impact on jobs or employment opportunities.

Regions of adverse impact: This rule applies to insurers authorized to do business in New York State. There would be no region in New York that would experience an impact unique to that geographic area.

Minimizing adverse impact: The Insurance Department has no reason to believe that the rule will result in any adverse impacts.

Self-employment opportunities: There is no evidence that this rule would have any adverse impact on self-employment opportunities.

Office of Mental Health

NOTICE OF ADOPTION

Incident Management

I.D. No. OMH-12-09-00001-A

Filing No. 536

Filing Date: 2009-05-15

Effective Date: 2009-06-03

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

Action taken: Amendment of Part 524 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, section 7.09

Subject: Incident Management.

Purpose: To correct outdated references.

Text or summary was published in the March 25, 2009 issue of the Register, I.D. No. OMH-12-09-00001-P.

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, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: cocbjdd@omh.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Prior Approval Review for Quality and Appropriateness

I.D. No. OMH-22-09-00012-P

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

Proposed Action: Amendment of Part 551 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.04, 31.05 and 31.23

Subject: Prior Approval Review for Quality and Appropriateness.

Purpose: To streamline the process for agencies to obtain OMH project approval.

Substance of proposed rule (Full text is posted at the following State website: www.omh.state.ny.us): Summary

This rule will amend 14 NYCRR Part 551, Prior Approval Review for Quality and Appropriateness, by streamlining the process for agencies to obtain project approval from the Office of Mental Health.

Overview

All programs requiring licensure (e.g., inpatient, community residences, outpatient) by the Office of Mental Health are required to obtain prior approval from the Office before a program can be developed or modified. The current regulatory requirements involve a comprehensive review process that does not necessarily reflect the scope of the proposed action; thus, changes that are relatively ministerial in nature require the same level of review as a more substantial project. The amendments will make better use of agency resources by categorizing projects requiring review into three distinct categories: "Administrative Action", "Comprehensive PAR" and "E-Z PAR". The amendments will ultimately result in a reduction in the amount of time it takes for the Office of Mental Health to render a decision, as well as a reduction in the amount of paperwork necessary to be completed by providers. Ultimately, the streamlined process will allow the agency to more appropriately focus its resources on substantial projects and eliminate or reduce such focus on ministerial projects.

Requirements

Projects categorized as "Administrative Action" will not be subject to the prior approval review specified in Part 551 of Title 14 NYCRR; however, certain projects will require the submission of OMH-prescribed forms prior to the implementation of a proposed action.

Projects in the category of "Comprehensive PAR" review would include those that establish a new program which is not currently licensed by OMH or which has been licensed for less than six months; establishment of licensed psychiatric inpatient beds or expansion or reduction of licensed psychiatric inpatient beds by at least 15 percent of the licensed capacity of that site or by more than 10 beds, whichever is less; a change in sponsor of a program licensed by OMH where the new sponsor does not currently operate a program licensed by OMH or has been licensed for less than six months; closure of a licensed psychiatric inpatient program; capital projects that exceed \$600,000 (or a dollar amount determined by the Commissioner based upon average construction cost increases subsequent to 2010), and projects otherwise eligible for E-Z PAR review that are reclassified to Comprehensive PAR review pursuant to the regulation.

Projects classified as E-Z Par review would consist of outpatient program projects submitted by an applicant which currently operates an outpatient program that is currently licensed by OMH including: establishment of a new outpatient program; establishment of a new satellite, relocation of a licensed outpatient program or satellite to a location outside of the program's current county; expansion or reduction of caseload or annual volume of services in a clinic treatment program over any contiguous 12-month period by more than 25 percent; expansion or reduction of the approved caseload or capacity of an outpatient program, excluding clinic treatment programs, over any contiguous 12-month period by more than 10 percent; closing an outpatient program; a substantial change in population served, services provided, or program type; and other projects that may have a substantial impact on outpatient mental health services. Other E-Z PAR projects would include licensed housing projects submitted by an applicant which currently operates a program which has been licensed by OMH including: expansion or reduction of licensed capacity; relocation of licensed housing, including community residences, crisis residences, single room occupancy residences; establishment of licensed housing operated by a business entity; establishment of licensed housing not selected through OMH's request for proposal process; and closure of licensed housing programs. E-Z PAR projects also include inpatient projects that involve expansion or reduction of licensed inpatient beds by more than 5 percent up to 15 percent, or by a maximum of 10 beds, whichever is less; and requests for a waiver of the requirement that the program admit individuals in emergencies. A change of sponsor of a program currently licensed by OMH, when the new sponsor currently operates a program which has been licensed by OMH for at least six months and is in good standing would warrant an E-Z PAR process, as would a significant change in the terms and conditions of an operating certificate and capital projects falling within a prescribed dollar range.

Text of proposed rule and any required statements and analyses may be obtained from: Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: cocbjdd@omh.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 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his/her jurisdiction.

Section 31.04 of the Mental Hygiene Law provides that the Commissioner has the power to adopt regulations and to establish procedures for the issuance and amendment of operating certificates.

Section 31.05 of the Mental Hygiene Law establishes the criteria for the issuance of an operating certificate.

Section 31.23 of the Mental Hygiene Law establishes criteria for the approval of facility programs, services and sites.

2. **Legislative Objectives:** Article 7 of the Mental Hygiene Law reflects the Commissioner's authority to establish regulations regarding mental health programs. Furthermore, the Legislature intended, through passage of Mental Hygiene Law Article 31, to grant the Commissioner of the New York State Office of Mental Health (OMH) the authority to issue operating certificates, and to prescribe a process to determine appropriate criteria for quality, safety and fiscal viability of the program.

3. **Needs and Benefits:** The amendments to Part 551 of Title 14 NYCRR will streamline the process for agencies to obtain OMH project approval. All programs requiring licensure (e.g., inpatient, community residences, outpatient) by OMH are required to obtain prior approval from OMH before a program can be developed or modified. The current regulatory requirements involve a comprehensive review process that does not necessarily reflect the scope of the proposed action. Therefore, changes that are relatively ministerial in nature require the same level of review as a more substantial project. The amendments will better use of agency resources by categorizing projects requiring review into three distinct categories: "Administrative Action," "Comprehensive PAR" and "E-Z PAR".

Projects categorized as "Administrative Action" will not be subject to the prior approval review specified in Part 551 of Title 14 NYCRR; however, certain projects will require the submission of OMH-prescribed forms prior to the implementation of a proposed action.

Projects in the category of "Comprehensive PAR" review would include those that establish a new program which is not currently licensed by OMH or which has been licensed for less than six months; establishment of licensed psychiatric inpatient beds or expansion or reduction of licensed psychiatric inpatient beds by at least 15 percent of the licensed capacity of that site or by more than 10 beds, whichever is less; a change in sponsor of a program licensed by OMH where the new sponsor does not currently operate a program licensed by OMH or has been licensed for less than six months; closure of a licensed psychiatric inpatient program; capital projects that exceed \$600,000 (or a dollar amount determined by the Commissioner based upon average construction cost increases subsequent to 2010), and projects otherwise eligible for E-Z PAR review that are reclassified to Comprehensive PAR review pursuant to the regulation.

Projects classified as E-Z Par review would consist of outpatient program projects submitted by an applicant which currently operates an outpatient program that is currently licensed by OMH including: establishment of a new outpatient program; establishment of a new satellite, relocation of a licensed outpatient program or satellite to a location outside of the program's current county; expansion or reduction of caseload or annual volume of services in a clinic treatment program over any contiguous 12-month period by more than 25 percent; expansion or reduction of the approved caseload or capacity of an outpatient program, excluding clinic treatment programs, over any contiguous 12-month period by more than 10 percent; closing an outpatient program; a substantial change in population served, services provided, or program type; and other projects that may have a substantial impact on outpatient mental health services. Other E-Z PAR projects would include licensed housing projects submitted by an applicant which currently operates a program which has been licensed by OMH including: expansion or reduction of licensed capacity; relocation of licensed housing, including community residences, crisis residences, single room occupancy residences; establishment of licensed housing operated by a business entity; establishment of licensed housing not selected through OMH's request for proposal process; and closure of licensed housing programs. E-Z PAR projects also include inpatient projects that involve expansion or reduction of licensed inpatient beds by more than 5 percent up to 15 percent, or by a maximum of 10 beds, whichever is less; and requests for a waiver of the requirement that the program admit individuals in emergencies. A change of sponsor of a program currently licensed by OMH, when the new sponsor currently operates a program which has been licensed by OMH for at least six months and is in good standing would warrant an E-Z PAR process, as would a significant change in the terms and conditions of an operating certificate and capital projects falling within a prescribed dollar range.

The amendments will result in a reduction in the amount of time it takes for OMH to render a decision, a reduction in the amount of paperwork necessary to be completed by providers, and will ultimately allow OMH

to focus agency resources on substantial projects and eliminate or reduce the focus on ministerial projects. The above-noted benefits are expected to assist agencies in adjusting to the needs of individuals receiving mental health services in a timely manner without undue delays.

4. **Costs:**

(a) cost to State government: These regulatory amendments will not result in any additional costs to State government.

(b) cost to local government: These regulatory amendments will not result in any additional costs to local government.

(c) cost to regulated parties: These regulatory amendments will not result in any additional costs to regulated parties.

5. **Local Government Mandates:** These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. **Paperwork:** By streamlining the Prior Approval Review process, this rule will result in reduced paperwork for certain providers.

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

8. **Alternatives:** The only alternative to the regulatory amendment which was considered was inaction. Since the amendment will provide a more streamlined and quicker approval process for providers, which will ultimately result in an improved mental health delivery system, that alternative was necessarily rejected.

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

10. **Compliance Schedule:** The regulatory amendments will become effective immediately upon adoption.

Regulatory Flexibility Analysis

The amendments to Part 551 serve to streamline the process for agencies to obtain OMH project approval. This will result in a reduction in the amount of time it takes for OMH to render a decision in the approval process, as well as a reduction in the amount of paperwork necessary to be completed by providers. Therefore, as it is evident from the nature of the proposed rule that there will be no adverse economic impact on small businesses or local governments, a regulatory flexibility analysis is not submitted with this notice.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this notice because the proposed rule will not impose any adverse economic impact on rural areas. The amendment merely streamlines the process for agencies to obtain project approval from the Office of Mental Health.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because the amendments merely serve to streamline the Prior Approval Review process. It is obvious from this rulemaking that there will be no adverse impact on jobs and employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Comprehensive Outpatient Programs

I.D. No. OMH-22-09-00013-P

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

Proposed Action: Amendment of Part 592 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.04, 43.02; Social Services Law, sections 364 and 364-a

Subject: Comprehensive Outpatient Programs.

Purpose: To adjust the Medicaid reimbursement associated with certain outpatient treatment programs regulated by OMH.

Text of proposed rule: 1. Subdivision (b) of Section 592.5 of Title 14 NYCRR is amended to read as follows:

(b) If the local governmental unit shall not have designated such providers of service or entered into agreements ensuring that comprehensive outpatient mental health services shall be available within the county, the Commissioner of Mental Health may directly designate providers of services as comprehensive outpatient providers pursuant to this Part.

(1) Any provider of service designated by the [commissioner] *Commissioner* shall meet the requirements of this Part. Any comprehensive outpatient program which fails at any time to meet the requirements set forth in [paragraph] *paragraphs* [(a)](1), (2) or (3) of subdivision (a) of this section shall have its supplemental medical assistance payments suspended until such time as the program substantially meets such require-

ments, as determined by the [commissioner] *Commissioner*. For purposes of this subdivision, a program which has failed to receive a renewed operating certificate of at least six months duration [as set forth in section 588.13(g)(4) of this Title] may be deemed to have met such requirement if it has submitted a plan of corrective action that has been approved by the [commissioner] *Commissioner* or his/her designee; has been visited to verify implementation of such plan; and has been issued an operating certificate of at least six months in duration.

(2) Prior to designating such providers, the [commissioner] *Commissioner* shall notify the local governmental unit of his/her intention to directly designate comprehensive outpatient programs within such county and shall provide the local governmental unit with an opportunity to respond.

2. Subdivisions (c), (d), (e), and (k) are amended and a new subdivision (l) is added to section 592.8 of Title 14 NYCRR as follows:

(c) The supplemental rate, for providers with at least one Level I comprehensive outpatient program, shall be calculated as follows:

(1) For outpatient mental health programs *other than clinics* which are designated Level I providers pursuant to this Part, grants received for the local fiscal year ended in 2001 for upstate and Long Island based providers, and for the local fiscal year ended in 2001 for New York City based providers, *as well as grants received for subsequent fiscal years which have been identified for inclusion by the Office of Mental Health* shall be added, if applicable, to the annualized eligible deficit approved in the calculation of the previous supplemental rate. *Effective January 1, 2009, the amount of the grant funding utilized in calculation of the rate supplement was reduced as follows:*

(i) *if the rate supplement effective immediately prior to January 1, 2009 was less than \$100 per visit, no reduction to the grant funding used in the rate calculation will be made;*

(ii) *if the rate supplement immediately prior to January 1, 2009 was greater than or equal to \$100 but less than \$250, a reduction of 3 percent shall be made to the grant funding used in the rate calculation, provided, however, that the resultant rate calculated effective January 1, 2009 in accordance with paragraph (3) of this subdivision shall not result in a rate lower than the highest rate for the providers described in subparagraph (i) of this paragraph;*

(iii) *if the rate supplement immediately prior to January 1, 2009 was greater than or equal to \$250 but less than \$300, a reduction of 5 percent shall be made to the grant funding used in the rate calculation, provided, however, that the resultant rate calculated effective January 1, 2009 in accordance with paragraph (3) of this subdivision shall not result in a rate lower than the highest rate for the providers described in subparagraph (ii) of this paragraph;*

(iv) *if the rate supplement immediately prior to January 1, 2009 was greater than or equal to \$300, a reduction shall be made to the grant funding used in the rate calculation that is the greater of 10 percent of the grant funding or an amount necessary to reduce the rate supplement to \$300, provided, however, that the resultant rate calculated effective January 1, 2009 in accordance with paragraph (3) of this subdivision shall not result in a rate lower than the highest rate for the providers described in subparagraph (iii) of this paragraph;*

(2) *For clinic treatment programs which are designated Level I programs pursuant to this Part, grants received for the local fiscal year ended in 2001 for upstate and Long Island based providers, and for the local fiscal year ended in 2001 for New York City based providers, as well as grants received for subsequent fiscal years which have been identified for inclusion by the Office of Mental Health shall be added, if applicable, to the annualized eligible deficit approved in the calculation of the previous supplemental rate. Effective January 1, 2009, the amount of the grant funding utilized in calculation of the rate supplement was reduced as follows:*

(i) *if the rate supplement effective immediately prior to January 1, 2009 was less than \$100 per visit, no reduction to the grant funding used in the rate calculation will be made;*

(ii) *if the rate supplement immediately prior to January 1, 2009 was greater than or equal to \$100 but less than \$250, a reduction of 3 percent shall be made to the grant funding used in the rate calculation, provided, however, that the resultant rate calculated effective January 1, 2009 in accordance with paragraph (3) of this subdivision shall not result in a rate lower than the highest rate for the providers described in subparagraph (i) of this paragraph;*

(iii) *if the rate supplement immediately prior to January 1, 2009 was greater than or equal to \$250 but less than \$300, a reduction of 5 percent shall be made to the grant funding used in the rate calculation, provided, however, that the resultant rate calculated effective January 1, 2009 in accordance with paragraph (3) of this subdivision shall not result in a rate lower than the highest rate for the providers described in subparagraph (ii) of this paragraph;*

(iv) *if the rate supplement immediately prior to January 1, 2009*

was greater than or equal to \$300, a reduction shall be made to the grant funding used in the rate calculation that is the greater of 10 percent of the grant funding or an amount necessary to reduce the rate supplement to \$300, provided, however, that the resultant rate calculated effective January 1, 2009 in accordance with paragraph (3) of this subdivision shall not result in a rate lower than the highest rate for the providers described in subparagraph (iii) of this paragraph.

(3) The sum of grants received by the provider, as recalculated under paragraph (1) or (2) of this subdivision *as applicable*, shall be divided by the projected number of annual visits to the provider's designated programs. The projected number of annual visits shall be calculated as follows:

(i) *For outpatient programs other than clinic treatment programs, the [The] combined total of outpatient mental health program visits reimbursed by medical assistance for each provider shall be calculated by using the average number of visits provided in the most recent three fiscal years multiplied by 90.9 percent. These visits shall include all visits reimbursed by Medicaid, including visits partially reimbursed by Medicare. Providers, who in the three most recent fiscal years earned less than the full Medicaid supplemental rate on visits partially reimbursed by Medicare, shall have the projected number of annual visits adjusted to reflect the lower supplemental revenue earned on Medicare/Medicaid dually eligible visits. The calculation of the Medicare/Medicaid adjusted visits shall be based on the percentage of Medicaid supplemental payments earned on Medicare/Medicaid dually eligible visits provided during the three most recent fiscal years and the number of dually eligible visits provided in the three most recent fiscal years. The Medicare/Medicaid adjusted visits are calculated by multiplying the projected annual volume of dually eligible visits by the average percentage of Medicaid supplemental revenue earned on these visits during the three most recent fiscal years.*

(ii) *For clinic treatment programs, the combined total of outpatient mental health program visits reimbursed by medical assistance for each provider shall be calculated by using the average number of visits provided in the most recent three fiscal years multiplied by 90.9 percent, for rates effective prior to July 1, 2008. For rates effective July 1, 2008 and January 1, 2009, the higher of the number of paid visits from calendar year 2007 or the average number of paid visits provided in the calendar years 2005 - 2007, multiplied by 90.9 percent, shall be used. These visits shall include all visits reimbursed by Medicaid, including visits partially reimbursed by Medicare, and those for which payment has been made or approved by a Medicaid managed care organization. Providers, who in the three most recent fiscal years earned less than the full Medicaid supplemental rate on visits partially reimbursed by Medicare, shall have the projected number of annual visits adjusted to reflect the lower supplemental revenue earned on Medicare/Medicaid dually eligible visits. The calculation of the Medicare/Medicaid adjusted visits shall be based on the percentage of Medicaid supplemental payments earned on Medicare/Medicaid dually eligible visits provided during the three most recent fiscal years and the number of dually eligible visits provided in the three most recent fiscal years. The Medicare/Medicaid adjusted visits are calculated by multiplying the projected annual volume of dually eligible visits by the average percentage of Medicaid supplemental revenue earned on these visits during the three most recent fiscal years.*

(iii) Rates calculated pursuant to [subparagraph] subparagraphs (i) or (ii) of this paragraph are subject to appeal by the local governmental unit, or by the provider with the approval of the local governmental unit. Appeals pursuant to this paragraph shall be made within [one year] 120 days after receipt of initial notification of the most recent supplemental reimbursement rate calculation. However, under no circumstances may the recalculated rate be higher than the rate cap set forth in paragraph [(3)] (4) of this subdivision.

[(3)](4) The supplemental rate for a provider operating a licensed outpatient mental health program shall be the lesser of the rate calculated in paragraph [(2)] (3) of this subdivision or a rate cap as established by the Commissioner of Mental Health and approved by the Director of the Division of the Budget. *Effective January 1, 2009, the rate cap that shall be used in the calculation of the supplemental rate shall be \$300.00 per visit.*

(d) *Excess supplemental payments shall be recouped as follows:*

(1) *For outpatient programs other than clinic treatment programs, in [In] order to recoup supplemental payments for those visits in excess of 110 percent of the number of visits used to calculate the supplemental rate for a Level I provider, the Office of Mental Health may adjust the supplemental rates for the period in which the excess visits occurred. Such adjustments shall be made no more frequently than quarterly during the year. The Office of Mental Health may recover such funds by requesting that the Department of Health withhold such funds from future Medicaid payments to the provider.*

(2) *For clinic treatment programs, in order to recoup supplemental payments for those visits provided prior to July 1, 2008 in excess of 110 percent of the number of visits used to calculate the supplemental rate for*

a Level I program, the Office of Mental Health may adjust the supplemental rates for the period in which the excess visits occurred. Such adjustments shall be made no more frequently than quarterly during the year. The Office of Mental Health may recover such funds by requesting that the Department of Health withhold such funds from future Medicaid payments to the provider. For services provided July 1, 2008, and thereafter, the Office of Mental Health will no longer recover supplemental payments in excess of 110 percent of the number of visits used to calculate the supplemental rate of a Level I provider.

(e) [The following visit categories] Collateral and group collateral visits for all clinic and continuing day treatment programs licensed pursuant to Part 587 of the Title shall not be eligible for Medicaid supplemental rate, and shall be excluded from the Medicaid visit volume used to calculate rate adjustments for designated programs operated by general hospitals]:

(1) collateral and home visits for day treatment and continuing treatment programs licensed pursuant to Part 585 of this Title;

(2) collateral and group collateral visits for clinic programs licensed pursuant to Part 585 of this Title; and

(3) collateral and group collateral visits for all clinic and continuing day treatment programs licensed pursuant to Part 587 of this Title].

(k) When a clinic treatment provider opens a new clinic program location, the supplemental rate shall be re-calculated to include the volume of Medicaid visits projected for the location in the provider's approved Application for Prior Approval Review. The funding used in calculation of the supplemental rate shall be increased by the amount calculated by multiplying the increased volume of Medicaid visits from the approved Application for Prior Approval Review by the Level II COPS supplement for the applicable program/region.

(l) Each general hospital, as defined by article 28 of the Public Health Law, which is operated by the New York City Health and Hospitals Corporation, which received a grant pursuant to section 41.47 of the Mental Hygiene Law for the local fiscal year ending in 1989, shall be designated as a Level I comprehensive outpatient program for all outpatient programs licensed pursuant to Part 587 of this Title. For purposes of calculating supplemental Medicaid rates pursuant to this Part, all such programs in the New York City Health and Hospitals Corporation are combined for a uniform supplemental Medical Assistance program rate.

3. Subdivision (b) is amended and a new subdivision (c) is added to section 592.10 of Title 14 NYCRR as follows:

(b) In order to recoup supplemental payments for those visits in excess of the number of visits used to calculate the supplemental rate under this section, the Office of Mental Health may adjust the supplemental rates for the period in which the excess visits occurred. Such adjustments shall be made no more frequently than quarterly during the year. *Effective with all services rendered July 1, 2008 and thereafter, no such recoupment of supplemental payments to clinic treatment programs shall be made.*

(c) *Any program eligible to receive supplemental medical assistance reimbursement as a Level II Comprehensive Outpatient Program which fails at any time to meet the requirements set forth in this section shall have its supplemental medical assistance payments suspended until such time as the program substantially meets such requirements, as determined by the Commissioner. For purposes of this subdivision, a program which has failed to receive a renewed operating certificate of at least six months duration may be deemed to have met such requirement if it has submitted a plan of corrective action that has been approved by the Commissioner or his/her designee; has been visited to verify implementation of such plan; and has been issued an operating certificate of at least six months in duration.*

Text of proposed rule and any required statements and analyses may be obtained from: Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: cocbjdd@omh.state.ny.us

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

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

Regulatory Impact Statement

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

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

Subdivision (a) of Section 43.02 of the Mental Hygiene Law grants

the Commissioner the power to set rates for facilities licensed under Article 31 of the Mental Hygiene Law.

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

Chapter 54 of the Laws of 2008 provides adjusted funding appropriations in support of amendments to Part 592. (Section 1, State Agencies, Office of Mental Health, lines 18-29 on page 393, lines 46-50 on page 403, and lines 1-7 on page 404.)

2. Legislative Objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. The amendments to Part 592 adjust the Medicaid reimbursement associated with certain outpatient treatment programs regulated by the Office of Mental Health (OMH) consistent with the enacted 2008-2009 state budget. These changes will be targeted in such a way as to provide general fiscal relief to providers most in need, as well as improve the quality and availability of services, all while recognizing the serious fiscal condition of the State. They will also equalize reimbursement fees for clinic treatment within geographic areas, as approved by the Division of Budget.

3. Needs and Benefits: The enacted state budget for State Fiscal Year 2008-2009 provided for an approximately \$5 million increase for clinic treatment programs in State share of Medicaid (\$10 million gross Medicaid funds) through adjustments to the Medicaid fee supplements calculated in accordance with Part 592. This funding would have had a full annual value of \$10 million in State share of Medicaid (\$20 million in gross Medicaid funds) but was adjusted to reduce the highest rate supplements. This resulted in an increase of \$4.39 million State share of Medicaid funds, with a full annual value of \$7.54 million State share of Medicaid funds (\$15.07 million in gross Medicaid funds).

Clinic treatment programs provide outpatient treatment designed to reduce symptoms, improve functioning and provide ongoing support to adults and children admitted to the program with a diagnosis of a designated mental illness. This rulemaking includes provisions to increase certain programs to a minimum payment level and removes the requirement to recover monies generated by paid visits in excess of 110 percent of the visits used to calculate the rate supplement effective July 1, 2008.

As a result of other actions proposed in the Financial Management Plan, there will be reductions made to the highest rate supplements. Providers with current rate supplements above \$300 will have the funding used in the supplement calculation reduced by 10 percent; providers with rate supplements of \$250-\$300 will have the funding used in the supplement calculation reduced by 5 percent; and providers with rate supplements of \$100-\$250 will have the funding used in the supplement calculation reduced by 3 percent. OMH's intent in these proposals is to begin to move the reimbursement for mental health clinic services toward a more uniform reimbursement system, by raising the reimbursement amounts for the lowest paid providers and lowering the reimbursement amounts for the providers with the highest rates.

4. Costs:

a) Costs to regulated parties: The reduction of funding used in the calculation of the rate supplements will impact approximately one third or 102 of the approximately 317 providers currently receiving such a supplement. The impact of these reductions totals \$4.93 million in gross Medicaid funds for the providers impacted by the reductions.

b) Costs to State and Local government and the agency: Medicaid services typically involve both a State and County share in matching the Federal portion. The annual State share of these outpatient initiatives is \$7.54 million, with no impact to local governments, after netting the increase to provide general fiscal relief to providers most in need, with reductions to those providers with the highest rate supplements. The increase is being implemented after the local share Medicaid cap is already in place. (The local share Medicaid cap was an initiative included in the enacted State budget for 2005-2006, under

which the state pays for increases in the local share of Medicaid after January 1, 2006.) The proposed changes to increase certain programs to a minimum payment level and remove the requirement to recover monies generated by paid visits in excess of 110 percent of the visits used to calculate the rate supplement were implemented effective July 1, 2008. The proposed changes to reduce the funding used in the calculation of the rate supplements for the providers with the highest supplement rates was effective January 1, 2009.

5. Local Government Mandates: These regulatory amendments will not involve or result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

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

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

8. Alternatives: The application of the increased funding for certain outpatient programs consistent with the 2008-2009 enacted State budget resulted in increases for certain clinic treatment programs, and allows clinic treatment programs to retain additional Medicaid rate supplement payments, should they increase the number of services they provide. The determination of the methodology to implement the supplement changes and the decision to allow clinic treatment programs to retain additional Medicaid rate supplement payments were made in consultation with the New York State Division of Budget, to be consistent with the enacted State budget. This allows for the continued strengthening and expansion of the ambulatory mental health system and supports a movement away from more expensive modalities of treatment. However, to address the serious fiscal condition of New York State, the Special Session of the Legislature included reductions in rate payments. The only alternative to this rulemaking would have been inaction, which would have resulted in the agency not being in compliance with the enacted State budget and amendments made as a result of the Legislative Special Session. Therefore that alternative was not considered.

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

10. Compliance Schedule: This rulemaking will be effective upon adoption.

Regulatory Flexibility Analysis

The rulemaking will adjust the Medicaid reimbursement associated with certain outpatient treatment programs regulated by the Office of Mental Health. These changes are consistent with the 2008-09 enacted State budget. The changes are targeted in such a way as to provide general fiscal relief to providers most in need and improve the quality and availability of services, all while recognizing the serious fiscal condition of the State. The amendments equalize reimbursement fees for clinic treatment within geographic areas, as approved by the Division of Budget, and allow for movement toward establishing a more uniform reimbursement system by raising the reimbursement amounts for the lowest paid providers and lowering the reimbursement amounts for providers with the highest rates. There will be no adverse economic impact on small businesses or local governments, therefore, a regulatory flexibility analysis is not submitted with this notice.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this notice because the rulemaking, which serves to adjust Medicaid reimbursement associated with certain outpatient treatment providers, will not impose any adverse economic impact on rural areas. These changes are consistent with the 2008-09 enacted State budget. The changes are targeted in such a way as to provide general fiscal relief to providers most in need and improve the quality and availability of services, all while recognizing the serious fiscal condition of the State. The amendments equalize reimbursement fees for clinic treatment within geographic areas, as approved by the Division of Budget, and allow for movement toward establishing a more uniform reimbursement system by raising the reimbursement amounts for the lowest paid providers and lowering the reimbursement amounts for providers with the highest rates.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because the rulemaking adjusts the Medicaid reimbursement associated with certain

outpatient treatment programs regulated by the Office of Mental Health. These changes are consistent with the 2008-09 enacted State budget. There will be no adverse impact on jobs and employment opportunities.

Office of Mental Retardation and Developmental Disabilities

EMERGENCY RULE MAKING

Amendment of Liability for Services Regulations

I.D. No. MRD-22-09-00005-E

Filing No. 508

Filing Date: 2009-05-14

Effective Date: 2009-05-14

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

Action taken: Amendment of Subpart 635-12 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07 and 13.09(b)

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

Specific reasons underlying the finding of necessity: The reason justifying the emergency adoption of these amendments to Subpart 635-12 is the preservation of the health, safety and general welfare of persons in New York State who are receiving, or wish to receive certain developmental disabilities services provided under the auspices of OMRDD. The emergency amendments delay implementation of the provisions of Subpart 635-12 for certain developmental disabilities services. If OMRDD did not temporarily suspend full implementation of Subpart 635-12, effective May 14, 2009, for the services specified in the emergency amendments, some individuals in need of these services might be unable to access these services or be otherwise adversely affected.

Subject: Amendment of Liability for Services Regulations.

Purpose: To delay implementation of provisions of Subpart 635-12 for certain services.

Text of emergency rule: Subdivision 635-12.1(e) is amended as follows:

(3) Services which an individual was receiving on a regular basis as of February 15, 2009, and receives from a different provider after February 15, 2009, where the individual's receipt of the Services from the different provider is the result of one provider assuming operation or control of the other provider's operations and programs, or is the result of a merger or consolidation of providers [; and].

[(4) HCBS Waiver Respite Services which converted after February 15, 2009 from respite services funded as a type of family support services if:

(i) the individual received the Respite Services funded as a type of family support services on a regular basis as of February 15, 2009; and

(ii) the HCBS Waiver Respite Services are delivered by the same provider.]

Subdivision 635-12.1(g) is amended as follows:

(g) "Services" means ICF/DD Services (Intermediate Care Facilities for Persons with Developmental Disabilities, see Part 681); *the following HCBS Waiver Residential Habilitation Services: community (in a community residence), IRA, and family care; and HCBS Waiver Day Habilitation Services.* [, Medicaid Service Coordination, Day Treatment Services, and the following HCBS Waiver Services: Residential Habilitation Services (community (in a community residence), IRA, family care, and at home), Day Habilitation Services, Prevocational Services, Supported Employment Services, and Respite Services. Blended and Comprehensive Services which are a combination of the Services listed above are also considered "Services."]

Paragraph 635-12.3(b)(1) is amended as follows:

(1) Prior to the individual receiving Services, the provider shall take [all] *such* steps to obtain personal and financial information as may be reasonably required to identify liable parties and to ascertain the individual's and any other liable parties' ability to pay for Services or the individual's ability to obtain and maintain Full Medicaid Coverage.

Subparagraph 635-12.3(d)(1)(ii) is amended as follows:

(ii) OMRDD approval for a reduction or waiver of fees is only available when the individual has taken all necessary steps to obtain and

maintain Full Medicaid Coverage. [However, OMRDD may approve a reduction or waiver of fees for Medicaid Service Coordination (MSC) for up to 3 months if an individual does not have Full Medicaid Coverage and MSC is necessary to assist the individual in obtaining Full Medicaid Coverage.]

Paragraph 635-12.4(b)(1) is amended as follows:

(1) Prior to March 15, 2009 the provider shall take [all] *such* steps to obtain personal and financial information concerning individuals without Full Medicaid Coverage as may be reasonably required to identify liable parties and to ascertain the individual's and any other liable parties' ability to pay for Services or the individual's ability to obtain and maintain Full Medicaid Coverage.

Subparagraph 635-12.4(d)(1)(ii) is amended as follows:

(ii) OMRDD approval for a reduction or waiver of fees is only available when the individual has taken all necessary steps to obtain and maintain Full Medicaid Coverage. [However, OMRDD may approve a reduction or waiver of fees for Medicaid Service Coordination (MSC) for up to 3 months if an individual does not have Full Medicaid Coverage and MSC is necessary to assist the individual in obtaining Full Medicaid Coverage.]

Paragraph 635-12.8(a)(5) is deleted as follows:

[(5) Medicaid Service Coordination (MSC). OMRDD may, subject to the availability of state funds, pay a provider for up to 3 months of MSC if:

(i) the individual does not have Full Medicaid Coverage and MSC is necessary to assist the individual in obtaining Full Medicaid Coverage;

(ii) the individual is not paying for MSC and no one else is paying for MSC; and

(iii) the provider is meeting its obligations under this Subpart.]

Subdivisions 635-12.9(e) and (f) are deleted as follows:

[(e) For At Home Residential Habilitation Services, the fee shall equal the Medicaid fee OMRDD established for the At Home Residential Habilitation Services for the dates the Services were provided.]

[(f) For Day Treatment Services, the fee shall equal the Medicaid fee OMRDD established for the day treatment facility for the dates the Services were provided.]

Note: Subdivisions (g) and (h) are renumbered as (e) and (f).

New subdivision 635-12.9(e) is amended as follows:

(e) For an ICF/DD, the fee shall equal the Medicaid rate OMRDD established for the ICF/DD for the dates the Services were provided, *excluding any day program services add-on for education and related services in accordance with Title 8 NYCRR.*

Subdivisions 635-12.9(i) through (m) are deleted as follows:

[(i) For Medicaid Service Coordination, the fee shall equal the payment level applicable to the individual's situation as stated in the Medicaid Service Coordination Vendor Contract between the provider and OMRDD in effect on the dates the Services were provided.]

[(j) For Prevocational Services, the fee shall equal the Medicaid price OMRDD established for the Prevocational Services on the dates the services were provided.]

[(k) For Supported Employment Services, the fee shall equal the Medicaid fee OMRDD established for the Supported Employment Services for the dates the Services were provided.]

[(l) For Respite Services, the fee shall equal the Medicaid price OMRDD established for the Respite Services for the dates the Services were provided.]

[(m) For Blended or Comprehensive Services, the fee shall equal the price OMRDD established for the Blended or Comprehensive Services for the dates the Services were provided.]

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 11, 2009.

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, OMRDD, 44 Holland Avenue, Albany, New York 12229, (518) 474-1830, email: barbara.brundage@omr.state.ny.us

Additional matter required by statute: Pursuant to the requirements of SEQRA and 14 NYCRR Part 602, OMRDD has filed a Negative Declaration with respect to this action. OMRDD has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory Authority:

a. The New York State Office of Mental Retardation and Developmental Disabilities' (OMRDD) statutory responsibility for seeing that persons with mental retardation and developmental disabilities are provided with services, as stated in the New York State Mental Hygiene Law Section 13.07.

b. OMRDD's authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09(b).

2. Legislative Objectives: These emergency regulations further the legislative objectives embodied in Section 13.07 and 13.09(b) of the Mental Hygiene Law by amending newly promulgated Subpart 635-12 (Liability for Services) by the deletion of specific services. OMRDD determined that individuals in need of those services might have been unable to access the services or might have been otherwise adversely impacted if Subpart 635-12 had become effective without the amendments in this emergency regulation.

3. Needs and Benefits: OMRDD recently filed a notice of adoption which added a new 14 NYCRR Subpart 635-12, Liability for Services, effective February 15, 2009. Subpart 635-12 established the obligations of providers and individuals receiving or requesting services related to liability for services. Generally, the regulations required that individuals obtain and maintain Medicaid which would pay for the services, and, if necessary, apply for enrollment in OMRDD's Home and Community Based Services (HCBS) Waiver, or that the individuals (or other liable parties) pay for the services themselves. The new requirements were applied to a list of specific service types included in the regulation.

Some of the service types included in the new Subpart 635-12 had previously been targeted by a similar OMRDD policy that has been in effect for some time. Compliance by these service types was not at issue.

However, the proposed regulations also included additional service types that had not been subject to the OMRDD policy. Providers of services not subject to the policy, as well as advocates, expressed concern that providers and individuals would not be able to comply with the regulatory requirements within the specified timeframes. The providers cited the workload involved (the number of individuals involved who do not currently have Medicaid and the extent of the efforts necessary for the provider to work with the individuals to obtain Medicaid) as making regulatory compliance difficult.

Beginning April 15, 2009, Subpart 635-12 specified that individuals receiving preexisting services who do not have Medicaid will generally be liable to pay the fee for services. However, providers and advocates were concerned that some Medicaid-eligible individuals would not be able to obtain Medicaid by this time and would therefore be personally liable for the fee. This might cause individuals to discontinue services which are important for their health, safety or welfare. In addition, concerns were raised about applying the regulations to individuals requesting those services, especially those transitioning from supported employment under VESID (Office of Vocational and Educational Supports for Individuals with Disabilities) to OMRDD supported employment and individuals requesting respite services. Application of the regulations to individuals requesting services might have been an impediment to the provision of services to those individuals with additional adverse consequences.

In response to the concerns raised, OMRDD adopted emergency regulations, effective February 15, 2009 to coincide with the effective date of the adoption of the new Subpart 635-12. The current emergency regulations, effective May 14, 2009, continue to exempt certain services from compliance with Subpart 635-12. It is not OMRDD's intention to permanently delete the specified services from the Subpart. OMRDD is temporarily suspending the application of Subpart 635-12 to the services in order to give individuals and providers more time to pursue Medicaid and HCBS waiver enrollment, and to evaluate whether changes might be appropriate related to those services. OMRDD intends to promulgate future regulations at a later date to include these services in Subpart 635-12.

The emergency regulation also clarifies that the provider's duty to gather information concerning liable parties and the ability to pay and qualify for Medicaid is limited to what is reasonably necessary to gather this information, not everything that is possible to gather the information. OMRDD made this clarification in response to provider concerns.

This emergency adoption also includes a clarification that the add-on for educational services is to be excluded from the ICF/DD fee that can be charged to individuals and liable parties.

4. Costs:

a. Costs to the Agency and to the State and its local governments: OMRDD will not incur any new costs as a result of these amendments. OMRDD had originally estimated that full implementation of the Subpart 635-12 regulations would result in a saving to the State of approximately \$17.5 million as services currently funded with 100 percent State monies become funded with 50 percent participation of federal funds and some individuals or liable parties pay the fees established. While the emergency adoption of these amendments may subtract from the full amount of these savings, a reliable estimate of the shortfall is very difficult to quantify. OMRDD is strongly encouraging providers to maintain and even step up efforts to help individuals obtain Medicaid and enroll in the HCBS waiver for the services during the interval that implementation has been delayed. Although Subpart 635-12 will not apply to these services because of these

emergency amendments, the State will experience much of the same savings through the compliance of individuals and providers with this request.

There will be no additional costs to local governments as a result of these specific amendments because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs to individuals and providers associated with implementation and continued compliance with the amendments.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: There will be no paperwork required as a result of the emergency amendments. The emergency amendments will instead decrease paperwork, since providers will not have to give the required notices to individuals and liable parties for the specified services.

7. Duplication: The emergency amendments do not duplicate any existing State or Federal requirements that are applicable to the above cited services for persons with developmental disabilities.

8. Alternatives: OMRDD had considered delaying the application of Subpart 635-12 for only "preexisting services" (services delivered as of February 15, 2009) of the service types addressed. However, in response to concerns raised concerning "new" services started after February 15, particularly regarding the supported employment transition from VESID to OMRDD services and intermittent respite services, OMRDD decided to delay the application for these services as well as "preexisting services" in the same categories, in order to more fully evaluate the concerns raised with regard to these issues.

9. Federal Standards: The proposed regulations do not exceed any applicable federal standards.

10. Compliance Schedule: No specific compliance activities are necessary to implement the emergency regulations. On the contrary, the emergency regulations defer the compliance activities necessary to implement Subpart 635-12 for the specified services.

In order to inform providers about the change, OMRDD notified providers in the OMRDD system of its intention to delete the specified services on January 30, 2009, and also announced its intention during a provider association meeting in January. Similar emergency regulations were adopted effective February 15, 2009. OMRDD received no formal, written, public or provider comment as a result of the original emergency adoption of these amendments, and informal reaction was positive.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments: These proposed regulatory amendments will apply to agencies which provide developmental disabilities services under the auspices of OMRDD. While most services are provided by voluntary agencies which employ more than 100 people overall, many of the facilities and services operated by these agencies at discrete sites employ fewer than 100 employees at each site, and each site (if viewed independently) would therefore be classified as a small business. Some smaller agencies which employ fewer than 100 employees overall would themselves be classified as small businesses. As of December, 2008, OMRDD estimates that there are approximately 274 provider agencies that would be affected by the emergency amendments.

The amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that adoption of these emergency amendments is necessary for the health, safety and general welfare and that they will have a positive effect on the regulated parties, including small business providers of services, associated with the specific developmental disabilities services for which implementation of Subpart 635-12 is being delayed by these emergency amendments. The emergency amendments will have no effect on local governments.

OMRDD recently filed a notice of adoption which added a new 14 NYCRR Subpart 635-12, Liability for Services, effective February 15, 2009. Subpart 635-12 established the obligations of providers and individuals receiving or requesting services related to liability for services. Generally, the regulations required that individuals obtain and maintain Medicaid which would pay for the services, and, if necessary, apply for enrollment in the HCBS Waiver, or that the individuals (or other liable parties) pay for the services themselves. The new requirements were applied to a list of specific service types included in the regulation.

Some of the service types included in the new Subpart 635-12 had previously been targeted by a similar OMRDD policy that has been in effect for some time. Compliance by these service types was not at issue.

However, the regulations also included additional service types that had not been subject to the OMRDD policy. Providers of services not previously subject to the policy, as well as advocates, expressed concern that providers and individuals would not be able to comply with the regulatory requirements within the specified timeframes. The providers cited the workload involved (the number of individuals involved who do not cur-

rently have Medicaid and the extent of the efforts necessary for the provider to work with the individuals to obtain Medicaid) as making regulatory compliance difficult.

Beginning April 15, 2009, Subpart 635-12 specified that individuals receiving preexisting services who do not have Medicaid will generally be liable to pay the fee for services. However, providers and advocates were concerned that some Medicaid-eligible individuals would not be able to obtain Medicaid by this time and would therefore be personally liable for the fee. This might cause individuals to discontinue services which are important for their health, safety or welfare. In addition, concerns were raised about applying the regulations to individuals requesting those services, especially those transitioning from supported employment under VESID (Office of Vocational and Educational Supports for Individuals with Disabilities) to OMRDD supported employment and individuals requesting respite services. Application of the regulations to individuals requesting services might have been an impediment to the provision of services to those individuals with additional adverse consequences.

This emergency adoption also includes a clarification that the add-on for educational services is to be excluded from the ICF/DD fee that can be charged to individuals and liable parties.

2. Compliance requirements: In response to the concerns raised, OMRDD promulgated emergency regulations, effective February 15, 2009 to coincide with the effective date of the adoption of the new Subpart 635-12. The emergency amendments suspended the compliance requirements of Subpart 635-12 for certain developmental disabilities services. The present emergency regulations continue this suspension. It is not OMRDD's intention to permanently delete the specified services from the Subpart. OMRDD is temporarily suspending the application of Subpart 635-12 to the services in order to give individuals and providers more time to pursue Medicaid and HCBS waiver enrollment, and to evaluate whether changes might be appropriate related to those services.

3. Professional services: There are no additional professional services required as a result of these amendments and the amendments will not add to the professional service needs of local governments.

4. Compliance costs: There will be no compliance costs for regulated parties or local governments as a result of the emergency amendments.

5. Economic and technological feasibility: The emergency amendments do not impose on regulated parties the use of any new technological processes.

6. Minimizing adverse economic impact: The amendments will not result in any adverse economic impacts for small businesses, local governments and other regulated parties.

7. Small business and local government participation: OMRDD conducted extensive outreach to providers related to the proposed regulations adding the new Subpart 635-12. OMRDD facilitated discussions of the proposed regulations in numerous meetings including the provider associations, the Benefit Development Workgroup which includes regulated parties, and a subcommittee of the Commissioner's Advisory Council. OMRDD also informed all providers of the proposed regulations. The emergency rule responds to concerns raised during these discussions and in written comments addressing the proposed rule making during the comment period for the proposed Subpart 635-12.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for this rule making is not submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. As discussed in the Regulatory Impact Statement, these emergency amendments temporarily delay implementation of the provisions of Subpart 635-12 for certain developmental disabilities services.

Job Impact Statement

A Job Impact Statement for this rule making is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial impact on jobs and/or employment opportunities. The emergency amendments temporarily delay implementation of Subpart 635-12 for certain developmental disabilities services.

Public Service Commission

NOTICE OF ADOPTION

Water Rates and Charges

I.D. No. PSC-22-08-00008-A

Filing Date: 2009-05-18

Effective Date: 2009-05-18

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

Action taken: On 5/14/09, the PSC approved a request filed by Boniville Water Company, Inc. to make changes in the rates and charges contained in its tariff schedule PSC No. 4—Water, to become effective May 29, 2009.

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

Subject: Water rates and charges.

Purpose: To approve an increase in annual operating revenues by \$8,107, or 14.86%.

Substance of final rule: The Commission, on May 14, 2009, adopted an order approving the request of Boniville Water Company, Inc. to increase its base rates to provide additional annual revenues of \$8,107, or 14.86%, effective May 29, 2009, and denied the company’s request for an automatic annual rate increase mechanism, beginning January 1, 2010, based on the greater of 5% or the Consumer Price Index of Greater New York, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us 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.

(08-W-0522SA1)

NOTICE OF ADOPTION

Water Rates and Charges

I.D. No. PSC-22-08-00010-A

Filing Date: 2009-05-15

Effective Date: 2009-05-15

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

Action taken: On 5/14/09, the PSC approved a request filed by Arbor Hills Waterworks, Inc. to make changes in the rates and charges contained in its tariff schedule PSC No. 3—Water, to become effective May 29, 2009.

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

Subject: Water rates and charges.

Purpose: To approve an increase in annual operating revenues by \$17,156, or 22.97%.

Substance of final rule: The Commission, on May 14, 2009, adopted an order approving the request of Arbor Hills Waterworks, Inc. to increase its base rates to provide additional annual revenues of \$17,156, or 22.97%, effective May 29, 2009, and denied the company’s request for an automatic annual rate increase mechanism, beginning January 1, 2010, based on the greater of 5% or the Consumer Price Index of Greater New York. The Commission also denied the Company’s request for a revenue reconciliation mechanism, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-

2655, email: leann_ayer@dps.state.ny.us 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.

(08-W-0527SA1)

NOTICE OF ADOPTION

Continuation of RDM Methodology and Targets

I.D. No. PSC-32-08-00010-A

Filing Date: 2009-05-19

Effective Date: 2009-05-19

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

Action taken: On May 14, 2009, the PSC adopted an order approving Consolidated Edison Company of New York, Inc. to continue for Rate Year 2 and 3, the same Revenue Decoupling Mechanism (RDM) methodology and targets that were used in Rate Year 1.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Continuation of RDM methodology and targets.

Purpose: To continue for Rate Year 2 and 3, the same RDM methodology and targets that were used in Rate Year 1.

Substance of final rule: The Commission, on May 14, 2009, adopted an order directing Consolidated Edison Company of New York, Inc. to continue for Rate Year 2 (October 1, 2008 through September 30, 2009) and Rate Year 3 (October 1, 2009 through September 30, 2010) the same Revenue Decoupling Mechanism (RDM) methodology that was used in Rate Year 1, and that Rate Year 3 methodologies and targets will continue from year to year thereafter until changed by the Commission, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us 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-1332SA3)

NOTICE OF ADOPTION

Major Gas Rate Filing

I.D. No. PSC-37-08-00009-A

Filing Date: 2009-05-15

Effective Date: 2009-05-15

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

Action taken: On May 14, 2009, the PSC adopted the terms and provisions of a joint proposal in regard to a rate increase by Niagara Mohawk Power Corporation d/b/a National Grid.

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

Subject: Major gas rate filing.

Purpose: To adopt terms & provisions of a proposal in regard to a rate increase by Niagara Mohawk Power Corporation d/b/a National Grid.

Substance of final rule: The Commission, on May 14, 2009, adopted the terms and provisions of a joint proposal in regard to a rate increase by Niagara Mohawk Power Corporation d/b/a National Grid, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-

2655, email: leann_ayer@dps.state.ny.us 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.
(08-G-0609SA2)

NOTICE OF ADOPTION

Mini Gas Rate Increase

I.D. No. PSC-50-08-00019-A

Filing Date: 2009-05-18

Effective Date: 2009-05-18

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

Action taken: On May 14, 2009, the PSC adopted an order approving Bath Electric, Gas & Water System's request for amendments to PSC 4 — Gas, effective June 1, 2009, to increase annual revenues by \$67,321 or 1.8%.

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

Subject: Mini gas rate increase.

Purpose: To approve an increase in annual gas revenues by \$67,321 or 1.8%.

Substance of final rule: The Commission, on May 14, 2009, adopted an order approving, with modifications, Bath Electric, Gas & Water System's request for amendments to PSC 4 — Gas, to take effect on June 1, 2009, to increase annual revenues by \$67,321 or 1.8%, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us 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.
(08-G-1364SA1)

NOTICE OF ADOPTION

Natural Gas Efficiency Programs

I.D. No. PSC-53-08-00010-A

Filing Date: 2009-05-19

Effective Date: 2009-05-19

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

Action taken: On 5/14/09, the PSC adopted an order establishing targets and standards for natural gas efficiency programs in New York State.

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

Subject: Natural gas efficiency programs.

Purpose: To establish targets and standards for natural gas efficiency programs in New York State.

Substance of final rule: The Commission, on May 14, 2009, adopted an order establishing targets and standards for natural gas efficiency programs in New York State, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(07-M-0548SA15)

NOTICE OF ADOPTION

Issuance of Long-term Debt of Up to \$2 Billion Through March 31, 2012

I.D. No. PSC-53-08-00014-A

Filing Date: 2009-05-15

Effective Date: 2009-05-15

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

Action taken: On 5/14/09, the PSC adopted an order approving the petition of Niagara Mohawk Power Corporation to issue and sell up to \$2 billion of securities in one or more transactions, no later than March 31, 2012.

Statutory authority: Public Service Law, section 69

Subject: Issuance of long-term debt of up to \$2 billion through March 31, 2012.

Purpose: To approve the issuance of long-term debt of up to \$2 billion through March 31, 2012.

Substance of final rule: The Commission, on May 14, 2009, adopted an order approving the petition of Niagara Mohawk Power Corporation to issue and sell up to \$2 billion of securities in one or more transactions, no later than March 31, 2012, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us 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.
(08-M-1352SA1)

NOTICE OF ADOPTION

Waiver of Filing Requirements

I.D. No. PSC-02-09-00011-A

Filing Date: 2009-05-19

Effective Date: 2009-05-19

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

Action taken: On 5/14/09 the PSC adopted an order approving, the request of Long Island Power Authority to waive several filing requirements in connection with an Article VII application.

Statutory authority: Public Service Law, section 122(1)

Subject: Waiver of filing requirements.

Purpose: To approve waivers for a Certificate of Environmental Compatibility & Public Need to install an electric transmission facility.

Substance of final rule: The Commission, on May 14, 2009, adopted an order approving the request of Long Island Power Authority to waive several filing requirements in connection with its application for a Certificate of Environmental Compatibility and Public Need to install a 138 kV electric transmission facility in an existing conduit, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us 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.
(08-T-1388SA1)

NOTICE OF ADOPTION**Installed Reserve Margin of 16.5% for the NY Control Area for the Capability Year Beginning 5/1/09 Through 4/30/10**

I.D. No. PSC-09-09-00015-A

Filing Date: 2009-05-15

Effective Date: 2009-05-15

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

Action taken: On May 14, 2009, the PSC adopted as a permanent rule, an order approving an Installed Reserve Margin of 16.5% for the New York Control Area for the Capability Year beginning May 1, 2009 and ending April 30, 2010.

Statutory authority: Public Service Law, sections 4, 5, 65 and 66

Subject: Installed Reserve Margin of 16.5% for the NY Control Area for the Capability Year beginning 5/1/09 through 4/30/10.

Purpose: To adopt as a permanent rule Installed Reserve Margin of 16.5% for the NY Control Area for the Capability Year 5/1/09 - 4/30/10.

Substance of final rule: The Commission, on May 14, 2009, approved as a permanent rule, an order adopting an Installed Reserve Margin of 16.5% for the New York Control Area for the Capability Year beginning May 1, 2009 and ending April 30, 2010, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us 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-0088SA3)

NOTICE OF ADOPTION**Continuation of Exemptions from Standby Rates for Beneficial Forms of Distributed Generation**

I.D. No. PSC-09-09-00019-A

Filing Date: 2009-05-18

Effective Date: 2009-05-18

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

Action taken: On 5/14/09, the PSC adopted an order approving the continuation of exemptions from standby rates for beneficial forms of distributed generation.

Statutory authority: Public Service Law, sections 64, 65(1), (2), (3), (5) and 66(1), (2), (5), (8), (9), (10), (12)

Subject: Continuation of exemptions from standby rates for beneficial forms of distributed generation.

Purpose: To continue the exemptions from standby rates for beneficial forms of distributed generation.

Substance of final rule: The Commission, on May 14, 2009, adopted an order approving the continuation of exemptions from standby rates for an additional six-year period, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(09-E-0109SA1)

NOTICE OF ADOPTION**Ratemaking Treatment for Changes in Uncollectible Expenses and Arrearages for the 2008-09 Heating Season**

I.D. No. PSC-11-09-00006-A

Filing Date: 2009-05-15

Effective Date: 2009-05-15

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

Action taken: On 5/14/09, the PSC adopted an order approving the State's major energy utilities, a one-time deferral of the unrecovered incremental costs attributable to the specified voluntary actions that the utilities undertook during the 2008-09 heating season.

Statutory authority: Public Service Law, section 66

Subject: Ratemaking treatment for changes in uncollectible expenses and arrearages for the 2008-09 heating season.

Purpose: To approve ratemaking treatment for changes in uncollectible expenses and arrearages for the 2008-09 heating season.

Substance of final rule: The Commission, on May 14, 2009, adopted an order approving the State's major energy utilities, a one-time deferral of the unrecovered incremental costs attributable to the specified voluntary actions that the utilities undertook during the 2008-2009 winter heating season and immediately thereafter, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us 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.
(08-M-1312SA1)

NOTICE OF ADOPTION**Fixed Transition Charge (Non-Bypassable Charge)**

I.D. No. PSC-12-09-00011-A

Filing Date: 2009-05-18

Effective Date: 2009-05-18

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

Action taken: On 5/14/09, the PSC approved Rochester Gas and Electric Corporation's request to make various changes to its schedule for Electric Service PSC No. 19 — Electricity, eff. 6/1/09.

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

Subject: Fixed Transition Charge (Non-Bypassable Charge).

Purpose: To approve an interim adjustment to the fixed transition charges (non-bypassable charge) that were established for 2009.

Substance of final rule: The Commission, on May 14, 2009, approved Rochester Gas and Electric Corporation's tariff revisions to implement an interim adjustment to the previously-fixed non-bypassable charges as of June 1, 2009.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(09-E-0228SA1)

NOTICE OF ADOPTION**Fixed Transition Charge (Non-Bypassable Charge)****I.D. No.** PSC-12-09-00016-A**Filing Date:** 2009-05-18**Effective Date:** 2009-05-18

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

Action taken: On 5/14/09, the PSC approved New York State Electric & Gas Corporation's request to make various changes to its schedule for Electric Service PSC No. 120 — Electricity, eff. 6/1/09.

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

Subject: Fixed Transition Charge (Non-Bypassable Charge).

Purpose: To approve an interim adjustment to the fixed transition charges (non-bypassable charge) that were established for 2009.

Substance of final rule: The Commission, on May 14, 2009, approved New York State Electric & Gas Corporation's tariff revisions to implement an interim adjustment to the previously-fixed non-bypassable charges as of June 1, 2009.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(09-E-0227SA1)

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

Authorization of a \$95 Million RPS Main Tier Procurement**I.D. No.** PSC-22-09-00008-P

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

Proposed Action: The Commission is considering whether to authorize a 2009 Renewable Portfolio Standard (RPS) program Main Tier procurement solicitation by NYSEERDA utilizing up to \$95 million of RPS program funds, and pertinent design details and methodologies.

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

Subject: Authorization of a \$95 million RPS Main Tier procurement.

Purpose: To encourage the deployment of renewable electric generation resources.

Substance of proposed rule: The Commission is considering whether to authorize a 2009 Renewable Portfolio Standard (RPS) program Main Tier procurement solicitation (2009 Solicitation) by the New York State Energy Research and Development Authority (NYSEERDA) utilizing up to \$95 million of RPS program funds, and whether to adopt, modify, or reject, in whole or in part, specific design details and methodologies pertinent to such a 2009 Solicitation. In general, the 2009 Solicitation would follow the design details and methodologies already established by Commission orders in Case 03-E-0188. However, to leverage funds available through the American Recovery and Reinvestment Act of 2009 (ARRA), for the 2009 Solicitation the Commission is considering the Design Details and Methodologies Changes set forth below that differ from past solicitations. These changes pertain to the 2009 Solicitation and are not indicative of potential future procurement rules.

Design Details and Methodologies Changes:

1. Proposals will be requested using a sealed, "pay-as-bid" auction procedure. A price will be determined above which bids will not be considered, but such price will not be revealed to bidders.

2. Contracts will be awarded for a ten year term, except that fuel-based bid facilities may bid any whole number of contract years from three to ten. A fuel-based bid facility receiving an RPS contract for

less than ten years will be permitted to bid in subsequent RPS solicitations; however the cumulative terms of RPS contracts for such fuel-based bid facility may not exceed ten years.

3. The selection of winning bids will primarily be based on a weighted combined score with price comprising 70% and projected incremental economic development benefits at 30%. No weight will be given to economic benefits that are not incremental due to the awarding of an RPS contract. Those projects taking advantage of the ARRA grant funds will be given priority consideration.

4. Only facilities that will be placed in service on or after the date of notice of the solicitation will be eligible to bid. Facilities that began operation prior to the date of notice of the solicitation will not be eligible to bid. Hydroelectric and Wind & All Other facilities will be required to be in service on or before January 1, 2011. Biomass & Biogas facilities will be required to be in service on or before January 1, 2012.

Note: Generation resource types are as defined in Case 03-E-0188, Renewable Portfolio Standard, Order On Customer-Sited Tier Implementation (issued June 28, 2006) Attachment pp. 1-5.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brillling@dps.state.ny.us

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.

(03-E-0188SP21)

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

A Size Limit on Qualifying for Net Metering of a Solar Generation Facility**I.D. No.** PSC-22-09-00009-P

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

Proposed Action: The Commission is considering a petition from Buddy's Place LLC requesting a waiver or reconsideration of a size limit on qualifying for net metering of a solar generation facility.

Statutory authority: Public Service Law, section 66-j

Subject: A size limit on qualifying for net metering of a solar generation facility.

Purpose: Consideration of a size limit on qualifying for net metering of a solar generation facility.

Substance of proposed rule: The Public Service Commission is considering a petition from Buddy's Place LLC requesting a waiver or reconsideration of a size limit on qualifying for net metering of a solar generation facility applicable to non-residential, non-demand customers of Niagara Mohawk Power Corporation d/b/a National Grid, which was adopted in an Order Modifying and Authorizing Net Metering Tariffs issued on February 13, 2009 in Cases 08-E-1305, et al. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brillling@dps.state.ny.us

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.

(08-E-1305SP2)

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

Mandatory Hourly Pricing

I.D. No. PSC-22-09-00010-P

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

Proposed Action: The Commission is considering a proposed filing by Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its Schedules for Electric Service, P.S.C. No. 9 and P.S.C. No. 2.

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

Subject: Mandatory Hourly Pricing.

Purpose: To change the eligibility for Mandatory Hourly Pricing under Rider M and related tariff revisions.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by Consolidated Edison Company of New York, Inc. (Con Edison) to implement a reduction in the Mandatory Hourly Pricing (MHP) threshold, stated in terms of maximum demand, for customers served under demand-billed service classifications and to adopt metering charges applicable to certain customers in connection with the MHP program. The proposed filing has an effective date of August 26, 2009.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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.

(09-E-0432SP1)

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

Cost Allocation for Consolidated Edison's East River Repowering Project

I.D. No. PSC-22-09-00011-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 examining the allocation of costs of Consolidated Edison Company of New York, Inc.'s East River Repowering Project, between electric revenue requirements and steam revenue requirements.

Statutory authority: Public Service Law, sections 65, 66, 79, 80 and 81

Subject: Cost allocation for Consolidated Edison's East River Repowering Project.

Purpose: To determine whether any changes are warranted in the cost allocation of Consolidated Edison's East River Repowering Project.

Substance of proposed rule: The Commission has initiated a proceeding to examine, among other things, the allocation of costs of Consolidated

Edison Company of New York, Inc.'s (Consolidated Edison) East River Repowering Project, between electric revenue requirements and steam revenue requirements. On May 7, 2009, Consolidated Edison filed an East River Repowering Project Cost Allocation Study that recommends continuation of the "incremental method" of allocation that is currently in use. The Cost Allocation Study also presents a comparison of results using different fuel cost allocation methods. The proceeding will examine the Cost Allocation Study, including the alternative allocation methods presented in the Study as well as other, related, alternative methods presented by other parties within the proceeding. Potential actions of the Commission are to continue the current allocation method, or to order the use of a different allocation method, effective not sooner than October 1, 2010. The Commission may also adopt rate mitigation options or other measures related to the issues presented by the Cost Allocation Study.

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: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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.

(09-S-0029SP3)

Department of State

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

Cease and Desist Zone for the Canarsie Area of Kings County

I.D. No. DOS-22-09-00003-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 section 175.17(c)(2) of Title 19 NYCRR.

Statutory authority: Real Property Law, section 442-h

Subject: Cease and desist zone for the Canarsie area of Kings County.

Purpose: To repeal a cease and desist zone that expired on May 31, 2008.

Text of proposed rule: Section 175.17(c)(2) of Title 19 of the NYCRR is amended to read as follows:

§ 175.17 Prohibitions in relation to solicitation

(2) The following geographic areas are designated as cease-and-desist zones, and, unless sooner redesignated, the designation for the following cease-and-desist zones shall expire on the following dates:

Zone	Expiration Date
County of Bronx	August 1, 2009

Within the County of Bronx as follows:

All that area of land in the County of Bronx, City of New York, otherwise known as Community Districts 9, 10, 11 and 12, and bounded and described as follows: Beginning at a point at the intersection of Bronx County and Westchester County boundary and Long Island Sound; thence southerly along Long Island Sound while including City Island to East River; thence westerly and northwesterly along East River to Bronx River; thence northwesterly and northerly along Bronx River to Sheridan Expressway; thence northeasterly along Sheridan Expressway to Cross Bronx Expressway; thence southeasterly and easterly along Cross Bronx Expressway to Bronx River Parkway; thence northerly and northeasterly along Bronx River Parkway to East 233rd Street; thence westerly along East 233rd Street to Van Cortlandt Park East; thence northerly along Van Cortlandt Park East to the boundary of Westchester County and Bronx County; thence easterly along the boundary of Westchester County and Bronx County to Long Island Sound and the point of beginning.

Zone
County of Queens

Expiration Date
August 1, 2009

Cease and Desist Zone
(Mill/Basin/Brooklyn)

Zone
County of Kings (Brooklyn)

Expiration Date
November 30, 2012

Within the County of Kings as follows:

All that area of land in the County of Kings, City of New York, otherwise known as the communities of Mill Basin, Mill Island, Bergen Beach, Futurama, Marine Park and Madison Marine, bounded and described as follows: Beginning at a point at the intersection of Flatlands Avenue and the northern prolongation of Paerdegat Basin, thence southwesterly along Flatlands Avenue to Avenue N; thence westerly along Avenue N to Nostrand Avenue; thence southerly along Nostrand Avenue to King's Highway; thence southwesterly along King's Highway to Ocean Avenue; thence southerly along Ocean Avenue to Shore Parkway; thence northeasterly, northerly, northeasterly and northerly along Shore Parkway to Paerdegat Basin; thence northwesterly along Paerdegat Basin and the northern prolongation of Paerdegat Basin to Flatlands Avenue and the point of beginning.

[Cease and Desist Zone
(Canarsie)]

Zone
County of Kings (Brooklyn)

Expiration
Date May 31, 2008

Within the County of Kings as follows:

All that area of land in the County of Kings, City of New York, bounded and described as follows:

Beginning at a point at the intersection of Ralph Avenue and the Long Island Railroad right-of-way (between Chase Court and Ditmas Avenue); thence northeasterly along the Long Island Railroad right-of-way to the northern prolongation of Bank Street; thence southeasterly along Bank Street to a point at the intersection of Bank Street and Foster Avenue; thence northeasterly continuing to a point at the intersection of Stanley Street and East 108th Street; thence southeasterly along East 108th Street to Flatlands Avenue; thence northeasterly along Flatlands Avenue to the northern prolongation of Fresh Creek Basin; thence southeasterly along Fresh Creek Basin to Shore (Belt) Parkway; thence southwesterly along Shore (Belt) Parkway to Paerdegat Basin; thence northwesterly along Paerdegat Basin, and the northern prolongation of Paerdegat Basin to Flatlands Avenue; thence southwesterly along Flatlands Avenue to Ralph Avenue; thence northwesterly along Ralph Avenue to the Long Island Railroad right-of-way and the point of beginning.]

Text of proposed rule and any required statements and analyses may be obtained from: Whitney Clark, NYS Department of State, Division of Licensing Services, Alfred E Smith Office Building, 80 South Swan Street, Albany, NY 12231, (518) 473-2728, email: whitney.clark@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.

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Consensus Rule Making Determination

This rule is being proposed as a consensus rule making. The New York State Department of State does not expect that any person is likely to object to its adoption because the proposed rule merely repeals an expired provision of regulation.

Pursuant to section 442-h of the Real Property Law, if the Secretary of State (the Secretary) determines that owners of residential real property within a defined geographic area are subject to intense and repeated solicitation to place their property for sale, the Secretary may adopt a rule establishing a cease and desist zone. After a zone has been established, homeowners within the zone may file a statement with the Secretary expressing their wish not to be solicited. Real estate brokers and salespersons are prohibited from contacting property owners who have filed such statements with the Secretary. No rule establishing a cease and desist zone may be effective for longer than five years. However, the Secretary may readopt the rule to continue a cease and desist zone for additional periods not to exceed five years each.

19 NYCRR 195.17 contains the cease and desist zones established by the Secretary pursuant to Real Property Law section 442-h. One of the zones currently set forth in regulation is for the Canarsie area of Kings County. This zone expired on May 31, 2008. The Secretary has not readopted the zone.

Job Impact Statement

This rule will not have any substantial adverse impact on jobs and employment opportunities. The rule repeals an expired provision of regulation

which prohibited real estate brokers and salespersons from soliciting real estate listings from residents of the Canarsie area of Kings County who notified the Department of State that they did not wish to be solicited. The provision of regulation establishing the cease and desist zone for this area expired on May 31, 2008 and has not been readopted. Real estate brokers and salespersons may now solicit real estate listings in the Canarsie area.

Susquehanna River Basin Commission

INFORMATION NOTICE

Notice of Public Hearing and Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Public Hearing and Commission Meeting.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing as part of its regular business meeting beginning at 8:30 a.m. on June 18, 2009, in Binghamton, N.Y. At the public hearing, the Commission will consider: 1) action on certain water resources projects; 2) action on two projects involving diversions; 3) the rescission of one previous docket approval; 4) enforcement actions against three projects; and 5) two requests for an administrative hearing on projects previously approved by the Commission. Details concerning the matters to be addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

DATE: June 18, 2009.

ADDRESS: Holiday Inn Binghamton-Downtown, 2-8 Hawley Street, Binghamton, N.Y.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304; fax: (717) 238-2436; e-mail: srichardson@srbc.net.

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the business meeting also includes actions or presentations on the following items: 1) hydrologic conditions of the basin; 2) the SRBC "Priority Management Area" on flooding; 3) presentation of the Maurice K. Goddard award; 4) an Application Fee Policy for Mine Drainage Withdrawals to guide the granting of fee waivers or reductions to projects using water impaired by abandoned mine drainage; 5) proposed rulemaking regarding federal licensing/re-licensing of projects and other revisions; 6) revision of the FY 2010 budget; 7) adoption of a FY 2011 budget; 8) ratification of a contract agreement; and 9) election of a new Chairman and Vice Chairman to serve in the next fiscal year. The Commission will also hear a Legal Counsel's report.

Public Hearing - Projects Scheduled for Action:

1. Project Sponsor and Facility: ALTA Operating Company, LLC (Turner Lake), Liberty Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.393 mgd.

2. Project Sponsor and Facility: Charles Header-Laurel Springs Development, Barry Township, Schuylkill County, Pa. Application for groundwater withdrawal of 0.099 mgd from Laurel Springs.

3. Project Sponsor and Facility: Charles Header-Laurel Springs Development, Barry Township, Schuylkill County, Pa. Application for consumptive water use of up to 0.099 mgd.

4. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Chemung River), Athens Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

5. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Sugar Creek), Burlington Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.499 mgd.

6. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River - Newton), Terry Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

7. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River - McCarthy), Wyalusing Township, Bradford County, Pa. Application for surface water withdrawal of up to 1.440 mgd.

8. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Towanda Creek - Monroe Hose), Monroe Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.400 mgd.

9. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Towanda Creek - DeCristo), Leroy Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.499 mgd.

10. Project Sponsor and Facility: Chesapeake Appalachia, LLC

(Wyalusing Creek - Wells), Wyalusing Borough, Bradford County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

11. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Wyalusing Creek - Vanderfeltz), Rush Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.499 mgd.

12. Project Sponsor and Facility: Citrus Energy (Inez Moss Pond), Benton Township, Columbia County, Pa. Application for surface water withdrawal of up to 0.099 mgd.

13. Project Sponsor and Facility: East Resources, Inc. (Tioga River - Greer), Richmond Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.107 mgd.

14. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (Black Moshannon Creek), Snow Shoe Township, Centre County, Pa. Application for surface water withdrawal of up to 0.140 mgd.

15. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (East Branch Tunkhannock Creek), Clifford Township, Lackawanna County, Pa. Application for surface water withdrawal of up to 0.130 mgd.

16. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (Little Muncy Creek - LYC-01, Jordan), Franklin Town, Lycoming County, Pa. Application for surface water withdrawal of up to 0.041 mgd.

17. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (Little Muncy Creek - LYC-02, Temple), Franklin Town, Lycoming County, Pa. Application for surface water withdrawal of up to 0.091 mgd.

18. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (South Branch Tunkhannock Creek - WSC), Benton Township, Lackawanna County, Pa. Application for surface water withdrawal of up to 0.091 mgd.

19. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (West Branch Susquehanna River - Sproul State Forest), Burnside Township, Centre County, Pa. Application for surface water withdrawal of up to 1.080 mgd.

20. Project Sponsor: Exelon Generation Company, LLC. Project Facility: Three Mile Island Generating Station, Unit 1, Londonderry Township, Dauphin County, Pa. Modification to project features of the consumptive water use approval (Docket No. 19950302).

21. Project Sponsor and Facility: Fortuna Energy Inc. (Towanda Creek - Franklin Township Volunteer Fire Department), Franklin Township, Bradford County, Pa. Application for surface water withdrawal of up to 2.000 mgd.

22. Project Sponsor and Facility: Grand Water Rush, LLC (Grand Farm Pond), Dunnstable Township, Clinton County, Pa. Application for surface water withdrawal of up to 0.022 mgd.

23. Project Sponsor and Facility: J-W Operating Company (Abandoned Mine Pool - Unnamed Tributary to Finley Run), Shippen Township, Cameron County, Pa. Application for surface water withdrawal of up to 0.090 mgd.

24. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Abandoned Mine Reclamation. Project Facility: Hollywood AMD Treatment Plant, Huston and Jay Townships, Clearfield and Elk Counties, Pa. Application for groundwater withdrawal of up to 2.890 mgd from six deep mine complexes.

25. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Abandoned Mine Reclamation. Project Facility: Lancashire No. 15 AMD Treatment Plant, Barr Township, Cambria County, Pa. Application for groundwater withdrawal of up to 7.400 mgd from Recovery Wells 1, 2, and 3, and D Seam Discharge.

26. Project Sponsor: PPL Holtwood, LLC. Project Facility: Holtwood Hydroelectric Station, Martic and Conestoga Townships, Lancaster County, and Chanceford and Lower Chanceford Townships, York County, Pa. Applications for redevelopment modifications of its operations on the lower Susquehanna River, including the addition of a second power station and associated infrastructure.

27. Project Sponsor and Facility: Schuylkill County Municipal Authority, Pottsville Public Water Supply System, Mount Laurel Subsystem, Butler Township, Schuylkill County, Pa. Application for a withdrawal of up to 0.432 mgd from the Gordon Well.

28. Project Sponsor and Facility: Southwestern Energy Company (Tunkhannock Creek - Price), Gibson Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.380 mgd.

29. Project Sponsor and Facility: Stone Energy Corporation (Wyalusing Creek - Stang 1), Rush Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.750 mgd.

30. Project Sponsor and Facility: Stone Energy Corporation (Wyalusing Creek - Stang 2), Rush Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.750 mgd.

31. Project Sponsor and Facility: Susquehanna Gas Field Services, L.L.C. (Meshoppen Creek), Meshoppen Borough, Wyoming County, Pa. Application for surface water withdrawal of up to 0.145 mgd.

32. Project Sponsor: Titanium Metals Corporation. Project Facility: Titanium Hearth Technologies, Inc., d.b.a. TIMET North American Operations, Caernarvon Township, Berks County, Pa. Application for groundwater withdrawal of up to 0.099 mgd from Well 1.

33. Project Sponsor: UGI Development Company. Project Facility: Hunlock Power Station, Hunlock Township, Luzerne County, Pa. Application for surface water withdrawal from the Susquehanna River of up to 55.050 mgd.

34. Project Sponsor: UGI Development Company. Project Facility: Hunlock Power Station, Hunlock Township, Luzerne County, Pa. Application for consumptive water use of up to 0.870 mgd.

35. Project Sponsor and Facility: Ultra Resources, Inc. (Elk Run), Gaines Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.021 mgd.

36. Project Sponsor and Facility: Valley Country Club, Sugarloaf Township, Luzerne County, Pa. Applications for groundwater withdrawal of up to 0.090 mgd from the Pump House Well and 0.090 mgd from the Shop Well.

Public Hearing - Projects Scheduled for Action Involving a Diversion:

1. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Abandoned Mine Reclamation. Project Facility: Lancashire No. 15 AMD Treatment Plant, Barr Township, Cambria County, Pa. Application for an into-basin diversion of up to 10.000 mgd from the Ohio River Basin.

2. Project Sponsor and Facility: Schuylkill County Municipal Authority, Pottsville Public Water Supply System, Mount Laurel Subsystem, Butler Township, Schuylkill County, Pa. Applications for: 1) an out-of-basin diversion of up to 0.432 mgd to the Delaware River Basin for water supply; and 2) an existing into-basin diversion of up to 0.485 mgd from the Delaware River Basin.

Public Hearing - Projects Scheduled for Rescission Action:

1. Project Sponsor: Corning Incorporated. Project Facility: Fall Brook Facility (Docket No. 19960301), Corning, Steuben County, N.Y.

Public Hearing - Enforcement Actions:

1. Project Sponsor: Belden & Blake Corporation (EnerVest Operating, LLC). Project Facility: Sturdevant #1 Well, Smithfield Township, Bradford County, Pa.

2. Project Sponsor: Chester County Solid Waste Authority. Project Facility: Lanchester Landfill, Lancaster and Chester Counties, Pa.

3. Project Sponsor: East Resources, Inc. (Tioga River). Project Facility: American Truck Stop Site, Tioga County, Pa.

Public Hearing - Request for Administrative Hearing:

1. Petitioner Mark A. Givler; RE: Chief Oil and Gas, Docket No. 20081203, approved December 4, 2008.

2. Petitioner Delta Borough, York County, Pennsylvania; RE: Delta Borough Public Water Supply Well No. DR-2; Docket No. 20090315, approved March 12, 2009.

Opportunity to Appear and Comment:

Interested parties may appear at the above hearing to offer written or oral comments to the Commission on any matter on the hearing agenda, or at the business meeting to offer written or oral comments on other matters scheduled for consideration at the business meeting. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Written comments may also be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102-2391, or submitted electronically to Richard A. Cairo, General Counsel, e-mail: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, e-mail: srichardson@srbc.net. Comments mailed or electronically submitted must be received prior to June 16, 2009, to be considered.

AUTHORITY: P.L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808

Dated: May 18, 2009.

Thomas W. Beauduy
Deputy Director.

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-10-09-00009-A

Filing No. 506

Filing Date: 2009-05-13

Effective Date: 2009-05-13

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c); 509(7); 523(b); and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period April 1, 2009 through June 30, 2009.

Text or summary was published in the March 11, 2009 issue of the Register, I.D. No. TAF-10-09-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax_regulations@tax.state.ny.us

Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Job Impact Statement

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Assessment of Public Comment

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.

NOTICE OF ADOPTION

Penalties and Forfeitures

I.D. No. TAF-10-09-00010-A

Filing No. 507

Filing Date: 2009-05-13

Effective Date: 2009-06-03

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

Action taken: Amendment of section 6-3.1(c) and repeal of Part 9 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First and 1096(a)

Subject: Penalties and forfeitures.

Purpose: To eliminate unnecessary and obsolete regulations regarding penalties and forfeitures.

Text or summary was published in the March 11, 2009 issue of the Register, I.D. No. TAF-10-09-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax_regulations@tax.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-22-09-00001-P

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

Proposed Action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c); 509(7); 523(b); and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period July 1, 2009 through September 30, 2009.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lv) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(liv) April - June 2009					
12.8	20.8	37.9	15.4	23.4	38.75
(lv) July - September 2009					
13.7	21.7	38.8	14.7	22.7	38.05

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax_regulations@tax.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, 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Farming and Commercial Horse Boarding Operations

I.D. No. TAF-22-09-00002-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 section 528.7(a) of Title 20 NYCRR. This rule is proposed pursuant to [SAPA § 207(3)], 5-Year Review of Existing Rules.

Statutory authority: Tax Law, sections 171, subd. First; 1142(1) and (8); and 1250 (not subdivided)

Subject: Farming and commercial horse boarding operations.

Purpose: To update section 528.7(a) to reflect the termination of the taxes imposed in New York City by section 1107 of the Tax Law.

Text of proposed rule: Section 1. Paragraph (2) of subdivision (a) of section 528.7 of such regulations is amended to read as follows:

(2) The services of installing, maintaining, servicing, and repairing the tangible personal property specified as exempt in paragraph (1) of this subdivision are excluded from the State and local sales and compensating use taxes. [However, this exclusion does not apply to the sales and compensating use taxes imposed in New York City under section 1107 of the Tax Law.] (See section 527.5 of this Title for rules pertaining to installing, maintaining, servicing, and repairing tangible personal property.)

Section 2. Example 2 in subdivision (a) of section 528.7 of such regulations is REPEALED, and Example 1 of such subdivision is amended to read as follows:

“Example [1]:” A farmer (or an operator of a commercial horse boarding operation) [located in an upstate county] in this State has a tractor repaired. The tractor is used predominantly in farm production (or in a commercial horse boarding operation). The charge for materials is \$100, and the charge for labor is \$50. The farmer gives the vendor a timely filed and properly completed exemption certificate and is not required to pay the New York State and local sales and compensating use taxes on the total charge for materials and labor. It does not matter whether the vendor’s invoice separately states the charges for the materials and labor[,] since neither is subject to tax.

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax_regulations@tax.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.

Consensus Rule Making Determination

The Department of Taxation and Finance has determined that no person is likely to object to the adoption of this rule as written because the amendments merely repeal regulatory provisions that are no longer applicable to any person and conform to non-discretionary statutory provisions. The amendments update section 528.7(a) of the sales and compensating use tax regulations by making technical changes to reflect the termination of the taxes imposed in New York City by section 1107 of the Tax Law. These amendments are not controversial in nature.

Reasoned Justification for Modification of the Rule

The Department of Taxation and Finance submitted for publication in the Rule Review section of the January 7, 2009, issue of the State Register summaries of rules that were adopted by the Commissioner of Taxation and Finance in 1999 and 2004, and a notice of the department’s intent to review such rules pursuant to section 207 of the State Administrative Procedure Act. On December 30, 2008, this information was also posted on the department’s web site (<http://www.tax.state.ny.us/rulemaker/regulations/fiveyearrev.htm>). Comments from the public concerning the continuation or modification of these rules were invited until February 23, 2009.

No public comments were received by the department concerning the 2004 amendments that were made to sections 528.7 and 528.22 of the Sales and Use Taxes Regulations as they pertained to farming and commercial horse boarding operations. These regulations were updated to reflect Chapter 407 of the Laws of 1999 and Chapters 63 and 472 of the Laws of 2000. The amendments were adopted by the commissioner on April 29, 2004, and published in the State Register on May 19, 2004, (TAF 10 04 00025 A).

This notwithstanding, the department determined as a result of its 2009 review that one of the provisions addressed in the 2004 amendments was dated and could not be continued without modification.

Section 1 of Part SS-1 of Chapter 57 of the Laws of 2008 amended section 1105(c)(3)(vi) of the Tax Law to repeal an obsolete and non-conforming provision concerning the now-terminated Municipal Assistance Corporation (MAC) taxes imposed in New York City by section 1107 of the Tax Law. The repealed provision provided that the exclusion from tax for services of installing, maintaining, servicing, and repairing exempt tangible personal property used predominantly either in farm production or in a commercial horse boarding operation (or both) did not apply to the taxes imposed in New York City by section 1107 of the Tax Law. These services are now excluded from the local New York City sales and compensating use taxes imposed pursuant to the authority of section 1210 of the Tax Law, which had been suspended but immediately resumed after the termination of the section 1107 taxes.

Because section 528.7(a)(2) and Example 2 in this section of the regulations reference the section 1107 taxes and because Example 1 includes a reference to “upstate” that is no longer relevant, this rule is necessary to bring the regulations up to date in this regard.

It is noted that the remainder of the amendments made in 2004 to these regulations are valid and are continued without modification.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter that the rule will have no impact on jobs or employment opportunities. The purpose of the rule is simply to update section 528.7(a) of the sales and compensating use tax regulations by making technical amendments to reflect the termination of the taxes imposed in New York City by section 1107 of the Tax Law.