

# 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.

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## Office of Alcoholism and Substance Abuse Services

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### NOTICE OF ADOPTION

#### Non-Medically Supervised Chemical Dependence Outpatient Services; Specialized Services

**I.D. No.** ASA-40-10-00002-A  
**Filing No.** 1213  
**Filing Date:** 2010-11-23  
**Effective Date:** 2010-12-08

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

**Action taken:** Repeal of Parts 821 and 1045; and addition of Part 824 to Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 19.07(c), 19.09(b), 19.40, 32.07(a) and 32.02

**Subject:** Non-medically supervised Chemical Dependence Outpatient Services; Specialized Services.

**Purpose:** Consolidate and clarify current regulations; repeal obsolete regulation.

**Text or summary was published** in the October 6, 2010 issue of the Register, I.D. No. ASA-40-10-00002-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Sara Osborne, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2317, email: SaraOsborne@oasas.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

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## Office of Children and Family Services

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### NOTICE OF ADOPTION

#### Amendment of the Definition of a Child for the Purpose of Adoption Subsidy and the Criteria for the Continuation of Subsidies

**I.D. No.** CFS-39-10-00003-A  
**Filing No.** 1206  
**Filing Date:** 2010-11-22  
**Effective Date:** 2010-12-08

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

**Action taken:** Amendment of section 421.24 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f) and 450 through 458; L. 1997, ch. 436

**Subject:** Amendment of the definition of a child for the purpose of adoption subsidy and the criteria for the continuation of subsidies.

**Purpose:** To implement amendments required by Chapter 518 of the Laws of 2006.

**Text or summary was published** in the September 29, 2010 issue of the Register, I.D. No. CFS-39-10-00003-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

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## Department of Civil Service

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### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-12-10-00004-A  
**Filing No.** 1189  
**Filing Date:** 2010-11-18  
**Effective Date:** 2010-12-08

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 March 24, 2010 issue of the Register, I.D. No. CVS-12-10-00004-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-12-10-00005-A

**Filing No.** 1196

**Filing Date:** 2010-11-18

**Effective Date:** 2010-12-08

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 March 24, 2010 issue of the Register, I.D. No. CVS-12-10-00005-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-12-10-00006-A

**Filing No.** 1190

**Filing Date:** 2010-11-18

**Effective Date:** 2010-12-08

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 March 24, 2010 issue of the Register, I.D. No. CVS-12-10-00006-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-16-10-00027-A

**Filing No.** 1194

**Filing Date:** 2010-11-18

**Effective Date:** 2010-12-08

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 April 21, 2010 issue of the Register, I.D. No. CVS-16-10-00027-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-16-10-00028-A

**Filing No.** 1198

**Filing Date:** 2010-11-18

**Effective Date:** 2010-12-08

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 April 21, 2010 issue of the Register, I.D. No. CVS-16-10-00028-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-16-10-00029-A

**Filing No.** 1192

**Filing Date:** 2010-11-18

**Effective Date:** 2010-12-08

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 April 21, 2010 issue of the Register, I.D. No. CVS-16-10-00029-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-16-10-00030-A

**Filing No.** 1193

**Filing Date:** 2010-11-18

**Effective Date:** 2010-12-08

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 April 21, 2010 issue of the Register, I.D. No. CVS-16-10-00030-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-16-10-00031-A  
**Filing No.** 1200  
**Filing Date:** 2010-11-18  
**Effective Date:** 2010-12-08

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 April 21, 2010 issue of the Register, I.D. No. CVS-16-10-00031-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-16-10-00032-A  
**Filing No.** 1197  
**Filing Date:** 2010-11-18  
**Effective Date:** 2010-12-08

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 April 21, 2010 issue of the Register, I.D. No. CVS-16-10-00032-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-21-10-00001-A  
**Filing No.** 1195  
**Filing Date:** 2010-11-18  
**Effective Date:** 2010-12-08

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 May 26, 2010 issue of the Register, I.D. No. CVS-21-10-00001-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-21-10-00002-A  
**Filing No.** 1191  
**Filing Date:** 2010-11-18  
**Effective Date:** 2010-12-08

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 May 26, 2010 issue of the Register, I.D. No. CVS-21-10-00002-P.  
**Final rule as compared with last published rule:** No changes.  
**Text of rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, 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-21-10-00012-A  
**Filing No.** 1204  
**Filing Date:** 2010-11-19  
**Effective Date:** 2010-12-08

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:  
**Action taken:** Amendment of Appendix 3 of Title 4 NYCRR.  
**Statutory authority:** Civil Service Law, section 6(1)  
**Subject:** Jurisdictional Classification.  
**Purpose:** To classify positions in the labor class.  
**Text or summary was published** in the May 26, 2010 issue of the Register, I.D. No. CVS-21-10-00012-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-24-10-00003-A  
**Filing No.** 1199  
**Filing Date:** 2010-11-18  
**Effective Date:** 2010-12-08

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 June 16, 2010 issue of the Register, I.D. No. CVS-24-10-00003-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-24-10-00004-A

**Filing No.** 1201

**Filing Date:** 2010-11-18

**Effective Date:** 2010-12-08

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 June 16, 2010 issue of the Register, I.D. No. CVS-24-10-00004-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-24-10-00005-A

**Filing No.** 1202

**Filing Date:** 2010-11-18

**Effective Date:** 2010-12-08

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 a position from the exempt class and classify a position in the non-competitive class.

**Text or summary was published** in the June 16, 2010 issue of the Register, I.D. No. CVS-24-10-00005-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.

## Division of Criminal Justice Services

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

#### Preliminary Procedure for Article 3 Juvenile Delinquency Intake; Intake

**I.D. No.** CJS-49-10-00004-P

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

**Proposed Action:** Addition of Part 356 and amendment of Part 354 of Title 9 NYCRR.

**Statutory authority:** Executive Law, section 243(1)

**Subject:** Preliminary Procedure for Article 3 Juvenile Delinquency Intake; Intake.

**Purpose:** Establishes new procedures for Article 3 Juvenile Delinquency Intake to promote consistent application of law and best practices.

**Substance of proposed rule (Full text is posted at the following State website: [www.dcjs.state.ny.us](http://www.dcjs.state.ny.us)):** Pursuant to Chapter 56 of the Laws of 2010, the Division of Probation and Correctional Alternatives (DPCA) was renamed the Office of Probation and Correctional Alternatives (OPCA) and was merged with the Division of Criminal Justice Services (DCJS). All DPCA rules and regulations were transferred to DCJS and are to continue in full force and effect until duly modified or abrogated by the Commissioner of DCJS. These regulatory amendments would delete past references as to Article 3 cases in Part 354 and add a new Part 356 so that there will be one rule related to Juvenile Delinquency (JD) Intake services. The new Part 356 was developed by an OPCA working committee comprised of OPCA staff and local probation department representation across the state of all Council of Probation Administrators (COPA) regions, and including all levels of probation staff, including director, deputy director, supervisor, senior probation officer, and probation officer. The existing regulations regarding JD intake provisions were last amended in 1982. In drafting new rule language, the committee's primary objectives have been to: 1) reflect best practice as it has evolved over the past 20 years; 2) incorporate evidence-based practice that has come to the forefront of probation practices in recent years; and 3) integrate statute and best probation practice into a single document organized according to the flow of cases through preliminary procedure similar to what OPCA adopted in 2008 with respect to probation intake services surrounding Persons In Need of Supervision (PINS). In this way, both populations of youth will benefit from state of the art probation services and increase effective diversion of such youth from Family Court.

#### Section 356.1 Definitions.

These regulatory amendments define numerous terms not previously defined under the old JD Intake rule. Some of these terms have come into widespread use in probation practice over the past 20 years, others are anchored in the 2008 OPCA PINS Intake Rule revision, and others originate from evidence-based practice. To improve the system's ability to communicate about and distinguish among different types of services, the new Part 356 rule contains new definitions for intervention service, accountability measure, and control measure. Other new definitions have been developed for: actuarial risk, case plan, conference, evidence-based practice, potential respondent, referred for petition, risk assessment, and successfully adjusted.

#### Section 356.2 Objective.

This section has been strengthened to encourage successful adjustment of alleged JD youth and for probation services to be more reflective of evidence-based practices.

#### Section 356.3 and 356.4 Applicability and Jurisdiction.

These rule sections reaffirm all probation departments' statutory duty to provide JD intake services and provide guidance regarding cases where the child lives in one county but the JD act occurred in a different county, and provides a mechanism in such instances in order to address provision of services for moderate and high risk youth by ensuring access to such services in the county of residence.

#### Section 356.5 General Requirements for JD Preliminary Procedure.

This rule section reinforces the importance and necessity of establishing, maintaining, and disseminating written policies and procedures for the uniform provision of preliminary procedure services for JD matters and addressing particular areas. It further sets forth key statutory and Uniform Rules for the Family Court requirements regarding eligibility, suitability and parameters relative to timeframes to promote probation compliance. Additional provisions relate to screening and assessment utilizing validated actuarial tools approved by the Commissioner of DCJS and is consistent with OPCA's aforementioned recently adopted PINS Intake Rule.

#### Section 356.6 Probation Intake.

This rule section sets forth eligibility and exclusionary criteria and establishes minimum suitability criteria. It further clarifies that the Family Court Act allows probation to provide JD intake services to eligible and suitable youth in pre-petition detention.

#### Section 356.7 Adjustment Services.

This rule section identifies minimum salient provisions with respect to adjustment services based in large part upon best practices and reaffirms a key statutory requirement that the inability to make restitution cannot be a factor in determining eligibility of services.

#### Section 356.8 Assessment, Case Planning, and Reassessment.

This rule section sets forth key provisions with respect to assessment, case planning, and reassessment. It requires an initial case plan to be developed within 30 calendar days of case initiation, and periodic reassessments during the adjustment period, including at case closure. Case plans must be based initially on assessment results, updated periodically in accordance with reassessment results, and focus on the priority areas for intervention to resolve the presenting problem. Further, these amendments require that referrals for service incorporate the results of the actuarial risk assessment to target the specific underlying dynamic risk factors related to the JD complaint. They also clarify that in addition to intervention services, accountability and control measures may be applied as part of adjustment services and that electronic monitoring may be used only with director consent and upon specific court order.

Similar to OPCA's PINS Intake Rule, this section emphasizes the importance for actuarial risk screening at intake in order to triage cases, and consideration for prompt termination of adjustment efforts with minimal probation intervention services where youth present as low risk for re-offending. Consistent with the actuarial screening and triage functions at intake, the rule language requires as part of adjustment services a full assessment of all youth who are at moderate or high risk for continued JD behavior, and directs that adjustment services be prioritized to higher risk youth.

#### Section 356.9 Referral To Presentment Agency.

This rule section in general delineates statutory responsibilities with respect to probation referral to presentment agencies when adjustment services are not appropriate or successful in order to promote compliance. Additionally, it reinforces the option that probation can recommend a referral back to probation for adjustment services in appropriate cases. This clarification will allow greater prosecutorial and judicial consideration of adjustment services for suitable cases.

#### Section 356.10 Return From Court.

This rule section outlines particular probation duties with respect to cases returned from the court for adjustment services.

Sections 356.11 and 356.12 Case Closing Requirements, and Case Record Keeping Requirements.

These rule sections clarify the three case closing options with respect to JD adjustment services and situations where probation may discontinue the adjustment process, and, in the interest of consistency, outlines case record keeping requirements based in large part on OPCA's PINS Intake Rule. However, it does reflect specific case record keeping distinctions for excluded or sealed cases.

#### Part 354.

Necessary amendments have been made to Part 354 to delete reference to Article 3 cases or JD language since there is now one new proposed rule (Part 356) governing these matters. Other minor technical amendments are further made as necessitated by removal of such language.

**Text of proposed rule and any required statements and analyses may be obtained from:** Linda J. Valenti, Esq., NYS Division of Criminal Justice Services, 4 Tower Place, Third Floor, Albany, New York 12203, (518) 457-8413, email: linda.valenti@dcjs.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:

Pursuant to Chapter 56 of the Laws of 2010, the former Division of Probation and Correctional Alternatives (DPCA) was merged within the Division of Criminal Justice Services (DCJS) and is now the Office of Probation and Correctional Alternatives (OPCA); hereinafter, all reference will be to OPCA. Section 8 of Part A of this Chapter specifically transferred all rules and regulations of OPCA to DCJS and provided that such shall continue in full force and effect until duly modified or abrogated by the Commissioner of DCJS. Additionally, section 17 of Part A of this Chapter amended Executive Law § 243(1) to make conforming changes and establish in pertinent part that the Commissioner of DCJS has authority to adopt "general rules which shall regulate methods and procedure in the administration of probation services, including investigation of ... children prior to adjudication, supervision, casework, recordkeeping...program planning and research so as to secure the most effective application of the probation system and the most effective enforcement of the probation laws throughout the state." Such rules are binding with the force and effect of law. Further, Article 12-A of such law, specifically section 256(1) and (6)(a), requires probation agencies to perform intake services pursuant to law.

##### 2. Legislative objectives:

These regulatory amendments are consistent with legislative intent regarding critical probation functions and the promotion of professional standards which govern administration and delivery of probation services in the area of intake (preliminary procedure) for family court involving any alleged Juvenile Delinquent (JD) matter. The overarching goal of these amendments is to reduce unnecessary and costly reliance on detention and residential placement with local commissioners of departments of social services or the Office of Children and Family Services (OCFS). By vesting the Commissioner of DCJS with rule-making authority, the Legislature authorized DCJS to set minimum standards in this area.

These amendments are necessary to: 1) recognize good probation practice in the area of preliminary probation procedures involving youth; 2) incorporate contemporary evidence-based (research-supported) practice principles for effective interventions; 3) ensure consistent statewide application of such key intervention strategies to any youth regardless of receiving JD or Persons in Need of Supervision (PINS) intake services.

##### 3. Needs and benefits:

In accordance with Family Court Act (FCA) article 3, probation is responsible for conducting JD preliminary procedures. OPCA has always had rules and regulations governing JD intake; however, there have not been significant revisions since statutory laws in this area have remained the same. However, as practice has nationally evolved in this area with emphasis on evidence-based principles, regulatory amendments are appropriate at this time.

The amendments clarify JD eligibility requirements, exclusionary and suitability criteria pursuant to FCA article 3. They promote consistent application of statutory requirements through statewide standardization of terms by eliminating obsolete terminology, updating, and adding definitions that: 1) reflect model probation practices, including evidence-based (research-supported) practices; and are 2) consistent with the OPCA's recently adopted PINS Intake rule, specifically Part 357.

To promote consistent application of law and best practices, these amendments address issues and confusion related to applicability, jurisdiction, and legal concerns. For example, where JD behavior occurs in a county other than where the youth resides, a mechanism is provided to ensure access to needed services in the county of residence. In keeping with the aforementioned PINS Intake rule, it is clarified

that electronic monitoring may be used only as part of adjustment services where there is director consent and a specific court order.

Consistent with good practice and/or certain legal provisions, these amendments reaffirm probation's need to notify the court of the status at case closing for cases returned from court for adjustment services. The amendments specify documents and other information to be included in case records and provided to the court to satisfy legal filing requirements.

Model probation practices have been incorporated. While some are prescriptive, there is flexibility for jurisdictions to develop policies and procedures that meet local needs and resources. These amendments incorporate nationally recognized evidence-based practice principles demonstrated in research to reduce risk of recidivism (continuing in a JD pattern of behavior), by addressing needs underlying the JD behaviors. These principles include actuarial risk and needs screening and assessment; prompt termination of adjustment efforts with minimal intervention services where youth present as low risk for continuing in JD behaviors; and full assessments for all JD youth at moderate or high risk for continued JD behavior. Adjustment services are to be prioritized for moderate and high risk youth, with a focus on addressing youth criminogenic needs in the community to reduce costly detention and placement outside the home and improve long term outcomes for youth and their families.

#### 4. Costs:

DCJS believes more effective JD adjustment services can reduce long-term state and local governmental costs for youth at risk of continued involvement with the juvenile justice or criminal justice system. We anticipate no additional costs in adhering to these amendments beyond what is currently required in law and regulation. Rather, initial triage at intake and sharing resources, wherever appropriate and feasible, with other agencies and services providers is designed to produce cost savings in the short-term, as well as generate longer-term savings by increasing youth capacity to lead productive, law-abiding lives.

Further, DCJS has made available, at no cost to jurisdictions, the Youth Assessment and Screening Instrument (YASI) tools and software for youth intake, investigation and supervision services. Fifty-seven counties currently use YASI. Consistent application and sharing of screening, assessment, and case planning protocols and results will further add savings by avoiding duplication of efforts within and across probation departments.

As part of the State's efforts to streamline recordkeeping, avoid duplication, and achieve cost savings, OPCA supported the deployment of web-based case management software, known as Caseload Explorer. Currently, 37 departments participate, four additional departments are in the process of implementation, and it is anticipated that several other departments will participate in the near future. As of March 31, 2010, 17 other probation departments use similar software to achieve record-keeping cost efficiencies.

As to any anticipated in-service costs of educating staff, DCJS believes orientation can be readily accomplished through memoranda and supervisory oversight without incurring any direct costs. Any minimal costs are outweighed by significant benefits of meeting the intent of current law and regulatory provisions to serve the best interests of JD youth and their families, and in turn, will reduce monetary costs associated with court processing, detention, and placement.

#### 5. Local government mandates:

OPCA always had agency rules governing JD preliminary procedure, and therefore DCJS does not anticipate that these new requirements will be burdensome. While this regulatory reform requires specific attention to key areas, establishing provisions for effective preliminary procedure consistent with traditional and emerging probation practices, it also provides flexibility and recognizes differences among jurisdictional policies and resources. DCJS requires actuarial risk and needs assessments along with case planning tools and protocols approved by the Commissioner. DCJS has made YASI software available to all jurisdictions free of charge. As the state oversight agency, and consistent with our supervision rule classification process (9 NYCRR section 351.3), our approval of any assessment tool is appropriate.

#### 6. Paperwork:

The State has provided leadership in the development and deployment of Caseload Explorer case management software which is streamlining paper requirements by avoiding duplication of efforts. The status of such implementation and of similar software being utilized is earlier noted.

#### 7. Duplication:

These amendments do not duplicate any State or Federal law or regulation. They clarify and reinforce certain laws regarding provision of preliminary procedure for youth engaged in JD behaviors.

#### 8. Alternatives:

These amendments integrate law, research, and model probation practices to establish specific minimum standards for probation's provision of adjustment services to JD youth and their families. Strengthening and supporting consistent application of preliminary procedures is essential to ensure effective adjustment of youth, wherever appropriate, and diversion from the Family Court. By addressing youth needs within the context of their families and communities, the State and local government can realize savings in detention, placement, legal and social costs. Accordingly, it is not a viable alternative to have a seriously outdated probation rule in this area, or no rule, governing preliminary procedure for the JD population.

In the preparation and drafting of the proposed amendments, OPCA was diligent in engaging probation professionals from around the state: 1) In July 2007, OPCA constituted the aforementioned JD rule working committee with representatives across the state from small, medium, and large jurisdictions representing urban and rural jurisdictions; 2) In February 2009, OPCA circulated a refined draft to all probation directors/commissioners; 3) In June 2009, OPCA and the aforementioned Workgroup met with a specific committee (known as the Probation Administrators Research Committee, or PARC) of the Council of Probation Administrators (COPA) for their professional association's feedback which has rural county participation; 4) In July 2009, OPCA communicated again with PARC as to content; and 5) subsequently, in August 2009, OPCA circulated a final draft for probation comment.

Most of the feedback indicated that these amendments reflect current model best probation practices. Some feedback sought clarification of language, alternate language, or increased flexibility. The majority of substantive suggestions for change were incorporated, and the workgroup clarified issues raised, and increased flexibility in certain instances. Overall, OPCA received favorable support from probation agencies that these amendments are manageable and consistent with good professional practice. For reasons stated throughout this document relative to approval and use of actuarial tools, and while NYC Probation is the sole remaining non-YASI jurisdiction and has in the past objected to State approval of their assessment tools, it is essential that DCJS ensure departments are using fully validated instruments. Flexibility in policy allows for New York City to choose another validated assessment tool, approved by DCJS, other than utilizing YASI at no cost. Importantly, the OPCA approved the use of NYC's Probation Assessment Tool (PAT) instrument and there has been in the past several months a change in Executive leadership within NYC's probation department. The Director of OPCA recently communicated with the new Probation Commissioner, forwarding the proposed regulations in this area, reaffirming State approval of PAT, soliciting their utilization of YASI and its benefits, and requesting feedback on content of the proposed regulatory reform in this area. At this time, OPCA has not received any renewed NYC objection as to this measure.

#### 9. Federal standards:

There are no federal standards governing the probation intake/preliminary procedure process.

#### 10. Compliance schedule:

Through prompt dissemination to staff of the new rule and its summary, local departments should be able to implement these amendments and comply with the provisions as soon as they are adopted.

#### **Regulatory Flexibility Analysis**

##### 1. Effect of Rule:

This proposed rule revises existing regulatory procedures in the

area of Juvenile Delinquent (JD) adjustment services and will impact local probation departments which are responsible for the delivery of such services to alleged JD youth.

The Division of Criminal Justice Services (DCJS) does not anticipate that these new requirements will be burdensome upon probation departments. While this regulatory reform requires specific attention to key areas, establishing provisions for effective preliminary procedure consistent with traditional and emerging probation practices, it also provides certain flexibility in recognition of differences among jurisdictional policies and resources.

These amendments integrate law, research and model probation practices to establish specific minimum standards for probation's provision of adjustment services to JD youth and their families. Strengthening and supporting consistent application of preliminary procedures is essential to ensure effective diversion of youth, wherever appropriate. By addressing youth needs within the context of their families and communities, the State and local governments can realize savings in detention, placement, legal and social costs. Accordingly, it is not a viable alternative to have a seriously outdated probation rule, or no rule, governing preliminary procedure for the JD population.

No small businesses are impacted by these proposed regulatory amendments.

#### 2. Compliance Requirements:

While DCJS will require actuarial risk and needs assessments along with case planning tools and protocols approved by the Commissioner of the Division of Criminal Justice Services and consistent with OPCA's PINS Intake and Supervision Rules requiring a classification process to identify risks and needs (9 NYCRR §§ 357.8(a); 351.3), State agency approval of the assessment tools is appropriate.

This rule does not change the monthly workload reporting requirements to DCJS. There are no small business compliance requirements imposed by these proposed rule amendments.

#### 3. Professional Services:

No professional services are required for probation departments to comply with the proposed rule changes. There are no professional services required of small business associated with these proposed rule amendments.

#### 4. Compliance Cost:

DCJS does not foresee these reforms leading to significant additional costs, and does not anticipate that these new requirements will be burdensome or require additional staffing above and beyond current needs. Initial triage at intake and utilizing other community-based resources, wherever appropriate and feasible, with other agencies and services providers should produce cost savings.

Additionally, the Office of Probation and Correctional Alternatives (OPCA) within DCJS provided leadership in the development and deployment of Caseload Explorer case management software, which is streamlining paper requirements by avoiding duplication of effort. Currently, 37 probation departments currently participate, an additional four departments are in the process of implementation, and it is anticipated that several other departments will participate in the near future. As of March 31, 2010, 17 other probation departments use similar software to achieve record-keeping cost efficiencies.

#### 5. Economic and Technological Feasibility:

Local probation departments should have no problem in complying with this rule as DCJS is providing the YASI software free of charge for 57 participating jurisdictions which enables them to have a validated DCJS approved risk and needs assessment tool and DCJS has supported the development and deployment of Caseload Explorer case management software for interested probation departments. DCJS does not anticipate any economic problems experienced by probation departments as a result of these rule changes. There are no economic or technological issues faced by small businesses as these proposed rules do not affect them.

#### 6. Minimizing Adverse Impacts:

In the preparation and drafting of the proposed amendments, OPCA was diligent in engaging probation professionals from around the state: 1) In July 2007, OPCA constituted the aforementioned JD rule

working committee with representatives across the state from small, medium, and large jurisdictions representing urban and rural jurisdictions; 2) In February 2009, OPCA circulated a refined draft to all probation directors/commissioners; 3) In June 2009, OPCA and the aforementioned Workgroup met with a specific committee (known as the Probation Administrators Research Committee, or PARC) of the Council of Probation Administrators (COPA) for their professional association's feedback which has rural county participation; and 4) in July 2009, OPCA communicated again with PARC as to content; and 5) subsequently, in August 2009, OPCA circulated a final draft for probation comment.

Most of the feedback indicated that these amendments reflect current model best probation practices. Some feedback sought clarification of language, alternate language, or increased flexibility. The majority of substantive suggestions for change were incorporated, and the workgroup clarified issues raised, and increased flexibility in certain instances. Overall, OPCA received favorable support from probation agencies that these amendments are manageable and consistent with good professional practice. For reasons stated throughout this document relative to approval and use of actuarial tools, and while New York City, the sole non-YASI jurisdiction, in the past has objected to State approval of its assessment tools, it is essential that DCJS ensure departments are using fully validated instruments. Flexibility in policy allows for New York City to choose another validated assessment tool, approved by DCJS, other than utilizing YASI at no cost. Importantly, OPCA approved the use of NYC's Probation Assessment Tool (PAT) instrument and there has been, in the past few months, a change in Executive leadership within NYC's probation department. The Director of OPCA has recently communicated with the new Probation Commissioner, forwarding the proposed regulations in this area, reaffirming OPCA approval of PAT, soliciting their utilization of YASI and its benefits, and requesting feedback on content of the proposed regulatory reform in this area. At this time, OPCA has not received any renewed NYC objection as to this measure.

These proposed regulatory reforms require specific attention to key areas, establishing provisions for effective preliminary procedure consistent with traditional and emerging probation practices, yet provides flexibility and recognizes differences among jurisdictional policies and resources.

#### 7. Small Business and Local Government Participation:

As noted earlier, OPCA previously sought to engage probation departments from across the State on the development of and refinement of the proposed regulatory changes.

#### *Rural Area Flexibility Analysis*

##### 1. Types and estimated number of rural areas:

Forty-four local probation departments are located in rural areas and will be affected by the proposed rule amendments.

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

The Division of Criminal Justice Services (DCJS) continues the existing regulatory requirement previously adopted by the former Division of Probation and Correctional Alternatives (DPCA), which has been renamed the Office of Probation and Correctional Alternatives (OPCA) and merged with DCJS pursuant to Chapter 56 of the Laws of 2010, that probation directors maintain local written policies and procedures governing preliminary procedure (intake) for juvenile delinquency (JD), and specifies key areas to be covered regarding timeframes, adjustment services, and case record documentation. These key areas for local policy development are consistent with best professional practices surrounding delivery of juvenile services and grant certain flexibility that takes into account local needs and resources.

There are no additional professional services necessitated in any rural area to comply with this rule. DCJS does not believe that these regulatory changes will prove difficult to achieve. Through prompt dissemination to staff of this new rule and its summary, local probation departments should be able to implement these amendments and comply with the provisions as soon as they are adopted.

This rule does not change the monthly workload reporting requirements to our state agency, DCJS.

## 3. Costs:

Fifty-seven counties currently use, at no cost, the DCJS approved actuarial Youth Assessment Screening Instrument (YASI) which promotes consistent application of screening assessment and case planning protocols for youth intake, investigation, and supervision services.

DCJS believes that more effective JD adjustment services can reduce long term state and local governmental costs for those youth who are at risk of continued involvement with the juvenile justice or criminal justice system. DCJS anticipates no additional costs in adhering to these regulatory amendments beyond what is currently required in law and regulation. Initial triage at intake and sharing resources, wherever appropriate and feasible, with other agencies and services providers will produce cost savings. Consistent application and sharing of screening, assessment, and case planning protocols and results will further add savings by avoiding duplication of efforts within and across probation departments.

As part of the State's efforts to streamline recordkeeping, avoid duplication and achieve cost savings, OPCA supported the deployment of a web-based case management software, known as Caseload Explorer. Currently, 37 probation departments currently utilize and an additional four departments are in the process of implementation of this software, and many rural counties benefit from this software. As of March 31, 2010, 17 other probation departments use similar software to achieve record-keeping cost efficiencies. Many rural counties are and will continue to benefit from this deployment.

Any anticipated in-service costs of educating staff, can be readily accomplished through memoranda and supervisory oversight without incurring any direct costs. Any minimal costs are outweighed by significant benefits of meeting the intent of current law and regulatory provisions to serve the best interests of JD youth and their families, and in turn will reduce monetary costs associated with court processing, detention, and placement.

## 4. Minimizing adverse impact:

DCJS foresees that these regulatory amendments will have no adverse impact on rural areas. As noted in more detail below, OPCA collaborated with jurisdictions across the state, including rural areas, and probation professional associations with rural membership in developing the proposed rule and incorporated numerous suggestions to clarify or address issues raised and to reflect good probation practice across the state. To OPCA's knowledge, no adverse impact on rural areas were identified, and DCJS embraced flexibility where it was found to be consistent with good probation practice.

## 5. Rural area participation:

These revisions were developed by an OPCA working committee comprised of OPCA staff and several local probation departments representing all geographic regions of the state, including rural, and involving all levels of probation staff, including director, deputy director, supervisor, senior probation officer, and probation officer. Additionally, the Office of Children and Family Services and the Council on Children and Families services were represented. OPCA circulated initial and final drafts to all probation directors/commissioners, the Council of Probation Administrators or COPA (the statewide professional association of probation administrators), which assigned it to a specific committee for review, with rural representation. After the initial draft comment period ended, OPCA convened the Workgroup with COPA's representatives to address feedback. The proposed regulatory amendments incorporate verbal and written suggestions gathered from probation professionals, including rural entities, across the state to address problems which probation departments have experienced in the area of JD preliminary procedure.

In the preparation and drafting of the proposed amendments, OPCA was diligent in engaging probation professionals from around the state: 1) In July 2007, OPCA constituted the aforementioned JD rule working committee with representatives across the state from small, medium, and large jurisdictions representing urban and rural jurisdictions; 2) In February 2009, OPCA circulated a refined draft to all probation directors/commissioners; 3) In June 2009, OPCA and the aforementioned Workgroup met with a specific committee (known as the Probation Administrators Research Committee, or PARC) of

COPA for their professional association's feedback which has rural county participation; 4) in July 2009, OPCA communicated again with PARC as to content; and 5) subsequently, in August 2009, OPCA circulated a final draft for probation comment.

Moreover, DCJS did not find significant differences among urban, rural, and suburban jurisdictions as to issues raised or suggestions for change. DCJS is confident that these regulatory changes have the flexibility to accommodate rural jurisdictional needs.

**Job Impact Statement**

A job impact statement is not being submitted with these proposed regulations because the amendments will have no adverse effect on private or public jobs or employment opportunities. While these regulatory changes address out-of-date requirements and reflect up-to-date best practices in the area of probation services, these changes are not onerous and can be implemented through correspondence and in-service training of probation staff.

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## Education Department

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### EMERGENCY RULE MAKING

#### Annual Professional Performance Reviews for Teachers in the Classroom Teaching Service

**I.D. No.** EDU-18-10-00015-E

**Filing No.** 1210

**Filing Date:** 2010-11-23

**Effective Date:** 2010-11-23

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

**Action taken:** Amendment of section 100.2(o) of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided) and 305(4)

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

**Specific reasons underlying the finding of necessity:** The proposed amendment relates to annual professional performance reviews of teachers in the classroom teaching service.

As part of the current Annual Professional Performance Review ("APPR") set forth in section 100.2 of the Commissioner's regulations, school districts and BOCES are required to perform annual evaluations of their teachers and the evaluation must be based on at least eight evaluation criteria prescribed in regulation. As part of its reform agenda for strengthening teaching, the Board of Regents have made a policy determination to make four major changes to the current requirements for the annual professional performance reviews of teachers.

First, the proposed amendment requires school districts and BOCES to include student growth as a mandatory criteria to be used in the evaluation of teachers. The proposed amendment defines student growth as a positive change in student achievement between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities or disabilities of each student, including English language learners.

Secondly, the proposed amendment requires school districts and BOCES to implement the following uniform qualitative rating categories/criteria in the evaluation of its teachers: Highly Effective, Effective, Developing and Ineffective. The proposed amendment also defines each of these quality rating categories/criteria.

The proposed amendment also requires that school districts and BOCES to provide timely and constructive feedback to the teacher. The proposed amendment requires school districts and BOCES to include in their professional performance review plan a description of how it will provide timely and constructive feedback to its teachers on all criteria evaluated, including data on student growth for each of their students, the class and the school as a whole and feedback and

training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

Lastly, the proposed amendment eliminates the reporting requirements which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated as unsatisfactory.

Following the Board of Regents adoption of the proposed amendment by emergency action at its April 2010 meeting, the Legislature and the Governor enacted Chapter 103 of the Laws of 2010. This new law establishes a new comprehensive annual evaluation system for teachers and principals based on multiple measures of effectiveness, including student achievement measures, which will result in a single composite effectiveness score for every teacher and principal. It also provides for the establishment of an advisory committee comprised of representatives of teachers, principals and other stakeholders that will make recommendations to the Commissioner and Regents prior to the adoption of implementing regulations and the use of a value-added growth model in evaluations. Department staff are conducting a review of the provisions of the statute and evaluating its impact on the existing APPR regulation. When the Department's review and the work of the advisory committee is complete, we anticipate making further revisions to the proposed amendment. Pursuant to section 202 of the State Administrative Procedure Act, these revisions may not be adopted until publication of a Notice of Revised Rule Making in the State Register and expiration of a 30-day public comment period. However, the emergency rule adopted at the September 2010 Regents meeting will expire on November 23, 2010. A lapse in the emergency rule will cause disruptions in the administration of annual professional performance reviews of teachers.

Emergency action is necessary at the November 2010 Board of Regents meeting in order to ensure that the rule remains continuously in effect until such time as it can be revised to conform to Chapter 103 of the Laws of 2010 and adopted as a permanent rule, after expiration of the 30-day public comment period for revised rule makings prescribed in the State Administrative Procedure Act, and thereby avoid disruption in the annual professional performance reviews of teachers.

**Subject:** Annual professional performance reviews for teachers in the classroom teaching service.

**Purpose:** To require school districts and BOCES to incorporate student growth as an evaluation criteria and establishes rating categories.

**Substance of emergency rule:** The Commissioner of Education proposes to amend section 100.2(o) of the Commissioner's regulations, relating to the Annual Professional Performance Review (APPR) for teachers in New York State. The following is a summary of the substance of the proposed amendment.

Annual Professional Performance Review for Teachers

Section 100.2(o) will be repealed effective May 1, 2010.

A new subdivision 100.2(o) will be added, effective May 1, 2010.

A new paragraph (1) of subdivision (o) of section 100.2 shall be added and shall apply for school years commencing on or after July 1, 2000 and ending prior to June 30, 2001. This paragraph shall contain the same provisions as the prior version of 100.2(o) that expires on May 1, 2010, except the requirement that school districts and BOCES report on an annual basis information related to the school district's efforts to address the performance of teachers whose performance is unsatisfactory has been eliminated.

A new paragraph (2) of subdivision (o) shall be added for school years commencing on or after July 1, 2011. The requirements for the annual professional performance reviews of teachers shall be the same as in paragraph (1) of this subdivision, except for the following changes:

Section 100.2(o)(2)(b) will add a new definition of "teacher providing instructional services" to be a teacher in the classroom teaching service as defined in section 80-1.1 of the Commissioner's regulations.

Section 100.2(o)(2)(iii) creates four quality rating categories/criteria to be used in the annual professional performance review of teachers (Highly Effective, Effective, Developing and Ineffective) and defines each of these categories.

Section 100.2(o)(2)(iii)(a) defines a teacher rated as Highly Effective being a teacher who is performing at a higher level than is typically expected based on the evaluation criteria listed in the subdivision, including acceptable rates of student growth.

Section 100.2(o)(2)(iii)(b) defines a teacher rated as Effective being a teacher who is performing at a level that is typically expected of a teacher based on the evaluation criteria listed in the subdivision, including acceptable rates of student growth.

Section 100.2(o)(2)(iii)(c) defines a teacher rated as Developing as one who is not performing at a level that is typically expected of a teacher based on the evaluation criteria listed in the subdivision, including less than acceptable rates of student growth.

Section 100.2(o)(2)(iii)(d) defines a teacher rated as Ineffective as one whose performance is unacceptable based on the evaluation criteria listed in the subdivision, including unacceptable or minimal rates of student growth.

Professional Performance Review Plan

Section 100.2(o)(2)(iv)(a)(1) requires the governing body of each school and BOCES to adopt a professional performance review plan of its teachers by September 1, 2011.

Content of the Plan

Section 100.2(o)(2)(iv)(b)(1)(vii) adds student growth as a new evaluation criteria. This item defines student growth as follows: the teacher shall demonstrate a positive change in student achievement for his or her students between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities and/or disabilities of each student, including English language learners. Student achievement is defined as a student's scores on State assessments for tested grades and subjects and other measures of student learning, including student scores on pre-tests and end-of-course tests, student performance on English language proficiency assessments and other measures of student achievement determined by the school district or BOCES to be rigorous and comparable across classrooms.

Section 100.2(o)(2)(iv)(b)(4) requires the APPR plan to describe how the new rating categories (Highly Effective, Effective, Developing and Ineffective) are used to differentiate professional development, compensation, and promotion for teachers providing instructional services. The procedures for implementation of the rating categories shall be consistent with the requirements of article 14 of the Civil Service Law.

Section 100.2(o)(2)(iv)(b)(5) requires the plan to describe how the school district or BOCES will provide timely and constructive feedback to teachers on all criteria evaluated as part of their annual evaluation, including providing teachers with data on student growth for each of their students, the class and the school as a whole. The plan must also describe how the school or BOCES will provide feedback and training on how the teacher can use such data to improve instruction.

Section 100.2(o)(2)(iv)(b)(6) requires the plan to describe how the school district or BOCES addresses the performance of teachers whose performance is evaluated as ineffective, and shall require a teacher improvement plan for teachers so evaluated or documentation of a prior teacher improvement plan, which shall be developed by the district or BOCES in consultation with such teacher.

Variance

Section 100.2(o)(2)(vii)(a) grants a variance from the requirements of this paragraph, upon a finding by the commissioner that a school district or BOCES has executed prior to May 1, 2010 an agreement negotiated pursuant to article 14 of Civil Service Law whose terms continue to effect and are inconsistent with such requirement.

**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-18-10-00015-P, Issue of May 5, 2010. The emergency rule will expire January 21, 2011.

**Text of rule and any required statements and analyses may be obtained from:** Christine Moore, New York State Education Department, 89 Washington Avenue, Room 148 EB, Albany, NY 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

**Regulatory Impact Statement****1. STATUTORY AUTHORITY:**

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

**2. LEGISLATIVE OBJECTIVES:**

The proposed amendment carries out the legislative objectives of the above-referenced statute by requiring school districts and BOCES to provide timely and constructive feedback to teachers as part of their annual evaluations; implementing uniform designated rating categories for the evaluation of teachers, and requiring that school districts and BOCES include a ninth evaluation criteria, i.e., student growth, in the evaluation of their teachers.

**3. NEEDS AND BENEFITS:**

As part of the current Annual Professional Performance Review ("APPR") set forth in section 100.2 of the Commissioner's regulations, school districts and BOCES are required to perform annual evaluations of their teachers and the evaluation must be based on at least eight evaluation criteria prescribed in regulation. As part of its reform agenda for strengthening teaching, the Board of Regents have made a policy determination to make four major changes to the current requirements for the annual professional performance reviews of teachers.

First, the proposed amendment requires school districts and BOCES to include student growth as a mandatory criteria to be used in the evaluation of teachers. The proposed amendment defines student growth as a positive change in student achievement between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities or disabilities of each student, including English language learners.

Secondly, the proposed amendment requires school districts and BOCES to implement the following uniform qualitative rating categories/criteria in the evaluation of its teachers: Highly Effective, Effective, Developing and Ineffective. The proposed amendment also defines each of these quality rating categories/criteria.

The proposed amendment also requires that school districts and BOCES to provide timely and constructive feedback to the teacher. The proposed amendment requires school districts and BOCES to include in their professional performance review plan a description of how it will provide timely and constructive feedback to its teachers on all criteria evaluated, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

Where the Commissioner finds that a collective bargaining agreement was executed by a school district or BOCES pursuant to Article 14 of the Civil Service Law prior to the effective date of this regulation and whose terms are inconsistent with the new provisions of this regulation the Commissioner will grant a variance from that portion of the regulation for the duration of the existing collective bargaining agreement.

Lastly, the proposed amendment eliminates the reporting requirements which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated as unsatisfactory.

**4. COSTS:**

(a) Costs to State government: The proposed amendment will not impose any additional costs on State government, including the State Education Department.

(b) Costs to local governments: The proposed amendment will not impose any additional costs on local governments, including school districts and BOCES.

(c) Costs to private regulated parties: In general, the proposed amendment does not impose any additional compliance costs on school districts and BOCES. The Annual Performance Review already requires teachers to measure student's progress in learning based on the analysis of available student performance data. Secondly, the proposed amendment requires districts and BOCES to utilize four

designated quality rating categories/criteria. The addition of such rating categories should not impose any additional costs.

Finally, the proposed amendment requires the district/BOCES to provide timely and constructive feedback to teachers as part of their annual evaluation. This feedback should already be provided to teachers to guide their analysis of student progress. If teacher training is necessary, all districts are already required to provide professional development to improve the quality of teaching within the district. Therefore, providing training to teachers to interpret and use student growth data to improve instruction should be incorporated into their current professional development plan, thus avoiding any additional training costs.

(d) Costs to regulating agency for implementing and continued administration of the rule: As stated above in "Costs to State Government," the amendment will not impose any additional costs on the State Education Department.

**5. LOCAL GOVERNMENT MANDATES:**

The proposed amendment applies to both school districts and boards of cooperative educational services. Therefore, the mandates in Section 3 apply to school districts and BOCES. The State Education Department has determined that uniform requirements are necessary to ensure the quality of the State's teaching workforce and consistency in the evaluations of teachers in the classroom teaching service across the State.

**6. PAPERWORK:**

The proposed amendment requires school districts and BOCES to include in their professional performance plan a description of how it will provide timely and constructive feedback to its teachers, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

**7. DUPLICATION:**

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

**8. ALTERNATIVES:**

The proposed amendment establishes the evaluation criteria for teachers employed in the classroom teaching service in school districts and BOCES. Because these requirements apply to teachers, school districts and BOCES located in all areas of the State, no viable alternatives were considered.

**9. FEDERAL STANDARDS:**

There are no Federal standards that establish procedures for the evaluation of teachers.

**10. COMPLIANCE SCHEDULE:**

School districts and BOCES will be required to comply with the proposed amendments by the 2011-2012 school year.

**Regulatory Flexibility Analysis****(a) Small Businesses:**

The proposed amendment applies to school districts and boards of cooperative educational services (BOCES) and relates to the annual professional performance reviews for teachers in the classroom teaching service. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

**(b) Local Governments:**

The proposed amendment relates to the criteria for the evaluation of teachers in the classroom teaching service in school districts and BOCES across New York State.

**1. EFFECT OF RULE:**

The proposed amendment applies to school districts and BOCES located in New York State and relates to the evaluation of teachers in the classroom teaching service.

**2. COMPLIANCE REQUIREMENTS:**

As part of the current Annual Professional Performance Review ("APPR") set forth in section 100.2 of the Commissioner's regula-

tions, school districts and BOCES are required to perform annual evaluations of their teachers and the evaluation must be based on at least eight evaluation criteria prescribed in regulation. As part of its reform agenda for strengthening teaching, the Board of Regents have made a policy determination to make four major changes to the current requirements for the annual professional performance reviews of teachers.

First, the proposed amendment requires school districts and BOCES to include student growth as a mandatory criteria to be used in the evaluation of teachers. The proposed amendment defines student growth as a positive change in student achievement between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities or disabilities of each student, including English language learners.

Secondly, the proposed amendment requires school districts and BOCES to implement the following uniform qualitative rating categories/criteria in the evaluation of its teachers: Highly Effective, Effective, Developing and Ineffective. The proposed amendment also defines each of these quality rating categories/criteria.

The proposed amendment also requires that school districts and BOCES to provide timely and constructive feedback to the teacher. The proposed amendment requires school districts and BOCES to include in their professional performance review plan a description of how it will provide timely and constructive feedback to its teachers on all criteria evaluated, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

Where the Commissioner finds that a collective bargaining agreement was executed by a school district or BOCES pursuant to Article 14 of the Civil Service Law prior to the effective date of this regulation and whose terms are inconsistent with the new provisions of this regulation the Commissioner will grant a variance from that portion of the regulation for the duration of the existing collective bargaining agreement.

Lastly, the proposed amendment eliminates the reporting requirements which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated as unsatisfactory.

### 3. PROFESSIONAL SERVICES:

The proposed amendment does not mandate that school districts or BOCES contract for additional professional services to comply.

### 4. COMPLIANCE COSTS:

In general, the proposed amendment does not impose any additional compliance costs on school districts and BOCES. The Annual Performance Review already requires teachers to measure student's progress in learning based on the analysis of available student performance data.

Secondly, the proposed amendment requires districts and BOCES to utilize four designated quality rating categories/criteria. The addition of such rating categories should not impose any additional costs.

Finally, the proposed amendment requires the district/BOCES to provide timely and constructive feedback to teachers as part of their annual evaluation. This feedback should already be provided to teachers to guide their analysis of student progress. If teacher training is necessary, all districts are already required to provide professional development to improve the quality of teaching within the district. Therefore, providing training to teachers to interpret and use student growth data to improve instruction should be incorporated into their current professional development plan, thus avoiding any additional training costs.

### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements. Economic feasibility is addressed under the Compliance Costs section above.

### 6. MINIMIZING ADVERSE IMPACT:

The proposed amendment applies to school districts and BOCES

and relates to the criteria for the evaluation of teachers in the classroom teaching service. The State Education Department has determined that uniform annual professional performance review standards are necessary to ensure the quality of the State's teaching workforce across the State for teachers in the classroom teaching service. Therefore, no exemption from these requirements has been provided for local governments. However, the Department has eliminated the current reporting requirement which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated unsatisfactory.

### 7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES across the State. Comments on the proposed rule were also solicited from the BOCES District Superintendents, New York State Council of School Superintendents, New York State United Teachers, New York State School Boards Association, School Administrators Association of New York State, and New York State Association of School Personnel Administrators.

### *Rural Area Flexibility Analysis*

#### 1. TYPES AND ESTIMATE OF THE NUMBER OF RURAL AREAS:

The proposed amendment will affect teachers in school districts and boards of cooperative services in all areas of New York State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

As part of the current Annual Professional Performance Review ("APPR") set forth in section 100.2 of the Commissioner's regulations, school districts and BOCES are required to perform annual evaluations of their teachers and the evaluation must be based on at least eight evaluation criteria prescribed in regulation. As part of its reform agenda for strengthening teaching, the Board of Regents have made a policy determination to make four major changes to the current requirements for the annual professional performance reviews of teachers.

First, the proposed amendment requires school districts and BOCES to include student growth as a mandatory criteria to be used in the evaluation of teachers. The proposed amendment defines student growth as a positive change in student achievement between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities or disabilities of each student, including English language learners.

Secondly, the proposed amendment requires school districts and BOCES to implement the following uniform qualitative rating categories/criteria in the evaluation of its teachers: Highly Effective, Effective, Developing and Ineffective. The proposed amendment also defines each of these quality rating categories/criteria.

The proposed amendment also requires that school districts and BOCES to provide timely and constructive feedback to the teacher. The proposed amendment requires school districts and BOCES to include in their professional performance review plan a description of how it will provide timely and constructive feedback to its teachers on all criteria evaluated, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

Where the Commissioner finds that a collective bargaining agreement was executed by a school district or BOCES pursuant to Article 14 of the Civil Service Law prior to the effective date of this regulation and whose terms are inconsistent with the new provisions of this regulation the Commissioner will grant a variance from that portion of the regulation for the duration of the existing collective bargaining

agreement. Lastly, the proposed amendment eliminates the reporting requirements which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated as unsatisfactory.

### 3. COSTS:

In general, the proposed amendment does not impose any additional compliance costs on school districts and BOCES. The Annual Performance Review already requires teachers to measure student's progress in learning based on the analysis of available student performance data.

Secondly, the proposed amendment requires districts and BOCES to utilize four designated quality rating categories/criteria. The addition of such rating categories should not impose any additional costs.

Finally, the proposed amendment requires the district/BOCES to provide timely and constructive feedback to teachers as part of their annual evaluation. This feedback should already be provided to teachers to guide their analysis of student progress. If teacher training is necessary, all districts are already required to provide professional development to improve the quality of teaching within the district. Therefore, providing training to teachers to interpret and use student growth data to improve instruction should be incorporated into their current professional development plan, thus avoiding any additional training costs.

### 4. MINIMIZING ADVERSE IMPACT:

The proposed amendment establishes uniform evaluation standards for teachers employed in the classroom teaching service in school districts and BOCES across the State. The State Education Department has determined that uniform standards for the evaluation of teachers should be applied across the State. Therefore, no exemption has been provided from these requirements for school districts and BOCES located in rural areas of the State. However, the Department has eliminated the current reporting requirement which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated unsatisfactory.

### 5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES located in rural areas of New York State. Comments on the proposed rule were also solicited from the District Superintendents, New York State Council of School Superintendents, New York State United Teachers, New York State School Boards Association, School Administrators Association of New York State, and New York State Association of School Personnel Administrators, the constituencies of which include those from rural areas.

#### *Job Impact Statement*

The purpose of the proposed amendment is to require school districts and BOCES to provide timely and constructive feedback to teachers as part of their annual evaluations; designate uniform quality rating categories/criteria for the evaluation of teachers; and mandate that a ninth evaluation criteria, i.e., student growth be utilized in the evaluation of teachers. Because it is evident from the nature of this regulation that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

## EMERGENCY RULE MAKING

### Limited Permits and Experience, Supervision and Endorsement Requirements for Licensure as a LCSW in New York

**I.D. No.** EDU-26-10-00007-E

**Filing No.** 1205

**Filing Date:** 2010-11-19

**Effective Date:** 2010-11-19

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

**Action taken:** Amendment of sections 74.3, 74.4, 74.5, 74.6 and 74.7; and addition of section 74.9 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207(not subdivided), 212(3), 6501(not subdivided), 6504(not subdivided), 6506(6), 6507(2)(a), 6508(1), 7704(2)(c), 7705(1) and 7706(1) through (5)

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

**Specific reasons underlying the finding of necessity:** The proposed amendments clarify the requirements for licensure as a licensed clinical social worker (LCSW), for the practice of clinical social work by a licensed master social worker (LMSW), and for the insurance privilege available to certain LCSWs. Legislation enacted in 2002 defined the scopes of practice for LMSWs and LCSWs and the requirements for licensure. The legislation also restricted the practice of these professions to those licensed or otherwise authorized to practice. The implementation of the law has been challenging, due to exemptions in law and the unique situation of licensure in one profession (LMSW) leading to licensure in another profession (LCSW) when additional requirements are satisfied.

When this law was enacted, it provided an exemption from licensure for individuals in certain programs until January 1, 2010. This date was subsequently changed to June 1, 2010 and then to July 1, 2013 and will require public and private agencies, including state government, to ensure an adequate supply of qualified, licensed professionals. However, the stringent standards of New York's licensing requirements have limited the ability of agencies to provide acceptable supervised experience for those seeking licensure as LCSWs. Therefore, agencies are at risk of not having sufficient staff to provide essential health services to individuals, families and communities. While part of the problem may be addressed only through legislation, the proposed amendments will, in conjunction with new legislation, play a significant part in addressing this serious problem.

Since the emergency regulations became effective, the State Board for Social Work has been able to approve the experience of hundreds of applicants for licensure as a LCSW who previously did not meet the existing requirements for licensure. It is also anticipated that hundreds of other LMSWs, who have not completed sufficient supervised experience to meet the requirements established in the existing regulations, will now submit applications as their experience will satisfy the more flexible requirements established in this emergency action.

The proposed amendments were published in the State Register on June 30, 2010. During the 45-day public comment period, the Department received comments from professional associations, state and private agencies and interested individuals. Based upon the comments submitted, the proposed amendment was revised to allow certain individuals who started their experience for the insurance privilege prior to January 1, 2011, to submit experience obtained prior to licensure as an LCSW toward the experience requirements for the insurance privilege. A Revised Rule Making was published in the State Register on September 29, 2010.

Pursuant to section 202 of the State Administrative Procedure Act, these revisions may not be adopted until publication of a Notice of Revised Rule Making in the State Register and expiration of a 30-day public comment period. However, the emergency rule adopted at the September 2010 Regents meeting will expire on November 22, 2010. A lapse in the emergency rule will cause disruptions in the licensure process.

Emergency action is necessary at the November 2010 Board of

Regents meeting in order to ensure that the rule remains continuously in effect until such time as it can be revised and adopted as a permanent rule, after expiration of the 30-day public comment period for revised rule makings prescribed in the State Administrative Procedure Act, and thereby avoid disruption in the processing of applications for licensure as a clinical social worker.

An emergency action is also necessary for the preservation of the general welfare in order to expedite the processing of applications for licensure as an LCSW in New York by enabling applicants to obtain advance approval of the settings for their experience and of their supervision arrangements and by providing clarity regarding acceptable settings and supervisors for licensure. By reducing the number of hours of experience and the hours of supervision required for licensure as a LCSW, the proposed amendment will produce more qualified social workers to address the social work needs of residents of the State of New York.

**Subject:** Limited permits and experience, supervision and endorsement requirements for licensure as a LCSW in New York.

**Purpose:** To expedite the processing of applications for licensure and to provide clarity regarding acceptable supervised experience.

**Substance of emergency rule:** The Commissioner of Education proposes to promulgate regulations, relating to licensure as a licensed master social worker (LMSW) and a licensed clinical social worker (LCSW), limited permits for applicants in these professions, the practice of clinical social work by a LMSW under supervision, the requirements for insurance reimbursement pursuant to the Insurance Law, the supervised practice of licensed master social work by certain social workers, and the endorsement of a license as a LCSW in another jurisdiction for practice in New York State. The following is a summary of the substance of the regulations.

Supervised experience for licensure as a LCSW

Section 74.3(a) requires an applicant to complete three years of full-time, supervised experience in diagnosis, psychotherapy and assessment-based treatment planning, or the part-time equivalent, over a period of at least 36 months and not more than six years, in accordance with the requirements of section 74.6. The full-time experience shall consist of not less than 2,000 client contact hours.

Section 74.3(a)(1) requires that experience completed in New York must be completed as a Licensed Master Social Worker (LMSW) or permit holder, except in limited circumstances, and provides that experience in another jurisdiction may be accepted if completed in an authorized setting under a qualified supervisor, as determined by the department.

Section 74.3(a)(2) requires an applicant to complete the experience in an acceptable setting, as defined in subdivision (a) of section 74.6.

Section 74(a)(3) requires an applicant to complete the experience under a qualified supervisor, as defined in paragraph (2) of subdivision (c) of section 74.6.

Section 74.3(a)(4) requires the supervisor to retain records of the applicant's supervised experience and to submit documentation of the supervised experience on forms prescribed by the department. The department may request clarification of the supervisor's qualifications or the authority of the setting to provide professional services. If the supervisor is deceased or not available, a licensed colleague may submit verification of the applicant's experience.

Limited Permit for LMSW and LCSW applicant

Section 74.4(a)(1) is amended to clarify that the applicant for a permit to practice licensed master social work must meet the moral character and education requirements to be eligible for a permit.

Section 74.4(a)(2) is amended to clarify that the permit is issued for a specific setting, as defined in subdivision (a) of section 74.6.

Section 74.4(a)(3) is amended to clarify that the supervisor shall be responsible for appropriate oversight of services provided by the permit holder and no supervisor shall supervise more than five permit holders at one time.

Section 74.4(b)(1) is amended to clarify that the applicant for a permit to practice licensed clinical social work must meet the moral character requirements, in addition to clinical education and supervised experience requirements, to be eligible for a permit.

Section 74.4(b)(2) is amended to clarify that the permit is issued for a specific setting, as defined in subdivision (a) of section 74.6, and

may not be issued for a private practice owned or operated by the applicant.

Section 74.4(b)(3) is amended to clarify that the supervision of a LCSW permit holder must meet the requirements in subdivision (c) of section 74.6. In addition, the supervisor shall be responsible for appropriate oversight of services provided by the permit holder and no supervisor shall supervise more than five permit holders at one time.

Authorization qualifying certain LCSW for insurance reimbursement

Section 74.5(a) is amended to increase the application fee from \$85 to \$100 and to clarify that a licensed clinical social worker must meet the requirements in section 3221(1)(4)(d) or 4303(n) of the Insurance Law to qualify for insurance reimbursement.

Section 74.5(c) is amended to clarify that the LCSW must complete 2,400 client contact hours of psychotherapy experience over a period of not less than three years. The amendment allows applicants who started their experience to qualify for insurance reimbursement prior to January 1, 2011 to submit any experience obtained prior to licensure as a licensed clinical social worker provided that such experience, in the determination of the department, satisfies the experience requirements for such reimbursement and is obtained after the experience used to satisfy the experience requirements for licensure as an LCSW. The amendment also clarifies that experience to qualify for insurance reimbursement commenced on or after January 1, 2011 shall be obtained only after licensure as a licensed clinical social worker in New York.

Section 74.5(c)(1) defines an acceptable setting for experience toward the psychotherapy privilege, which may include a private practice owned or operated by the applicant, who is licensed as a LCSW and authorized to practice psychotherapy.

Section 74.5(c)(2) requires the LCSW to submit for review and approval by the State Board for Social Work a plan for supervised experience that meets the requirements for the privilege. The plan shall be submitted to the State Board for Social Work before the applicant starts the experience for the privilege. Section 74.5(c)(2)(i) requires the plan to specify individual or group consultation of no less than two hours a month or enrollment in a program authorized to provide psychotherapy that is offered by an institution of higher education or a psychotherapy institute chartered by the Board of Regents. The amendment eliminates peer supervision for the privilege.

The amendment to 74.5(c)(2)(ii) clarifies that a qualified supervisor includes a LCSW who holds the privilege or the equivalent as determined by the department, a licensed psychologist competent in psychotherapy, or a licensed physician who is qualified to practice psychiatry, as determined by the department.

Supervision of certain qualified individuals providing clinical social work services

Section 74.6 is amended to clarify the supervision required for a LMSW or other qualified individual to practice clinical social work under supervision, in a setting acceptable to the Department.

Section 74.6(a)(i) defines an acceptable setting for the supervised practice of licensed clinical social work as including a professional business entity authorized to provide services in licensed clinical social work, a sole proprietorship or professional partnership owned by licensees who provide services that are within the scope of practice of licensed clinical social work, a hospital or clinic authorized under the Public Health law, a program or facility authorized under the Mental Hygiene law, a program or facility authorized under federal law or an entity defined as exempt or otherwise authorized to provide services that are within the scope of licensed clinical social work.

Section 74.6(a)(2) defines a qualified individual authorized to provide licensed clinical social work services under supervision as a LMSW, an individual with a limited permit to practice licensed clinical social work in New York, or an individual otherwise authorized to provide clinical social work services in a setting acceptable to the department and under appropriate supervision.

Section 74.6(b) allows a qualified individual to submit to the State Board for Social Work a plan for supervised experience in New York toward licensure as a LCSW for review and approval. The plan shall

include a copy of documentation establishing that the agency or setting is an acceptable setting, as defined in section 74.6(a); a copy of the license of the qualified supervisor, as defined in section 74.6(c); a plan for supervision of the qualified individual accompanied by an attestation by the supervisor that he or she is responsible for services provided by the qualified individual; and, if a third-party is supervising the qualified individual, an affirmation from a designated representative of the setting that the setting is authorized to provide clinical social work services and the setting will ensure appropriate supervision of the qualified individual who is providing such services.

Section 74.6(c) is amended to clarify the supervision of a qualified individual seeking licensure as a LCSW to include at least 100 hours of in-person individual or group supervision, distributed appropriately over the period of the supervised experience. In addition, the qualified individual shall be under the general supervision of a qualified supervisor who shall review the qualified individual's diagnosis and treatment of each client, discuss the cases, provide oversight to the qualified individual in developing skills as a licensed clinical social worker, and regularly review and evaluate the professional work of the qualified individual.

There are no changes to section 74.6(c)(2), which requires the supervisor to be licensed and registered as a licensed clinical social worker, licensed psychologist or physician who is competent as a psychiatrist, in the determination of the department.

Section 74.6(d) defines the supervision of a LMSW who is providing clinical social work services under supervision but who is not using the experience to satisfy the experience requirements for licensure as a LCSW.

Section 74.6(d)(1) defines the supervision to be contact between the LMSW and supervisor during which the LMSW apprises the supervisor of the diagnosis and treatment of each client; the LMSW's cases are discussed; the supervisor provides the LMSW with oversight and guidance in diagnosing and treatment clients; the supervisor regularly reviews and evaluates the professional work of the LMSW; and the supervisor provides at least two hours per month of in-person individual or group clinical supervision.

Section 74.6(d)(2) requires the supervisor to meet the definition of a qualified supervisor in section 74.6(c)(2).

Section 74.6(e) requires the supervisor to maintain records of client contact hours in diagnosis, psychotherapy and assessment-based treatment planning and supervision hours provided to the qualified individual and to produce a log of hours, if requested.

Supervision of certain social workers providing licensed master social work services

The title of section 74.7 is amended and section 74.7 is amended to authorize a person with a bachelor of social work or master of social work degree, acceptable to the department, to perform activities and services within the scope of practice of a licensed master social worker as defined in paragraphs (a) and (b) of subdivision (1) of section 7701 of the Education Law, under the supervision of a LMSW or LCSW. The amendment clarifies that nothing in this section authorizes the use of the title "LMSW" or "LCSW" or the practice of licensed clinical social work, as defined in the Education Law.

Endorsement of certain LCSW applicants

A new section 74.9 is added to the Regulations of the Commissioner of Education to establish requirements for endorsement of a license to practice licensed clinical social work issued by another jurisdiction. The applicant must demonstrate licensure in good standing as a LCSW in another jurisdiction(s) and at least 10 years of practice in the 15 years preceding the application, submit the application and fee established in law for licensure and initial registration, and complete coursework in the identification and reporting of suspected child abuse or neglect.

*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-26-10-00007-P, Issue of June 30, 2010. The emergency rule will expire January 17, 2011.

*Text of rule and any required statements and analyses may be obtained from:* Christine Moore, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 148, Albany, NY 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

### Regulatory Impact Statement

#### 1. STATUTORY AUTHORITY:

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

Subdivision (3) of section 212 of the Education Law authorizes the Commissioner of Education to charge a fee for permits in regulation.

Section 6501 of the Education Law provides that, to qualify for admission to a profession, an applicant must meet requirements prescribed in the article of the Education Law that pertains to the particular profession.

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

Paragraph (6) of section 6506 of the Education Law authorizes the Board of Regents to indorse a license issued by a licensing board of another state or country upon the applicant fulfilling the requirements.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations relating to the professions.

Subdivision (1) of section 6508 of the Education Law authorizes the state boards for the professions to assist the Regents and the Department in matters of professional licensure and practice.

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

Section 7705 of the Education Law authorizes the department to issue a limited permit for a period of not more than twelve months to practice licensed clinical social work or licensed master social work to an applicant who has met all requirements for licensure except those relating to the examination and provided that the individual is under the general supervision of a licensed master social work or a licensed clinical social worker.

Subdivision (2) of Section 7706 of the Education Law provides that nothing shall prevent an individual possessing a baccalaureate of social work degree or its equivalent from performing social work services under supervision by a licensed master social worker or a licensed clinical social worker, in accordance with the Commissioner's regulations.

Subdivision (3) of section 7706 of the Education Law provides that nothing shall prevent a licensed master social worker from performing clinical social work services in a facility setting and under supervision in accordance with the Commissioner's regulations.

Subparagraphs (A) and (D) of paragraph (4) of subsection (l) of section 3221 of the Insurance Law and subsections (i) and (n) of section 4303 of the Insurance Law authorize licensed clinical social workers with satisfactory experience to qualify for reimbursements under certain group health insurance policies for psychotherapy services, in accordance with the Commissioner's regulations.

#### 2. LEGISLATIVE OBJECTIVES:

The proposed regulation carries out the intent of these sections of the Education Law by clarifying existing experience and limited permit requirements for licensure as a licensed master social worker and licensed clinical social worker, by clarifying experience requirements for the insurance privilege available to certain LCSWs, and by establishing requirements for the endorsement of a license issued in another jurisdiction.

#### 3. NEEDS AND BENEFITS:

Section 7704(2) of the Education Law requires an applicant seeking licensure as a LCSW to complete three years of full-time supervised post-graduate clinical social work experience in diagnosis, psychotherapy and assessment-based treatment planning, or its part-time equivalent obtained over a period of not more than six years. The law does not require the applicant to complete any other social work experience, although the practice of licensed clinical social work includes other activities, including case management, advocacy, and testing. Such activities are not acceptable toward completion of the experience requirement under the current law. The proposed amendments to

the regulations require an applicant to complete 2,000 client contact hours in diagnosis, psychotherapy, and assessment-based treatment planning over a period of not less than 36 months and not more than 72 months under a qualified supervisor. While this is a 30 percent reduction from the current requirement of 2,880 client contact hours over the same period of time, it is still among the highest requirements for clinical hours in the U.S., and the Department believes 2,000 client contact hours provides sufficient experience to ensure client protection once the applicant is licensed.

The proposed amendment to section 74.3 of the Commissioner's regulations clarifies the experience requirements for licensure as a LCSW in New York. The amendments require an applicant for licensure to complete the required experience as a LMSW or permit holder in New York, except in certain limited circumstances. For experience completed in another jurisdiction, the experience must be obtained after the applicant completes his or her master's degree. The amendment requires the applicant to complete the experience in an acceptable setting under a qualified supervisor, as defined in section 74.6 of the Commissioner's regulations. The proposed amendment requires the supervisor to maintain records of the applicant's client contact hours and supervision and to submit verification of the client contact hours and supervision on forms prescribed by the Commissioner.

The proposed amendment also amends section 74.4 of the Commissioner's regulations to clarify that limited permit applicants must be of good moral character and that the permit may only be issued for work in an authorized setting under a qualified supervisor. In addition, the amendment strengthens the requirement that the supervisor is responsible for the services provided by the permit holder and limits a licensee to supervising no more than five permit holders at any one time. Since the permit holder is only authorized to practice under supervision, this restriction is appropriate for public protection and consistent with the requirements in other professions. A LMSW or LCSW permit holder who is practicing clinical social work under supervision must be under general supervision as defined in the proposed amendment.

Currently, section 74.5 of the Commissioner's regulations establishes the fee and experience requirements for a LCSW to qualify for the insurance privilege established in section 3221(1)(4)(D) or 4303(n) of the Insurance Law. The proposed amendments increase the application fee from \$85 to \$100 and continue the requirement that the applicant complete 2,400 client contact hours of psychotherapy. However, the current regulations allow experience completed before licensure to be submitted and this amendment clarifies the intent of the law that experience must be after licensure as an LCSW over a period of not less than three years. Under the proposed amendment, the applicant would have to have no less than 400 client contact hours in any one year in order to qualify for the privilege. In order to clarify the process of meeting the requirements in Insurance Law, the proposed amendment also defines an acceptable setting for the practice of licensed clinical social work and requires a LCSW to submit for approval by the State Board for Social Work a plan for appropriate supervision. The amendment also defines acceptable supervision for the privilege as two or more hours per month of individual or group consultation or enrollment in a program in psychotherapy offered by an institution of higher education or by a psychotherapy institute chartered by the Board of Regents. This amendment eliminates peer supervision, which is not authorized by the Insurance Law, and clarifies the pathway to the insurance privilege.

The proposed amendments to section 74.6 of the Commissioner's regulations establish the supervision requirements for a licensed master social worker providing clinical social work services. A LMSW who has submitted an application for licensure as a LCSW must maintain registration as a LMSW in New York and may only practice under supervision until licensed as a LCSW. The amendments clarify what constitutes an acceptable setting for the practice of clinical social work and require the supervisor to provide at least 100 hours of individual or group supervision to the LMSW, distributed appropriately over a period of at least 36 months. The LMSW would also be able to submit a plan for supervised experience toward licensure as a LCSW, for review and approval by the State Board for

Social Work. By obtaining such approval prior to starting a position, an applicant would be able to avoid working for three years in a position which cannot be accepted toward meeting the experience requirements for licensure as a LCSW because the setting or supervisor was not authorized by law and/or regulation. The State Board's review and approval of the voluntary plan would both protect the public and provide assurances to the LMSW that the setting and supervisor are authorized to engage in the practice of clinical social work in New York. Since a LMSW may provide diagnosis, psychotherapy and assessment-based treatment planning under supervision without seeking licensure as an LCSW, the amendment requires such a LMSW to receive at least two hours per month of in-person individual or group clinical supervision.

Section 7706(2) of the Education Law provides an exemption from licensure for an individual with a bachelor's degree in social work, if the person is under the general supervision of a LMSW or LCSW and engages in non-supervisory and non-clinical activities only. The proposed amendments to section 74.7 of the Commissioner's regulations provide standards for an individual with a BSW or MSW degree to provide licensed master social work services, under supervision. In order to clarify the boundaries of practice, the amendment clearly states that the individual may not provide administrative supervision or engage in the practice of licensed clinical social work or use the title "LMSW" or "LCSW."

The proposed amendment adds a new section 74.9 to allow the Department to endorse for practice in New York the license of an LCSW licensed in another jurisdiction. The applicant would have to have at least 10 years of licensed practice during the 15 years immediately preceding the application for licensure in New York. In addition, the applicant must demonstrate: licensure as a LCSW on the basis of an a master's degree in social work from an acceptable school, post-degree supervised clinical experience, and the passage of a clinical examination in social work acceptable to the department. The applicant must also be of good character, complete coursework in the identification and reporting of suspected child abuse, and submit the application for licensure and fee established in law and regulation.

#### 4. COSTS:

(a) Costs to State government: The proposed regulations will not impose any additional cost on State government, including the State Education Department, over and above the costs imposed by Article 154 of the Education Law for administering these professions.

(b) Cost to local government: The proposed amendment establishes requirements for licensure as a licensed master social worker or licensed clinical social worker. The regulation will not impose additional costs on local government.

(c) Cost to private regulated parties: The proposed regulation will increase the cost of the application for the insurance privilege available to certain licensed clinical social workers from \$85 to \$100. The proposed regulation will not impose any other costs on applicants for the licenses over and above those imposed by Article 154 of the Education Law. The proposed regulation simply clarifies the standards for acceptable experience and the issuance of limited permits, and provides an option for endorsement of a professional license for certain applicants seeking licensure in New York.

(d) Cost to the regulatory agency: As stated above in Costs to State government, the proposed regulation does not impose costs on the State Education Department beyond those imposed by statute.

#### 5. LOCAL GOVERNMENT MANDATES:

The proposed regulation implements the requirements of Article 154 of the Education Law by establishing experience and supervision requirements that individuals must meet to be licensed as a licensed master social worker and licensed clinical social worker. Therefore, the proposed regulation does not impose any program, service, duty or responsibility upon local governments.

#### 6. PAPERWORK:

Applicants seeking licensure as a licensed clinical social worker will be required to submit to the department verification of their supervised experience to meet the licensure requirement. The applicant's licensed supervisor(s) will also be required to maintain

documentation of the applicant's supervised practice and hours of supervision and will be responsible for submitting a copy of such documentation to the Department upon its request. Applicants seeking authorization for insurance reimbursement and individuals seeking licensure as a clinical social worker will also be required to submit for review and approval by the State Board for Social Work, a plan for supervised experience before the applicant commences its supervised experience requirement.

#### 7. DUPLICATION:

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

#### 8. ALTERNATIVES:

There was discussion about changing requirements for licensure and practice through an amendment to Article 154 of the Education Law, but it was determined that the changes included in the proposed regulations are within the authority of the State Education Department and that the promulgation of such regulations would be the more efficient way to achieve the clarifications necessary to ensure an adequate supply of qualified licensed master social workers and licensed clinical social workers.

#### 9. FEDERAL STANDARDS:

There are no Federal standards for the licensure of master social workers and clinical social workers, the subject of the proposed amendment.

#### 10. COMPLIANCE SCHEDULE:

Applicants for licensure or certification must comply with the regulation on the stated effective date.

#### *Regulatory Flexibility Analysis*

The proposed amendments to section 145-2.2 of the Regulations of the Commissioner of Education relate to the standards for academic progress for the tuition assistance program for the 2010-2011 academic year. The purpose of the proposed amendment is to implement Chapter 53 of the Laws of 2010 and provide clarity as to what constitutes a program of remedial study to determine whether the 2006 or 2010 standards of academic progress apply for the 2010-2011 academic year.

The amendment will not impose any adverse economic impact, recordkeeping, reporting, or other compliance requirements on small businesses or local governments. Because it is evident from the nature of the regulation that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken.

#### *Rural Area Flexibility Analysis*

##### 1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to applicants seeking licensure as a licensed master social worker ("LMSW") or licensed clinical social worker ("LCSW") in New York State. The proposed amendment seeks to change New York State licensure requirements to conform to current practice in these professions, to expand opportunities for applicants to meet the experience requirement under qualified supervisors, and allow for the endorsement of licenses issued in other jurisdictions for qualified licensed clinical social workers seeking to become licensed in New York State. Applicants for licensure in these fields include individuals located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

Section 7704(2) of the Education Law requires an applicant seeking licensure as a LCSW to complete three years of full-time supervised post-graduate clinical social work experience in diagnosis, psychotherapy and assessment-based treatment planning, or its part-time equivalent obtained over a period of not more than six years. The law does not require the applicant to complete any other social work experience, although the practice of licensed clinical social work includes other activities, including case management, advocacy, and testing. Such activities are not acceptable toward completion of the experience requirement under the current law. The proposed amendments to

the regulations require an applicant to complete 2,000 client contact hours in diagnosis, psychotherapy, and assessment-based treatment planning over a period of not less than 36 months and not more than 72 months under a qualified supervisor. While this is a 30 percent reduction from the current requirement for 2,880 client contact hours over the same period of time, it is still among the highest requirements for clinical hours in the U.S., and the Department believes 2,000 client contact hours provides sufficient experience to ensure client protection once the applicant is licensed.

The proposed amendment to section 74.3 of the Commissioner's regulations clarifies the experience requirements for licensure as a LCSW in New York. The amendments require an applicant for licensure to complete the required experience as a LMSW or permit holder in New York, except in certain limited circumstances. For experience completed in another jurisdiction, the experience must be obtained after the applicant completes their master's degree. The amendment requires the applicant to complete the experience in an acceptable setting under a qualified supervisor, as defined in section 74.6 of the Commissioner's regulations. The proposed amendment requires the supervisor to maintain records of the applicant's client contact hours and supervision and to submit verification of the client contact hours and supervision on forms prescribed by the Commissioner.

The proposed amendment also amends section 74.4 of the Commissioner's regulations to clarify that limited permit applicants must be of good moral character and that the permit may only be issued for work in an authorized setting under a qualified supervisor. In addition, the amendment strengthens the requirement that the supervisor is responsible for the services provided by the permit holder and limits a licensee to supervising no more than five permit holders at any one time. Since the permit holder is only authorized to practice under supervision, this restriction is appropriate for public protection and consistent with the requirements in other professions. A LMSW or LCSW permit holder who is practicing clinical social work under supervision must be under general supervision as defined in the proposed amendment.

Currently, section 74.5 of the Commissioner's regulations establishes the fee and experience requirements for a LCSW to qualify for the insurance privilege established in section 3221(1)(4)(D) or 4303(n) of the Insurance Law. The proposed amendments increase the application fee from \$85 to \$100 and continue the requirement that the applicant complete 2,400 client contact hours of psychotherapy. The proposal also specifies that experience must be after licensure as an LCSW over a period of not less than three years. Under the proposed amendment, the applicant would have to have no less than 400 client contact hours in any one year in order to qualify for the privilege. In order to clarify the process of meeting the requirements in Insurance Law, the proposed amendment also defines an acceptable setting for the practice of licensed clinical social work and requires a LCSW to submit for approval by the State Board for Social Work a plan for appropriate supervision. The amendment also defines acceptable supervision for the privilege as two or more hours per month of individual or group consultation or enrollment in a program in psychotherapy offered by an institution of higher education or by a psychotherapy institute chartered by the Board of Regents. This amendment eliminates peer supervision, which is not authorized by the Insurance Law, and clarifies the pathway to the insurance privilege.

The proposed amendments to section 74.6 of the Regulations of the Commissioner of Education establish the supervision requirements for a licensed master social worker providing clinical social work services. A LMSW who has submitted an application for licensure as a LCSW must maintain registration as a LMSW in New York and may only practice under supervision until licensed as a LCSW. The amendments clarify what constitutes an acceptable setting for the practice of clinical social work and require the supervisor to provide at least 100 hours of individual or group supervision to the LMSW, distributed appropriately over a period of at least 36 months. The LMSW would also be able to submit a plan for supervised experience toward licensure as a LCSW, for review and approval by the State Board for Social Work. By obtaining such approval prior to starting a position, an applicant would be able to avoid working for three years

in a position which cannot be accepted toward meeting the experience requirements for licensure as a LCSW because the setting or supervisor was not authorized by law and/or regulation. The State Board's review and approval of the voluntary plan would both protect the public and provide assurances to the LMSW that the setting and supervisor are authorized to engage in the practice of clinical social work in New York. Since a LMSW may provide diagnosis, psychotherapy and assessment-based treatment planning under supervision without seeking licensure as an LCSW, the amendment requires such a LMSW to receive at least two hours per month of in-person individual or group clinical supervision.

Section 7706(2) of the Education Law provides an exemption from licensure for an individual with a bachelor's degree in social work, if the person is under the general supervision of a LMSW or LCSW and engages in non-supervisory and non-clinical activities only. The proposed amendments to section 74.7 of the Commissioner's regulations provide standards for an individual with a BSW or MSW degree to provide licensed master social work services, under supervision. In order to clarify the boundaries of practice, the amendment clearly states that the individual may not provide administrative supervision or engage in the practice of licensed clinical social work or use the title "LMSW" or "LCSW."

The proposed amendment adds a new section 74.9 to allow the Department to endorse for practice in New York the license of a LCSW licensed in another jurisdiction. The applicant would have to have at least 10 years of licensed practice during the 15 years immediately preceding the application for licensure in New York. In addition, the applicant must demonstrate: licensure as a LCSW on the basis of an a master's degree in social work from an acceptable school, post-degree supervised clinical experience, and the passage of a clinical examination in social work acceptable to the department. The applicant must also be of good character, complete coursework in the identification and reporting of suspected child abuse, and submit the application for licensure and fee established in law and regulation.

### 3. COSTS:

The proposed amendment increases the fee for licensed clinical social workers seeking authorization to qualify for insurance reimbursement from \$85 to \$100.

### 4. MINIMIZING ADVERSE IMPACT:

The proposed amendment revises the experience and limited permit provisions and establishes new endorsement requirements for the licensure of clinical social workers in New York State. These requirements are in place to ensure competency of licensed professionals and thereby safeguard the public.

Due to the nature of the proposed amendment, the State Education Department does not believe it to be warranted to establish different requirements for institutions located in rural areas.

### 5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the State Board for Social Work and from statewide professional associations whose memberships include individuals who live or work in rural areas.

#### **Job Impact Statement**

The purpose of the proposed amendment is to clarify existing requirements for limited permits for licensed master social workers (LMSW) and licensed clinical social workers (LCSW) and experience and supervision requirements for licensure as a LCSW in New York and for the insurance privilege available to certain LCSWs. The proposed amendment will expedite the processing of applications for licensure as a LCSW in New York State, will provide clarity regarding acceptable supervised experience for licensure as a LCSW and for the insurance privilege to ensure public protection, and will establish requirements for the endorsement of certain out-of-state licensed clinical social workers.

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

#### **Assessment of Public Comment**

Since publication of a Notice of Revised Rule Making in the State Register on September 29, 2010, the State Education Department received the following comment.

COMMENT: I would like to know once the amendments for the above law are adopted on a permanent basis if the special provisions outlined in section 7707 will take effect. Section 2 gives reference to the grandfathering of MSW's who have "five years of post-graduate social work employment and meets the requirements for license, except for examination, and who files with the department within one year of the effective date of this section shall be licensed as a licensed master social worker."

RESPONSE: The proposed regulations do not amend or alter the provisions in section 7707 of the Education Law, including subdivision (2) which authorized a one-year period for licensure without examination. Subdivision (2) of section 7707 of the Education Law expired on September 1, 2005 and has not been renewed by the Legislature. Therefore, an individual seeking licensure as a Licensed Master Social Worker (LMSW) must meet all the licensure requirements set forth in section 7704 of the Education Law, including an application, fee, acceptable education, and examination.

### **EMERGENCY RULE MAKING**

#### **Qualified School Construction Bonds (QSCB) and Qualified Zone Academy Bonds (QZAB)**

**I.D. No.** EDU-35-10-00019-E

**Filing No.** 1212

**Filing Date:** 2010-11-23

**Effective Date:** 2010-11-23

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

**Action taken:** Amendment of section 155.22 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101, 207, 305(1) and (2); and 26 USC sections 54E and 54F

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

**Specific reasons underlying the finding of necessity:** Internal Revenue Code section 54F (26 USC section 54F), as added by section 1521(a) of Part III of Subtitle F of Title 1 of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. 111-5, 123 Stat. 115, 355 provides for the issuance of Qualified School Construction Bonds for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue, by a State or local government within the jurisdiction of which such school is located. There is a national qualified school construction bond limitation of \$11 billion for each of the 2009 and 2010 calendar years. Within such national bond limitation amounts, the Secretary of the U.S. Treasury will allocate state limitation amounts to each state for the state's allocation to bond issuers within the state.

New York State is home to three city school districts, New York City, Buffalo and Rochester, that are large enough to qualify as part of the 100 largest nationwide school districts, and as such, these districts will receive direct federal Qualified School Construction Bond Allocations from the U.S. Treasury Secretary. Additionally, New York State received \$192 Million in the 2009 and \$178 Million in the 2010 calendar years to allocate to other districts in the State that did not receive a direct federal allocation.

The 2009 allocation was retained by the State to fund State expenditures for local district capital projects. The purpose of the proposed amendment to section 155.22 of the Commissioner's Regulations is to prescribe the procedures for New York State to allocate its \$174,782,000 2010 state limitation amount to those school district bond issuers not receiving a direct federal allocation.

In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior

to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E.

The proposed amendment was adopted as an emergency action at the September Regents meeting upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to immediately establish procedures for the State's allocation to prospective issuers of Qualified School Construction Bonds (QSCBs) of their respective bond limitation amounts from the State bond limitation amount, so that such bond issuers may timely apply for and receive their respective bond limitation amounts, and timely issue QSCBs for the 2010 calendar year. A Notice of Proposed Rule Making was published in the State Register on September 1, 2010.

The proposed amendment has been substantially revised in response to public comment. Subparagraph 155.22(b)(4)(i) has been revised to ensure consistency with a June 11, 2010 policy letter of the U.S. Department of Education, by clarifying that QSCB limitation amounts carried forward to successive calendar year(s) by a large local educational agency shall not be included in the amounts to be reallocated by the Commissioner pursuant to that subparagraph. The proposed amendment has also been revised to increase the QSCB limitation amount for the Syracuse and Yonkers city school districts to \$15 million.

Pursuant to the State Administrative Procedure Act (SAPA) section 202(4-a), the revised rule cannot be adopted by regular (non-emergency) action until at least 30 days after publication of the revised rule in the State Register. Since the Board of Regents only meets at fixed intervals, the earliest the proposed amendment could be adopted by regular action would be at the January 10-11, 2011 Regents meeting. Furthermore, under SAPA, the earliest an amendment adopted at the January meeting can take effect is February 2, 2011, the date the notice of adoption would be published in the State Register. Since the September emergency adoption will expire on December 19, 2010, 90 days after its filing with the Department of State on September 21, 2010, there would be a lapse in the rule's effectiveness if adopted by regular action, which will, in turn, disrupt implementation of the QSCB program in New York State. A second emergency adoption is necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the September 2010 Regents meeting, as revised, remains continuously in effect until the effective date of its adoption as a permanent rule.

It is anticipated that the emergency rule will be presented for adoption as a permanent rule at the January 10-11, 2011 Regents meeting, after publication of a new Notice of Revised Rule Making in the State Register and expiration of the 30-day public comment period prescribed in the State Administrative Procedure Act.

**Subject:** Qualified School Construction Bonds (QSCB) and Qualified Zone Academy Bonds (QZAB).

**Purpose:** To establish QSCB and update QZAB provisions.

**Substance of emergency rule:** The Board of Regents has amended section 155.22 of the Commissioner's Regulations as an emergency action, effective November 23, 2010, relating to Qualified School Construction Bonds issued pursuant to 26 USC section 54F and Qualified Zone Academy Bonds issued pursuant to 26 USC sections 1397E and 54E. The following is a summary of the emergency rule.

Section 155.22 is revised to organize the regulation into subdivision (a), relating to Qualified Zone Academy Bonds, and subdivision (b), relating to Qualified School Construction Bonds. The provisions relating to Qualified Zone Academy Bonds (QZAB) are revised to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E.

Provisions relating to Qualified School Construction Bonds (QSCB) are established in section 155.22(b).

Section 155.22(b)(1) sets forth the purpose of the subdivision, to establish procedures for the allocation and issuance of QSCB as authorized by 26 USC section 54F.

Section 155.22(b)(2) sets forth definitions for terms used in the subdivision.

Section 155.22(b)(3) establishes procedures for allocating respective amounts of the QSCB State limitation amount to local educational agencies (LEAs), including provisions for allocating to the large city school districts, charter schools, and all other LEAs.

Section 155.22(b)(4) establishes procedures for making adjustments for unused allocations.

Section 155.22(b)(5) requires QSCB to be used within three years after issuance.

Section 155.22(b)(6) requires that capital construction projects to be financed through the issuance of QSCB must be submitted for review to the Office of Facilities Planning in the State Education Department.

Section 155.22(b)(7) provides that capital construction projects funded in whole or in part with QSCB and involving the repair, renovation or alteration of public school facilities that are approved by the Commissioner, shall be eligible to receive building aid pursuant to the provisions of Education Law section 3602(6).

**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-35-10-00019-P, Issue of September 1, 2010. The emergency rule will expire January 21, 2011.

**Text of rule and any required statements and analyses may be obtained from:** Chris Moore, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

#### **Regulatory Impact Statement**

##### STATUTORY AUTHORITY:

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

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

26 USC section 54E, as added by section 313(a) of Title III of Division C of the Emergency Economic Stabilization Act of 2008, Pub.L.110-343, 122 Stat. 3765, 3869, establishes a federal tax credit to holders of qualified zone academy bonds issued for qualified purposes under the statute, establishes a national zone academy bond limitation for such credit, and provides for the allocation of such limitation amount to state education agencies for allocation to qualified zone academies within each respective state.

26 USC section 54F, as added by section 1521(a) of Part III of Subtitle F of Title 1 of Div. B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L.111-5, provides for the issuance of Qualified School Construction Bonds for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue, by a State or local government within the jurisdiction of which such school is located; establishes a national qualified school construction bond limitation, and provides for the allocation of such limitation amount to state education agencies for allocation to bond issuers within each respective state.

##### LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above statutes and is necessary for the implementation of the provisions of 26 USC section 54F in that it will establish criteria for the allocation of the State limitation amount for the issuance of Qualified School Construction Bonds

(QSCB) to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2), and update the Qualified Zone Academy provisions in Commissioner's Regulation section 155.22 to include Qualified Zone Academy Bonds issued under 26 USC 54E.

#### NEEDS AND BENEFITS:

Internal Revenue Code section 54F (26 USC section 54F), as added by section 1521(a) of Title 1 of Part III of Subtitle F of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. 111-5, provides for the issuance of Qualified School Construction Bonds for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue, by a State or local government within the jurisdiction of which such school is located. The statute establishes a national qualified school construction bond limitation for each of the 2009 and 2010 calendar years. Within such national bond limitation amount, the Secretary of the U.S. Treasury will allocate state limitation amounts to each state for the state's allocation to bond issuers within the state.

New York State is home to three city school districts, New York City, Buffalo and Rochester, that are large enough to qualify as part of the 100 largest nationwide school districts, and as such, these districts will receive direct federal Qualified School Construction Bond Allocations from the U.S. Treasury Secretary. Additionally, New York State received \$192 Million in the 2009 and \$178 Million in the 2010 calendar years to allocate to other districts in the State that did not receive a direct federal allocation.

The 2009 allocation was retained by the State to fund State expenditures for local district capital projects. The purpose of the proposed amendment to section 155.22 of the Commissioner's Regulations is to prescribe the procedures for New York State to allocate its \$174,782,000 2010 state limitation amount to those school district bond issuers not receiving a direct federal allocation.

In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E.

#### COSTS:

(a) Costs to State government: None. The proposed rule does not impose any additional costs on the State beyond those inherent in the authorizing statutes, 26 USC sections 54E and 54F. Although school districts participating in the QSCB and QZAB programs will be entitled to building aid for capital construction projects as they are under existing law, it is anticipated that there will be a reduced cost to the State as there is no interest on the bonds and the State will not be obligated to pay its share of interest on the borrowing.

(b) Costs to local government: The proposed rule does not impose any costs on local government. It merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2), and updates the Qualified Zone Academy provisions in Commissioner's Regulation section 155.22 to include Qualified Zone Academy Bonds (QZAB) issued under 26 USC 54E. Participation in both the QSCB and QZAB programs is voluntary.

(c) Costs to private, regulated parties: None. The proposed rule does not impact private parties in any way.

(d) Cost to the regulating agency for implementation and continued administration of this rule: None. The proposed rule does not impose any additional costs on the State Education Department beyond those imposed by the authorizing statutes, 26 USC sections 54E and 54F. It merely amends Commissioner's Regulation section 155.22 to establish procedures for allocation of the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2), and

amends the Qualified Zone Academy Bond (QZAB) provisions to provide for a separate Charter school allocation from the QZAB State limitation amount, and to update the QZAB provisions to include Qualified Zone Academy Bonds (QZABs) issued under 26 USC 54E. Participation in both the QSCB and QZAB programs is voluntary.

#### LOCAL GOVERNMENT MANDATES:

The proposed rule will not impose any program, service, duty or responsibility on local governments. It merely amends Commissioner's Regulation section 155.22 to establish procedures for allocation of the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2), and amends the Qualified Zone Academy Bond (QZAB) provisions to provide for a separate Charter school allocation from the QZAB State limitation amount, and to update the QZAB provisions to include Qualified Zone Academy Bonds (QZABs) issued under 26 USC 54E. Participation in both the QSCB and QZAB programs is voluntary.

#### PAPERWORK:

Local educational agencies, other than those located in cities having a population of more than one hundred twenty-five thousand inhabitants, may apply in a form prescribed and by a date established by the commissioner for approval to receive an allocation from the State limitation amount allocation. Such application shall include, but is not limited to:

- (1) a certification by the local educational agency that the bonds to be issued meet the requirements for a qualified school construction bond pursuant to 26 USC section 54F(a);
- (2) a description of the capital construction project(s) to be financed through the issuance of qualified school construction bonds; and
- (3) the written approval of the superintendent of schools and the Board of Education for such bond issuance.

#### DUPLICATION:

The proposed amendment does not duplicate existing State or Federal regulations.

#### ALTERNATIVES:

There are no significant alternatives and none were considered. The proposed rule is necessary to establish the procedures for New York State to allocate its state limitation amount to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2), and to update the Qualified Zone Academy provisions to include Qualified Zone Academy Bonds (QZAB) issued under 26 USC 54E.

#### FEDERAL STANDARDS:

The proposed rule does not exceed any minimum standards of the Federal government for the same or similar subject areas. The proposed rule is consistent with the authority provided under 26 USC section 54F to establish a process for the allocation of the State's Qualified School Construction Bond state limitation amount to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2), and to update provisions in the Commissioner's Regulation regarding Qualified Zone Academy provisions to include Qualified Zone Academy Bonds (QZAB) issued under 26 USC 54E.

#### COMPLIANCE SCHEDULE:

The proposed amendment does not place any compliance requirements on school districts. It merely amends Commissioner's Regulation section 155.22 to establish procedures for allocation of the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2), and amends the Qualified Zone Academy Bond (QZAB) provisions to provide for a separate Charter school allocation from the QZAB State limitation amount, and to update the QZAB provisions to include Qualified Zone Academy Bonds (QZABs) issued under 26 USC 54E. Participation in both the QSCB and QZAB programs is voluntary.

#### Regulatory Flexibility Analysis

##### Small Businesses:

The proposed rule relates to the process by which local educational

agencies gain access to a program entitled Qualified School Construction Bonds (QSCB), established in 26 USC section 54F, for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such bond issue. The purchaser of the bonds receives a Federal tax credit in lieu of interest payments on the bonds. The proposed rule merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of QSCB pursuant to 26 USC section 54F, and updates the Qualified Zone Academy provisions in Commissioner's Regulation section 155.22 to include Qualified Zone Academy Bonds (QZAB) issued under 26 USC 54E. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or other compliance requirements on small businesses. Because it is evident from the nature of the proposed rule that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

EFFECT OF RULE:

The proposed rule applies to all public school districts and boards of cooperative educational services in the State.

COMPLIANCE REQUIREMENTS:

The proposed rule will not impose any compliance requirements on local governments. It merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2). In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

Local educational agencies, other than those located in cities having a population of more than one hundred twenty-five thousand inhabitants, may apply in a form prescribed and by a date established by the commissioner for approval to receive an allocation from the State limitation amount allocation. Such application shall include, but is not limited to:

(1) a certification by the local educational agency that the bonds to be issued meet the requirements for a qualified school construction bond pursuant to 26 USC section 54F(a);

(2) a description of the capital construction project(s) to be financed through the issuance of qualified school construction bonds; and

(3) the written approval of the superintendent of schools and the Board of Education for such bond issuance.

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

The proposed rule does not impose any costs on local government. It merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2). In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule does not impose any new economic or technological requirements on local governments.

MINIMIZING ADVERSE IMPACT:

The proposed rule does not impose any compliance requirements or compliance costs on local governments. It merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2). In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts.

*Rural Area Flexibility Analysis*

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to all school districts and boards of cooperative educational services in the State, including 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.

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

The proposed rule will not impose any compliance requirements on local governments. It merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2). In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

Local educational agencies, other than those located in cities having a population of more than one hundred twenty-five thousand inhabitants, may apply in a form prescribed and by a date established by the commissioner for approval to receive an allocation from the State limitation amount allocation. Such application shall include, but is not limited to:

(1) a certification by the local educational agency that the bonds to be issued meet the requirements for a qualified school construction bond pursuant to 26 USC section 54F(a);

(2) a description of the capital construction project(s) to be financed through the issuance of qualified school construction bonds; and

(3) the written approval of the superintendent of schools and the Board of Education for such bond issuance.

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

COMPLIANCE COSTS:

The proposed rule does not impose any costs on rural areas. It merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2). In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

**MINIMIZING ADVERSE IMPACT:**

The proposed rule does not impose any compliance requirements or compliance costs on rural areas. The proposed rule does not impose any compliance requirements or compliance costs on local governments. It merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2). In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

**RURAL AREA PARTICIPATION:**

Copies of the proposed amendment have been distributed to members of the Department’s Rural Advisory Committee, which includes representatives of school districts in rural areas.

**Job Impact Statement**

The proposed amendment relates to the process by which local educational agencies gain access to a program entitled Qualified School Construction Bonds (QSCB), established in 26 USC section 54F, for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such bond issue. The purchaser of the bonds receives a Federal tax credit in lieu of interest payments on the bonds. The proposed amendment merely provides for a method for the Commissioner to allocate the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2). In addition, the proposed amendment revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

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

**EMERGENCY  
RULE MAKING**

**Relating to the Clinically Rich Graduate Level Teacher Preparation Program**

**I.D. No.** EDU-49-10-00005-E

**Filing No.** 1203

**Filing Date:** 2010-11-19

**Effective Date:** 2010-11-19

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

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

**Statutory authority:** Education Law, sections 207, 208, 210, 214, 216, 224, 305(1), (2) and (7), 3004(1) and 3006(1)

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

**Specific reasons underlying the finding of necessity:** To maximize student growth and achievement in high need schools, the Department established a graduate level clinically rich pilot program for teacher preparation programs. The Department will select program providers for the graduate level clinically rich principal preparation pilot programs through a Request for Proposal (RFP) process.

In order to ensure that any program selected to offer a clinically rich principal preparation program is of high quality, the Board of Regents will establish a Blue Ribbon Commission to evaluate all applications. The Blue Ribbon Commission will make recommendations to the Board of Regents for those programs that should be authorized to establish clinically rich principal preparation programs, both from collegiate and non-collegiate providers or in combination. The goal is to create a process that will ensure a rigorous programmatic review and to select only the highest quality providers to assist in the preparation of teachers for our high need schools.

At its April 2010 meeting, the Board of Regents established certain eligibility requirements to participate in the clinically rich teacher preparation program, including certain curriculum requirements, a clinical component, mentoring and training requirements. As part of the eligibility requirements adopted in April 2010, program providers were required to complete at least one continuous school year of experience.

In order to provide program providers with the flexibility they need to provide innovative approaches to this new pilot program, the proposed amendment amends the clinical experience requirement to allow providers to provide up to one continuous school year of clinical experience. An emergency action is necessary for the preservation of the general welfare in order to timely implement the provisions of the proposed amendment to provide program providers with timely notice of the eligibility requirements for the request for proposal process so the Department complete the competitive bidding process for the selection of program providers before the 2011-2012 school year.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at its February 2011 meeting, which is the first scheduled meeting after the expiration of the 45-day public comment period mandated by the State Administrative Procedures Act.

**Subject:** Relating to the clinically rich graduate level teacher preparation program.

**Purpose:** To amend the clinical experience to provide program providers with the flexibility they need to be as innovative as possible.

**Text of emergency rule:** Subclause (3) of clause (c) of subparagraph (iv) of paragraph (5) of section 52.21 of the Regulations of the Commissioner of Education shall be amended, effective November 19, 2010, to read as follows:

(3) Clinically rich experience component. The clinical experience component of the program shall meet the following requirements:

- (i) . . . .
- (ii) Prior to assigning the candidate to a classroom, the institution shall enter into a written agreement with the high need school wherein the high need school shall agree to establish a plan for [at least] up to one continuous school year of mentored clinical experience by the assigned teacher-mentor for the candidate and support by a team comprised of a faculty member of the program, the school principal or designee, the assigned teacher-mentor, and a school curriculum supervisor or specialist.
- (iii) The program shall ensure its candidates receive mentoring support by a teacher-mentor during the entire period they are assigned to the classroom and enrolled in the program, which shall [be at least] include up to one continuous school year of mentoring.
- (iv) . . . .

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires February 16, 2011.

**Text of rule and any required statements and analyses may be obtained from:** Chris Moore, NYS Education Department, 89 Washington Avenue, Albany, NY 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

**Regulatory Impact Statement**

**1. STATUTORY AUTHORITY:**

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

Section 208 of the Education Law authorizes the Regents to award and confer diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

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

Section 214 of the Education Law provides that institutions of the university shall include all secondary and higher educational institutions which are now or may hereafter be incorporated in this state, and such other libraries, museums, institutions, schools, organizations and agencies for education as may be admitted to or incorporated by the university.

Section 216 of the Education Law authorizes the Regents to incorporate any university, college, academy, library, museum, or other institution or

association for the promotion of science, literature, art, history or other department of knowledge, or of education in any way.

Section 224 of the Education Law prohibits any individual, partnership or corporation not holding university, college or other degree conferring powers by special charter from the Legislature or the Regents from conferring any degree or using the designation college or university unless specifically authorized by the Regents to do so.

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

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

Subdivision (7) of section 305 of the Education Law authorizes the Commissioner of Education to annul upon cause shown to his satisfaction any certificate of qualification granted to a teacher.

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

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

## 2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above-referenced statutes by modifying the registration requirements in the Regulations of the Commissioner of Education for teacher education programs, by amending the eligibility requirements for the graduate level clinically rich pilot teacher preparation program.

## 3. NEEDS AND BENEFITS:

At its November 2009 and December 2009 meetings, the Board of Regents approved the conceptual framework for graduate level clinically rich teacher preparation pilot programs. At its April 2010 meeting, the Board approved an amendment to the Commissioner's regulations to establish a graduate level clinically rich teacher preparation pilot program, effective May 1, 2010.

The amendment established two tracks for the graduate level clinically rich program: 1) the Model A track is the residency program for candidates working with a teacher of record in a high need school; and 2) the Model B track is the residency program for candidates employed as teachers of record in a high need school who will be eligible to receive a Transitional B certificate upon completion of required introductory preparation, tests, and workshops. To ensure program quality, the regulatory amendment requires that the pilot program meet the general registration standards established by the Board of Regents for graduate curricula in terms of instructional time, faculty qualifications, and the rigor of curriculum.

The pilot program also includes components of effective residency programs supported by research findings and best practices, which include, among other requirements:

- Recruitment and selection for program candidates: the recruitment process will be highly selective to attract not only the highest caliber of candidates to the pilot program but also candidates with a strong commitment to high need schools.

- Collaboration between program providers and partnering high need schools or school districts: program providers shall execute a written agreement with partnering high need schools which specifies the roles of each partner in the design, implementation, and evaluation of the pilot programs.

- Recruitment, selection, training, and support for mentors: program providers shall collaborate with the high need schools to select mentors that are highly effective teachers and must provide mentors with continuous support and research-based training to support program candidates. Mentors will work collaboratively with faculty supervisors to evaluate candidates and provide feedback.

- Mentoring and support for candidates throughout the program and after program completion: Prior to assigning candidates to a classroom, program providers will enter into a written agreement with the high need schools specifying the mentoring plan. During the clinical experience, each candidate will be assigned a teacher-mentor and a support team comprised of a faculty member of the program, the school principal or designee, the assigned teacher-mentor, and a school curriculum supervisor or specialist. In addition, program providers must have a formal written agreement with partnering schools or school districts to provide continued mentoring support for program graduates during their first year of teaching.

The regulatory amendments adopted in April 2010 also required that the pilot programs include at least one continuous school year of mentored clinical experience, grounded in the teaching standards currently being

developed, and centered on practicing research-based teaching skills that make a difference in the classroom.

A competitive bidding process will be implemented to select program providers for the graduate level clinically rich teacher preparation pilot program. In order to provide program providers with the flexibility they need to be as innovative as possible, the Department believes that the one school year requirement for clinical experience is too restrictive. Therefore, the proposed amendment changes the required clinical experience component of the pilot program to require up to one continuous school year of mentored experience.

## 4. COSTS:

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

(b) Cost to local government: The proposed amendment will not impose any additional costs on local government.

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

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

## 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment provides some flexibility to local governments by allowing local governments to provide less than one school year of mentored clinical experience to candidates enrolled in a graduate level clinically rich teacher preparation program, as opposed to the prior requirement, which required them to provide at least one continuous school year of clinical experience.

## 6. PAPERWORK:

The proposed amendment does not impose any paper requirements.

## 7. DUPLICATION:

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

## 8. ALTERNATIVES:

There were no significant alternative proposals considered.

## 9. FEDERAL STANDARDS:

There are no Federal standards that deal with graduate level clinically rich program requirements qualifying individuals to teach in the New York State public schools, the subject matter of this amendment.

## 10. COMPLIANCE SCHEDULE:

If adopted as an emergency measure at the November Regents meeting, the proposed amendment will become effective on November 19, 2010. It is anticipated that the proposed amendment will become effective as a permanent rule on March 30, 2011.

## *Regulatory Flexibility Analysis*

### a) Small Businesses:

#### 1. Effect of rule:

The purpose of the proposed amendment is to establish program registration standards for a clinically rich graduate level pilot program and to authorize institutions, other than institutions of higher education, with an education mission and that are selected by the Board of Regents, to offer teacher preparation programs under this pilot program. Some of these institutions may be small businesses.

#### 2. Compliance requirements:

Any institution that participates in this pilot program shall execute a written agreement with each partnering high need school which shall include the following: (1) the specific roles of the institution and the high need school in the recruitment, preparation, and mentoring of candidates, as well as their roles in sustaining this pilot program in the long term; (2) the selection and evaluation criteria and the recruitment process for teacher-mentors; and (3) the various types of assessments that will be used to evaluate candidates throughout the program, and how such assessments will be utilized to prescribe study and experiences that will enable candidates to develop the knowledge, understanding, and skills necessary to successfully meet the requirements of this program and to obtain certification upon completion of the program.

These institutions will also be required to enter into a written agreement with the high need school, prior to assigning the candidate to a classroom in such high need school, wherein the high need school must agree to establish a plan for at least one continuous school year of mentored clinical experience by an assigned teacher-mentor and provide support by a team comprised of a faculty member of the program, the school principal or designee, the assigned teacher-mentor, and a school curriculum supervisor or specialist. Program faculty will also be required to supervise the candidate and promote the linking of theory and practice by observing and advising the candidate at least twice each month during the clinical experience and shall work in collaboration with the assigned teacher-mentor to evaluate candidates and provide feedback. During the clinical experience component of the program, the institution shall also provide courses and seminars that are designed to link educational theory with clinical experiences.

An institution that elects to participate in this program will also be required to have a formal written agreement with partnering schools or districts to provide continued mentoring support for graduates of the pilot program during their first year of teaching, which shall include, but not be limited to, setting selection criteria, and the recruitment and training processes for mentors; and developing plans to provide research-based professional development programs for mentors and graduates.

Institutions that choose to offer Track B of the program (which leads to a Transitional B certificate) must also provide weekly program faculty supervision and daily mentoring by an assigned teacher-mentor during the first eight weeks of teaching and continued mentoring by an assigned teacher mentor during the remainder of the time that the candidate is enrolled in the program and teaching.

3. Professional services:

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

4. Compliance costs:

The proposed amendment is permissive in nature and any costs associated with the proposed amendment only apply to institutions and high need schools that elect to participate in the pilot program. However, for each teacher certification candidate in the pilot program, the State Education Department estimates that it will cost a high need school or school district that elects to participate in the program approximately \$6,200 per year to provide mentoring. The Department also anticipates that for any institution that elects to participate in the pilot program, it will incur the same costs for the development and implementation of both tracks of this program as they would for a traditional teacher education program and that such institutions could use existing faculty to meet supervision requirements of the proposed amendment.

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

7. Small business participation:

The conceptual framework of the graduate level clinically rich pilot program was shared with the State Professional Standards and Practices Board for Teaching and comments were solicited from this board. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The board has representatives from school districts across the State.

b) Local Governments:

1. Effect of rule:

The purpose of the proposed amendment is to establish program registration standards for a clinically rich graduate level pilot program and to authorize institutions, other than institutions of higher education, that are selected by the Board of Regents, to offer teacher preparation programs under this pilot program. High need schools and school districts may opt to participate and collaborate with institutions that are selected by the Board of Regents to participate in this program.

2. Compliance requirements:

Any institution that participates in this pilot program shall execute a written agreement with each partnering high need school which shall include the following: (1) the specific roles of the institution and the high need school in the recruitment, preparation, and mentoring of candidates, as well as their roles in sustaining this pilot program in the long term; (2) the selection and evaluation criteria and the recruitment process for teacher-mentors; and (3) the various types of assessments that will be used to evaluate candidates throughout the program, and how such assessments will be utilized to prescribe study and experiences that will enable candidates to develop the knowledge, understanding, and skills necessary to successfully meet the requirements of this program and to obtain certification upon completion of the program.

These institutions will also be required to enter into a written agreement with the high need school, prior to assigning the candidate to a classroom in such high need school, wherein the high need school must agree to establish a plan for at least one continuous school year of mentored clinical experience by an assigned teacher-mentor and provide support by a team comprised of a faculty member of the program, the school principal or designee, the assigned teacher-mentor, and a school curriculum supervisor or specialist. Program faculty will also be required to supervise the candidate and promote the linking of theory and practice by observing and advising the candidate at least twice each month during the clinical experience and shall work in collaboration with the assigned teacher-mentor to evaluate candidates and provide feedback. During the clinical experience

component of the program, the institution shall also provide courses and seminars that are designed to link educational theory with clinical experiences.

An institution that elects to participate in this program will also be required to have a formal written agreement with partnering schools or districts to provide continued mentoring support for graduates of the pilot program during their first year of teaching, which shall include, but not be limited to, setting selection criteria, and the recruitment and training processes for mentors; and developing plans to provide research-based professional development programs for mentors and graduates.

Institutions that choose to offer Track B of the program (which leads to a Transitional B certificate) must also provide weekly program faculty supervision and daily mentoring by an assigned teacher-mentor during the first eight weeks of teaching and continued mentoring by an assigned teacher mentor during the remainder of the time that the candidate is enrolled in the program and teaching.

3. Professional services:

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

4. Compliance costs:

The proposed amendment is permissive in nature and any costs associated with the proposed amendment only apply to institutions and high need schools that elect to participate in the pilot program. However, for each teacher certification candidate in the pilot program, the State Education Department estimates that it will cost a high need school or school district that elects to participate in the program approximately \$6,200 per year to provide mentoring. The Department also anticipates that for any institution that elects to participate in the pilot program, it will incur the same costs for the development and implementation of both tracks of this program as they would for a traditional teacher education program and that such institutions could use existing faculty to meet supervision requirements of the proposed amendment.

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

The proposed amendment is expected to have a positive impact on high need schools and school districts by increasing the supply of highly effective teachers in high need subjects in high need schools. As stated above, the proposed amendment is permissive in nature. It only applies to high need schools and school districts that wish to participate in a graduate level clinically rich pilot program. Because of the nature of the proposed amendment, it is unnecessary to minimize adverse impacts on school districts.

7. Local government participation:

The conceptual framework of the graduate level clinically rich pilot programs was shared with the State Professional Standards and Practices Board for Teaching and comments were solicited from this board. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The board has representatives from school districts across the State.

**Rural Area Flexibility Analysis**

1. Types and estimate of number of rural areas:

The proposed amendment will impact institutions that elect to offer a clinically rich teacher preparation program, which may include colleges and universities and institutions other than institutions of higher education that are selected by the Board of Regents to participate in this program. Such institutions may include cultural institutions, libraries, research centers, and other organizations with an educational mission. The proposed amendment will also impact high need schools and school districts in New York State that elect to participate in this program. These high need schools and institutions may be located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

Any institution that participates in this pilot program will be required to provide up to one continuous school year of clinical experience to meet the eligibility requirements of this program.

3. Costs:

The proposed amendment does not impose any additional costs on regulated entities.

4. Minimizing adverse impact:

Implementation of the proposed rule will not have a negative impact on entities or individuals located in rural communities. The proposed amendment is permissive in nature. Only program providers that wish to offer a clinically rich principal preparation pilot program are required to meet the new requirements for such programs. High need schools and school

districts that elect to participate in the pilot program will benefit by having access to a larger pool of teacher candidates, although they will have the expense of providing mentoring support.

Moreover, the proposed amendment provides flexibility to program providers located in all areas of the State, including rural areas. The proposed amendment changes the clinical experience component of the program to require program providers to provide up to one continuous school year of clinical experience.

#### 5. Rural area participation:

The concept of the graduate level clinically rich pilot programs was shared with the State Professional Standards and Practices Board for Teaching and comments were solicited from this board. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The board has representatives who live and/or work in rural areas, including individuals who are employed as educators in rural school districts.

#### Job Impact Statement

The purpose of the proposed amendment is to amend the clinical experience component of the graduate level clinical rich pilot programs to allow program providers to offer less than a year of mentored clinical experience to provide program providers with the flexibility they need to be as innovative as possible.

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

### NOTICE OF ADOPTION

#### Limited Permits and Experience, Supervision and Endorsement Requirements for Licensure as a LCSW in New York

**I.D. No.** EDU-26-10-00007-A

**Filing No.** 1209

**Filing Date:** 2010-11-23

**Effective Date:** 2010-12-08

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

**Action taken:** Amendment of sections 74.3, 74.4, 74.5, 74.6 and 74.7; and addition of section 74.9 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207(not subdivided), 212(3), 6501(not subdivided), 6504(not subdivided), 6506(6), 6507(2)(a), 6508(1), 7704(2)(c), 7705(1) and 7706(1) through (5)

**Subject:** Limited permits and experience, supervision and endorsement requirements for licensure as a LCSW in New York.

**Purpose:** To expedite the processing of applications for licensure and to provide clarity regarding acceptable supervised experience.

**Substance of final rule:** The Commissioner of Education proposes to promulgate regulations, relating to licensure as a licensed master social worker (LMSW) and a licensed clinical social worker (LCSW), limited permits for applicants in these professions, the practice of clinical social work by a LMSW under supervision, the requirements for insurance reimbursement pursuant to the Insurance Law, the supervised practice of licensed master social work by certain social workers, and the endorsement of a license as a LCSW in another jurisdiction for practice in New York State. The following is a summary of the substance of the regulations.

Supervised experience for licensure as a LCSW

Section 74.3(a) requires an applicant to complete three years of full-time, supervised experience in diagnosis, psychotherapy and assessment-based treatment planning, or the part-time equivalent, over a period of at least 36 months and not more than six years, in accordance with the requirements of section 74.6. The full-time experience shall consist of not less than 2,000 client contact hours.

Section 74.3(a)(1) requires that experience completed in New York must be completed as a Licensed Master Social Worker (LMSW) or permit holder, except in limited circumstances, and provides that experience in another jurisdiction may be accepted if completed in an authorized setting under a qualified supervisor, as determined by the department.

Section 74.3(a)(2) requires an applicant to complete the experience in an acceptable setting, as defined in subdivision (a) of section 74.6.

Section 74(a)(3) requires an applicant to complete the experience under a qualified supervisor, as defined in paragraph (2) of subdivision (c) of section 74.6.

Section 74.3(a)(4) requires the supervisor to retain records of the applicant's supervised experience and to submit documentation of the

supervised experience on forms prescribed by the department. The department may request clarification of the supervisor's qualifications or the authority of the setting to provide professional services. If the supervisor is deceased or not available, a licensed colleague may submit verification of the applicant's experience.

Limited Permit for LMSW and LCSW applicant

Section 74.4(a)(1) is amended to clarify that the applicant for a permit to practice licensed master social work must meet the moral character and education requirements to be eligible for a permit.

Section 74.4(a)(2) is amended to clarify that the permit is issued for a specific setting, as defined in subdivision (a) of section 74.6.

Section 74.4(a)(3) is amended to clarify that the supervisor shall be responsible for appropriate oversight of services provided by the permit holder and no supervisor shall supervise more than five permit holders at one time.

Section 74.4(b)(1) is amended to clarify that the applicant for a permit to practice licensed clinical social work must meet the moral character requirements, in addition to clinical education and supervised experience requirements, to be eligible for a permit.

Section 74.4(b)(2) is amended to clarify that the permit is issued for a specific setting, as defined in subdivision (a) of section 74.6, and may not be issued for a private practice owned or operated by the applicant.

Section 74.4(b)(3) is amended to clarify that the supervision of a LCSW permit holder must meet the requirements in subdivision (c) of section 74.6. In addition, the supervisor shall be responsible for appropriate oversight of services provided by the permit holder and no supervisor shall supervise more than five permit holders at one time.

Authorization qualifying certain LCSW for insurance reimbursement

Section 74.5(a) is amended to increase the application fee from \$85 to \$100 and to clarify that a licensed clinical social worker must meet the requirements in section 3221(l)(4)(d) or 4303(n) of the Insurance Law to qualify for insurance reimbursement.

Section 74.5(c) is amended to clarify that the LCSW must complete 2,400 client contact hours of psychotherapy experience over a period of not less than three years. The amendment allows applicants who started their experience to qualify for insurance reimbursement prior to January 1, 2011 to submit any experience obtained prior to licensure as a licensed clinical social worker provided that such experience, in the determination of the department, satisfies the experience requirements for such reimbursement and is obtained after the experience used to satisfy the experience requirements for licensure as an LCSW. The amendment also clarifies that experience to qualify for insurance reimbursement commenced on or after January 1, 2011 shall be obtained only after licensure as a licensed clinical social worker in New York.

Section 74.5(c)(1) defines an acceptable setting for experience toward the psychotherapy privilege, which may include a private practice owned or operated by the applicant, who is licensed as a LCSW and authorized to practice psychotherapy.

Section 74.5(c)(2) requires the LCSW to submit for review and approval by the State Board for Social Work a plan for supervised experience that meets the requirements for the privilege. The plan shall be submitted to the State Board for Social Work before the applicant starts the experience for the privilege. Section 74.5(c)(2)(i) requires the plan to specify individual or group consultation of no less than two hours a month or enrollment in a program authorized to provide psychotherapy that is offered by an institution of higher education or a psychotherapy institute chartered by the Board of Regents. The amendment eliminates peer supervision for the privilege.

The amendment to 74.5(c)(2)(ii) clarifies that a qualified supervisor includes a LCSW who holds the privilege or the equivalent as determined by the department, a licensed psychologist competent in psychotherapy, or a licensed physician who is qualified to practice psychiatry, as determined by the department.

Supervision of certain qualified individuals providing clinical social work services

Section 74.6 is amended to clarify the supervision required for a LMSW or other qualified individual to practice clinical social work under supervision, in a setting acceptable to the Department.

Section 74.6(a)(i) defines an acceptable setting for the supervised practice of licensed clinical social work as including a professional business entity authorized to provide services in licensed clinical social work, a sole proprietorship or professional partnership owned by licensees who provide services that are within the scope of practice of licensed clinical social work, a hospital or clinic authorized under the Public Health law, a program or facility authorized under the Mental Hygiene law, a program or facility authorized under federal law or an entity defined as exempt or otherwise authorized to provide services that are within the scope of licensed clinical social work.

Section 74.6(a)(2) defines a qualified individual authorized to provide licensed clinical social work services under supervision as a LMSW, an

individual with a limited permit to practice licensed clinical social work in New York, or an individual otherwise authorized to provide clinical social work services in a setting acceptable to the department and under appropriate supervision.

Section 74.6(b) allows a qualified individual to submit to the State Board for Social Work a plan for supervised experience in New York toward licensure as a LCSW for review and approval. The plan shall include a copy of documentation establishing that the agency or setting is an acceptable setting, as defined in section 74.6(a); a copy of the license of the qualified supervisor, as defined in section 74.6(c); a plan for supervision of the qualified individual accompanied by an attestation by the supervisor that he or she is responsible for services provided by the qualified individual; and, if a third-party is supervising the qualified individual, an affirmation from a designated representative of the setting that the setting is authorized to provide clinical social work services and the setting will ensure appropriate supervision of the qualified individual who is providing such services.

Section 74.6(c) is amended to clarify the supervision of a qualified individual seeking licensure as a LCSW to include at least 100 hours of in-person individual or group supervision, distributed appropriately over the period of the supervised experience. In addition, the qualified individual shall be under the general supervision of a qualified supervisor who shall review the qualified individual's diagnosis and treatment of each client, discuss the cases, provide oversight to the qualified individual in developing skills as a licensed clinical social worker, and regularly review and evaluate the professional work of the qualified individual.

There are no changes to section 74.6(c)(2), which requires the supervisor to be licensed and registered as a licensed clinical social worker, licensed psychologist or physician who is competent as a psychiatrist, in the determination of the department.

Section 74.6(d) defines the supervision of a LMSW who is providing clinical social work services under supervision but who is not using the experience to satisfy the experience requirements for licensure as a LCSW.

Section 74.6(d)(1) defines the supervision to be contact between the LMSW and supervisor during which the LMSW apprises the supervisor of the diagnosis and treatment of each client; the LMSW's cases are discussed; the supervisor provides the LMSW with oversight and guidance in diagnosing and treatment clients; the supervisor regularly reviews and evaluates the professional work of the LMSW; and the supervisor provides at least two hours per month of in-person individual or group clinical supervision.

Section 74.6(d)(2) requires the supervisor to meet the definition of a qualified supervisor in section 74.6(c)(2).

Section 74.6(e) requires the supervisor to maintain records of client contact hours in diagnosis, psychotherapy and assessment-based treatment planning and supervision hours provided to the qualified individual and to produce a log of hours, if requested.

Supervision of certain social workers providing licensed master social work services.

The title of section 74.7 is amended and section 74.7 is amended to authorize a person with a bachelor of social work or master of social work degree, acceptable to the department, to perform activities and services within the scope of practice of a licensed master social worker as defined in paragraphs (a) and (b) of subdivision (1) of section 7701 of the Education Law, under the supervision of a LMSW or LCSW. The amendment clarifies that nothing in this section authorizes the use of the title "LMSW" or "LCSW" or the practice of licensed clinical social work, as defined in the Education Law.

#### Endorsement of certain LCSW applicants

A new section 74.9 is added to the Regulations of the Commissioner of Education to establish requirements for endorsement of a license to practice licensed clinical social work issued by another jurisdiction. The applicant must demonstrate licensure in good standing as a LCSW in another jurisdiction(s) and at least 10 years of practice in the 15 years preceding the application, submit the application and fee established in law for licensure and initial registration, and complete coursework in the identification and reporting of suspected child abuse or neglect.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 74.5(c) and (2)(ii).

**Revised rule making(s) were previously published in the State Register** on September 29, 2010.

**Text of rule and any required statements and analyses may be obtained from:** Christine Moore, NYS Education Department, 89 Washington Avenue, Room 148, Albany, NY 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

#### Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on June 30, 2010, the following substantial revisions were made to the proposed rule:

Subdivision (c) of section 74.5 of the Regulations of the Commissioner of Education is amended to insert the following language: "except as provided in subdivision (d) of this section".

Clause (d) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 74.5 of the Regulations of the Commissioner is amended to allow an applicant who started their experience to qualify for insurance reimbursement prior to January 1, 2011 to submit any experience obtained prior to licensure as a licensed clinical social worker provided that such experience, in the determination of the department, satisfies the experience requirements for such reimbursement and is obtained after the experience used to satisfy the experience requirements for licensure as a licensed clinical social worker. This amendment also clarifies that experience to qualify for insurance reimbursement commenced on after January 1, 2011 shall be obtained only after licensure as a licensed clinical social worker in New York.

The above revisions to the proposed rule require the following revisions to the Needs and Benefits Section of the previously published Regulatory Impact Statement:

#### 3. NEEDS AND BENEFITS:

Section 7704(2) of the Education Law requires an applicant seeking licensure as a LCSW to complete three years of full-time supervised post-graduate clinical social work experience in diagnosis, psychotherapy and assessment-based treatment planning, or its part-time equivalent obtained over a period of not more than six years. The law does not require the applicant to complete any other social work experience, although the practice of licensed clinical social work includes other activities, including case management, advocacy, and testing. Such activities are not acceptable toward completion of the experience requirement under the current law. The proposed amendments to the regulations require an applicant to complete 2,000 client contact hours in diagnosis, psychotherapy, and assessment-based treatment planning over a period of not less than 36 months and not more than 72 months under a qualified supervisor. While this is a 30 percent reduction from the current requirement of 2,880 client contact hours over the same period of time, it is still among the highest requirements for clinical hours in the U.S., and the Department believes 2,000 client contact hours provides sufficient experience to ensure client protection once the applicant is licensed.

The proposed amendment to section 74.3 of the Commissioner's regulations clarifies the experience requirements for licensure as a LCSW in New York. The amendments require an applicant for licensure to complete the required experience as a LMSW or permit holder in New York, except in certain limited circumstances. For experience completed in another jurisdiction, the experience must be obtained after the applicant completes his or her master's degree. The amendment requires the applicant to complete the experience in an acceptable setting under a qualified supervisor, as defined in section 74.6 of the Commissioner's regulations. The proposed amendment requires the supervisor to maintain records of the applicant's client contact hours and supervision and to submit verification of the client contact hours and supervision on forms prescribed by the Commissioner.

The proposed amendment also amends section 74.4 of the Commissioner's regulations to clarify that limited permit applicants must be of good moral character and that the permit may only be issued for work in an authorized setting under a qualified supervisor. In addition, the amendment strengthens the requirement that the supervisor is responsible for the services provided by the permit holder and limits a licensee to supervising no more than five permit holders at any one time. Since the permit holder is only authorized to practice under supervision, this restriction is appropriate for public protection and consistent with the requirements in other professions. A LMSW or LCSW permit holder who is practicing clinical social work under supervision must be under general supervision as defined in the proposed amendment.

Currently, section 74.5 of the Commissioner's regulations establishes the fee and experience requirements for a LCSW to qualify for the insurance privilege established in section 3221(l)(4)(D) or 4303(n) of the Insurance Law. The proposed amendments increase the application fee from \$85 to \$100 and continue the requirement that the applicant complete 2,400 client contact hours of psychotherapy.

The proposed amendment clarifies that an applicant who commences their experience to qualify for insurance reimbursement prior to January 1, 2011 may submit any experience obtained prior to licensure as a licensed clinical social worker provided that such experience, in the determination of the department, satisfies the experience requirements for such reimbursement and is obtained after the experience used to satisfy the experience requirements for licensure as a licensed clinical social worker. However, the proposed amendment provides that any experience commenced on after January 1, 2011 to qualify for the insurance privilege, may only be obtained after licensure as a clinical social worker. The purpose of the amendment is to clarify the intent of the law that experience for the insurance privilege must be obtained after licensure as an LCSW over a period of not less than three years.

Under the proposed amendment, the applicant would also have to have no less than 400 client contact hours in any one year in order to qualify for the privilege. In order to clarify the process of meeting the requirements in Insurance Law, the proposed amendment also defines an acceptable setting for the practice of licensed clinical social work and requires a LCSW to submit for approval by the State Board for Social Work a plan for appropriate supervision. The amendment also defines acceptable supervision for the privilege as two or more hours per month of individual or group consultation or enrollment in a program in psychotherapy offered by an institution of higher education or by a psychotherapy institute chartered by the Board of Regents. This amendment eliminates peer supervision, which is not authorized by the Insurance Law, and clarifies the pathway to the insurance privilege.

The proposed amendments to section 74.6 of the Commissioner's regulations establish the supervision requirements for a licensed master social worker providing clinical social work services. A LMSW who has submitted an application for licensure as a LCSW must maintain registration as a LMSW in New York and may only practice under supervision until licensed as a LCSW. The amendments clarify what constitutes an acceptable setting for the practice of clinical social work and require the supervisor to provide at least 100 hours of individual or group supervision to the LMSW, distributed appropriately over a period of at least 36 months. The LMSW would also be able to submit a plan for supervised experience toward licensure as a LCSW, for review and approval by the State Board for Social Work. By obtaining such approval prior to starting a position, an applicant would be able to avoid working for three years in a position which cannot be accepted toward meeting the experience requirements for licensure as a LCSW because the setting or supervisor was not authorized by law and/or regulation. The State Board's review and approval of the voluntary plan would both protect the public and provide assurances to the LMSW that the setting and supervisor are authorized to engage in the practice of clinical social work in New York. Since a LMSW may provide diagnosis, psychotherapy and assessment-based treatment planning under supervision without seeking licensure as an LCSW, the amendment requires such a LMSW to receive at least two hours per month of in-person individual or group clinical supervision.

Section 7706(2) of the Education Law provides an exemption from licensure for an individual with a bachelor's degree in social work, if the person is under the general supervision of a LMSW or LCSW and engages in non-supervisory and non-clinical activities only. The proposed amendments to section 74.7 of the Commissioner's regulations provide standards for an individual with a BSW or MSW degree to provide licensed master social work services, under supervision. In order to clarify the boundaries of practice, the amendment clearly states that the individual may not provide administrative supervision or engage in the practice of licensed clinical social work or use the title "LMSW" or "LCSW."

The proposed amendment adds a new section 74.9 to allow the Department to endorse for practice in New York the license of an LCSW licensed in another jurisdiction. The applicant would have to have at least 10 years of licensed practice during the 15 years immediately preceding the application for licensure in New York. In addition, the applicant must demonstrate: licensure as a LCSW on the basis of an a master's degree in social work from an acceptable school, post-degree supervised clinical experience, and the passage of a clinical examination in social work acceptable to the department. The applicant must also be of good character, complete coursework in the identification and reporting of suspected child abuse, and submit the application for licensure and fee established in law and regulation.

#### **Revised Regulatory Flexibility Analysis**

Since publication of a Notice of Proposed Rule Making in the State Register on June 30, 2010, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement herewith.

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

#### **Revised Rural Area Flexibility Analysis**

Since publication of a Notice of Proposed Rule Making in the State Register on June 30, 2010, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The above revisions to the proposed rule require the following revisions to the Reporting, Recordkeeping and Other Compliance Requirements, and Professional Services section previously published Rural Area Flexibility Analysis.

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

Section 7704(2) of the Education Law requires an applicant seeking licensure as a LCSW to complete three years of full-time supervised post-graduate clinical social work experience in diagnosis, psychotherapy and assessment-based treatment planning, or its part-time equivalent obtained over a period of not more than six years. The law does not require the ap-

plicant to complete any other social work experience, although the practice of licensed clinical social work includes other activities, including case management, advocacy, and testing. Such activities are not acceptable toward completion of the experience requirement under the current law. The proposed amendments to the regulations require an applicant to complete 2,000 client contact hours in diagnosis, psychotherapy, and assessment-based treatment planning over a period of not less than 36 months and not more than 72 months under a qualified supervisor. While this is a 30 percent reduction from the current requirement for 2,880 client contact hours over the same period of time, it is still among the highest requirements for clinical hours in the U.S., and the Department believes 2,000 client contact hours provides sufficient experience to ensure client protection once the applicant is licensed.

The proposed amendment to section 74.3 of the Commissioner's regulations clarifies the experience requirements for licensure as a LCSW in New York. The amendments require an applicant for licensure to complete the required experience as a LMSW or permit holder in New York, except in certain limited circumstances. For experience completed in another jurisdiction, the experience must be obtained after the applicant completes their master's degree. The amendment requires the applicant to complete the experience in an acceptable setting under a qualified supervisor, as defined in section 74.6 of the Commissioner's regulations. The proposed amendment requires the supervisor to maintain records of the applicant's client contact hours and supervision and to submit verification of the client contact hours and supervision on forms prescribed by the Commissioner.

The proposed amendment also amends section 74.4 of the Commissioner's regulations to clarify that limited permit applicants must be of good moral character and that the permit may only be issued for work in an authorized setting under a qualified supervisor. In addition, the amendment strengthens the requirement that the supervisor is responsible for the services provided by the permit holder and limits a licensee to supervising no more than five permit holders at any one time. Since the permit holder is only authorized to practice under supervision, this restriction is appropriate for public protection and consistent with the requirements in other professions. A LMSW or LCSW permit holder who is practicing clinical social work under supervision must be under general supervision as defined in the proposed amendment.

Currently, section 74.5 of the Commissioner's regulations establishes the fee and experience requirements for a LCSW to qualify for the insurance privilege established in section 3221(l)(4)(D) or 4303(n) of the Insurance Law. The proposed amendments increase the application fee from \$85 to \$100 and continue the requirement that the applicant complete 2,400 client contact hours of psychotherapy.

The proposed amendment clarifies that an applicant who commences their experience to qualify for insurance reimbursement prior to January 1, 2011 may submit any experience obtained prior to licensure as a licensed clinical social worker provided that such experience, in the determination of the department, satisfies the experience requirements for such reimbursement and is obtained after the experience used to satisfy the experience requirements for licensure as a licensed clinical social worker. However, the proposed amendment provides that any experience commenced on after January 1, 2011 to qualify for the insurance privilege, may only be obtained after licensure as a clinical social worker. The purpose of the amendment is to clarify the intent of the law that experience for the insurance privilege must be obtained after licensure as an LCSW over a period of not less than three years.

Under the proposed amendment, the applicant would also have to have no less than 400 client contact hours in any one year in order to qualify for the privilege. In order to clarify the process of meeting the requirements in Insurance Law, the proposed amendment also defines an acceptable setting for the practice of licensed clinical social work and requires a LCSW to submit for approval by the State Board for Social Work a plan for appropriate supervision. The amendment also defines acceptable supervision for the privilege as two or more hours per month of individual or group consultation or enrollment in a program in psychotherapy offered by an institution of higher education or by a psychotherapy institute chartered by the Board of Regents. This amendment eliminates peer supervision, which is not authorized by the Insurance Law, and clarifies the pathway to the insurance privilege.

The proposed amendments to section 74.6 of the Regulations of the Commissioner of Education establish the supervision requirements for a licensed master social worker providing clinical social work services. A LMSW who has submitted an application for licensure as a LCSW must maintain registration as a LMSW in New York and may only practice under supervision until licensed as a LCSW. The amendments clarify what constitutes an acceptable setting for the practice of clinical social work and require the supervisor to provide at least 100 hours of individual or group supervision to the LMSW, distributed appropriately over a period of at least 36 months. The LMSW would also be able to submit a plan for

supervised experience toward licensure as a LCSW, for review and approval by the State Board for Social Work. By obtaining such approval prior to starting a position, an applicant would be able to avoid working for three years in a position which cannot be accepted toward meeting the experience requirements for licensure as a LCSW because the setting or supervisor was not authorized by law and/or regulation. The State Board's review and approval of the voluntary plan would both protect the public and provide assurances to the LMSW that the setting and supervisor are authorized to engage in the practice of clinical social work in New York. Since a LMSW may provide diagnosis, psychotherapy and assessment-based treatment planning under supervision without seeking licensure as an LCSW, the amendment requires such a LMSW to receive at least two hours per month of in-person individual or group clinical supervision.

Section 7706(2) of the Education Law provides an exemption from licensure for an individual with a bachelor's degree in social work, if the person is under the general supervision of a LMSW or LCSW and engages in non-supervisory and non-clinical activities only. The proposed amendments to section 74.7 of the Commissioner's regulations provide standards for an individual with a BSW or MSW degree to provide licensed master social work services, under supervision. In order to clarify the boundaries of practice, the amendment clearly states that the individual may not provide administrative supervision or engage in the practice of licensed clinical social work or use the title "LMSW" or "LCSW."

The proposed amendment adds a new section 74.9 to allow the Department to endorse for practice in New York the license of a LCSW licensed in another jurisdiction. The applicant would have to have at least 10 years of licensed practice during the 15 years immediately preceding the application for licensure in New York. In addition, the applicant must demonstrate: licensure as a LCSW on the basis of an a master's degree in social work from an acceptable school, post-degree supervised clinical experience, and the passage of a clinical examination in social work acceptable to the department. The applicant must also be of good character, complete coursework in the identification and reporting of suspected child abuse, and submit the application for licensure and fee established in law and regulation.

#### **Revised Job Impact Statement**

Since publication of the Notice of Proposed Rule Making in the State Register on June 30, 2010, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The proposed rule, as so revised, relates to limited permits for licensed master social workers (LMSW) and licensed clinical social workers (LCSW) and experience, supervision, and endorsement requirements for licensure as a LCSW in New York. The revised rule will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the revised rule that it will have no impact on jobs or employment opportunities, no further measures were taken. Accordingly, a job impact statement is not required and one has not been prepared.

#### **Assessment of Public Comment**

Since publication of a Notice of Proposed Rule Making in the State Register on June 29, 2010, the State Education Department received the following comments.

COMMENT: Several commenters expressed concern with the requirement that a candidate applying for the psychotherapy privilege must complete the supervised experience requirement after becoming a licensed clinical social worker ("LCSW"), as opposed to the prior regulations which allowed an individual to complete the experience prior to licensure stating this change could eliminate a year or more of supervised experience completed while the applicant was under supervision and taking the licensure examination.

RESPONSE: The Department will revise its regulations to allow individuals who started their experience for the insurance privilege prior to January 1, 2011 to meet the experience requirements under the prior requirements, which allowed applicants to complete their experience before licensure.

COMMENT: Several commenters strongly support the amendments related to supervised experience for licensure as an LCSW and the supervision of a BSW or MSW providing certain services, as the amendments provide a level of flexibility that reflects the settings in which social workers practice while maintaining appropriate standards for licensure as an LCSW.

RESPONSE: The Department appreciates the response and support.

COMMENT: The proposed amendment to 74.6 would allow a Licensed Master Social Worker to provide diagnosis, psychotherapy, and assessment-based treatment planning under supervision. Would you want your child to be treated by an LMSW who was not required to study differential diagnosis and to understand the DSM-IV-TR, academically?

RESPONSE: Section 7701(c) of the Education Law authorizes an LMSW to practice clinical social work, including diagnosis, psycho-

therapy and assessment-based treatment planning, under supervision in a setting acceptable to the Department. The proposed regulation requires the LMSW to be under supervision and is consistent with the Education Law; therefore, no change is needed.

COMMENT: SED should consider amending the regulations to include the Licensed Mental Health Counselor as an acceptable supervisor for a LMSW who is providing clinical social work services.

RESPONSE: Section 7704(2)(c) of the Education Law specifically defines a qualified supervisor as a LCSW, licensed psychologist or a psychiatrist. The law does not allow the Department to define in regulation any other supervisor for the LMSW practicing clinical social work.

COMMENT: Section 74.3(a) should be amended to allow the Department to approve interruptions for good cause in the requirement for supervised experience to be completed in no more than six continuous years.

RESPONSE: Section 7704(2)(c) of the Education Law requires an applicant to have at least three years full-time supervised experience over a continuous period not to exceed six continuous years and does not provide for interruptions in supervised experience.

COMMENT: Please amend 74.3(a)(4) to require the verification of supervised experience to be submitted by a licensed colleague of the supervisor, not the applicant, if the supervisor is deceased or not available.

RESPONSE: The regulation provides flexibility when an applicant's former supervisor cannot be located. The suggested change is not necessary.

COMMENT: Please amend the regulations to establish a time limit for the Department to respond to limited permit applications.

RESPONSE: Applications are processed in a timely manner when the applicant has submitted all necessary information. It is not necessary to establish this timeline in regulation.

COMMENT: Is the limit on supervising 5 permit holders at one time enforced across disciplines (e.g., LMSW, LMHC) and does the limit include clinical supervision of LMSWs?

RESPONSE: The proposed amendment restricts a licensed professional to supervising no more than five permit holders, in any combination of professions that he/she is competent to practice and supervise and does not include clinical supervision of licensees.

COMMENT: Section 74.6 establishes a process by which an LMSW may file a supervision plan for prior review but does not address a change in supervisor and how will this impact the supervision and experience accrued?

RESPONSE: If the LMSW or supervisor should leave the setting, a new plan may be submitted to the State Board and the LMSW could complete the experience under the new approved plan. Once the new plan is approved by the Department, the LMSW could complete the remainder of the experience under the new plan.

COMMENT: Please define good moral character and how a supervisor or applicant can demonstrate good moral character or respond to any questions about his/her moral character.

RESPONSE: Section 28-1 of the Regents Rules sets out the process by which a question of the applicant's moral character is investigated and reviewed to determine if the applicant has met the requirement.

COMMENT: Please clarify the process for obtaining a permit, including information on where to obtain the permit, cost, and the application.

RESPONSE: Applications, instructions and other information about permits, including costs, are available on our website: [www.op.nysed.gov/prof/sw/](http://www.op.nysed.gov/prof/sw/).

COMMENT: Language in 74.4(a)(2) and 74.4(b)(2) should be amended to allow a LMSW or LMSW permit holder to provide services in a private practice that he or she owns and operates.

RESPONSE: The Department disagrees with the comment, as the permit holder and the LMSW are only authorized to provide services under supervision, in a setting that is authorized to provide professional services to a public and this does not include a setting owned by an LMSW permit holder or LMSW.

COMMENT: A commenter applauded the Department's proposal to allow for the submission of a supervision plan by an LCSW seeking the psychotherapy privilege and for qualified individuals seeking to provide clinical social work services under supervision.

RESPONSE: The Department appreciates the comment.

COMMENT: Is the new form for supervisors different than the current log and can it be used for permit and non-permit holders?

RESPONSE: The Office of the Professions is revising existing applications. In the meantime, an applicant may use the existing forms and the supervisor may use the log that is part of Form 4B to maintain a record of the client contact and supervision hours.

COMMENT: Comments about the manner and effectiveness of clinical group supervision for LCSW licensure included a suggestion that the regulation require more individual supervision and the possibility of waivers from stricter requirements in the event of hardship.

RESPONSE: There is no evidence that individual supervision provides a more qualified or competent entry level practitioner than does group supervision. The regulation provides appropriate flexibility and no change is needed.

COMMENT: A supervisor should be responsible for no more than four individuals or four members of a group to ensure appropriate supervision.

RESPONSE: This level of specificity is not required in the regulation, as the supervisor is responsible for accepting no more supervisees than he or she can supervise appropriately.

COMMENT: Sections 74.6(c)(1) and 74.6(d)(1) should be amended, similar to amendments in section 74.4, to clarify the supervisor's responsibility for appropriate oversight of all services provided under his or her supervision.

RESPONSE: A change is not required as the supervisor is responsible under Part 29 of the Regents Rules for appropriate oversight of an individual who is only authorized to practice under his/her supervision.

COMMENT: Is Child Welfare Services authorized under law or regulation to provide services that are within the scope of licensed clinical social work?

RESPONSE: An entity must be authorized by law to provide professional services. The entity should discuss any questions about its authority to provide professional services with its attorney to ensure compliance with applicable laws.

COMMENT: Commenters suggested that 74.5(c)(1)(v) and 74.6(a)(v) should be amended to "specify a program or facility authorized under articles 16, 31 or 32 of the mental hygiene law...", an OCFS program exempt until July 1, 2013, or a psychotherapy institute granted a waiver under section 6503-a be defined as acceptable settings.

RESPONSE: The regulations clearly provide that if the facility or program is authorized under the Mental Hygiene Law, it is an acceptable setting. A program that is exempt or issued a waiver is considered "otherwise authorized" under the regulations. Therefore, this level of specificity is not needed in the regulations.

COMMENT: Social workers perform many tasks that are not included in diagnosis, psychotherapy, and assessment based treatment planning and this makes it difficult to ensure enough time in those areas and counting hours becomes a challenge.

RESPONSE: The amendments are intended to provide flexibility to supervisors in assuring that applicants complete appropriate experience in diagnosis, psychotherapy and assessment-based treatment planning, even if these are not provided in 60-minute sessions.

COMMENT: "Diagnosis" and "assessment-based treatment planning" involve work that does not happen 'face-to-face' with the client; does this count toward experience hours for these tasks?"

RESPONSE: It depends on the situation. Generally, to count toward experience hours, these tasks should happen 'face-to-face' with the client. However, a minimal amount of time that does not happen 'face-to-face' may be counted towards this experience. For example, a 50 minute face-to-face client session followed by 10 minutes of non-face-to-face documentation and recordkeeping, including treatment planning, would be acceptable by the Department for this experience.

COMMENT: It would be helpful to have some more clarity regarding assessment based treatment planning and if this is the same as a treatment plan or behavior plan?

RESPONSE: Assessment-based treatment planning is defined in subparagraph (d) of paragraph (2) of section 7701 of the Education Law, in the context of LCSW practice. It depends on the plan and whether or not a treatment plan or behavior plan meets the definition of assessment based treatment planning.

COMMENT: What does the supervised plan for the 'R' psychotherapy privilege look like and what happens when there are changes over time?

RESPONSE: The LCSW will submit a plan for prior review by the State Board, to ensure the supervisor and setting are legally authorized and acceptable toward the privilege. If there are changes in the supervisor or setting, a new plan may be submitted for review.

COMMENT: The client contact hours required in 74.5(c) for the privilege should be reduced from 2,400 to 2,000, consistent with the changes for licensure as a LCSW.

RESPONSE: The Department disagrees with the recommendation. The psychotherapy privilege is intended to recognize those LCSWs who provide psychotherapy and therefore, the required hours are appropriate for the privilege.

COMMENT: Several commenters object to requirements in 74.5(c)(2) that an LCSW submit the proposed plan for meeting the privilege requirement prior to starting such experience, as this may prevent the LCSW from providing psychotherapy services that he/she can legally provide and the regulation suggests the privilege is required to provide psychotherapy services.

RESPONSE: The Department disagrees with the comments. The law does not restrict an LCSW from providing psychotherapy, if competent,

nor require the LCSW to apply for or receive the privilege. A requirement for prior approval ensures public protection as well as providing assurances to the LCSW that the plan for meeting the privilege is consistent with the laws and regulations.

COMMENT: The amendment to 74.5(c)(2)(ii)(a) eliminates the possibility of peer supervision for the privilege, although this was allowed under the previous regulations. Several commenters believe that the Department's reading of the Insurance Law, requiring the supervisor to hold the privilege, does not apply for experience in certain settings and the regulations should be amended to allow peer supervision.

RESPONSE: The Department disagrees with the comment and believes that there should not be different standards for oversight of psychotherapy practice in facilities than for practice in other settings. The supervising LCSW who holds the privilege has demonstrated competence in psychotherapy, consistent with the Insurance Law and therefore a regulatory change is not warranted.

COMMENT: What exactly counts as acceptable experience in clinical social work for endorsement of a license issued in another state.

RESPONSE: The new section 74.9 allows the Department to endorse a license issued to an LCSW in another jurisdiction if the applicant met appropriate clinical requirements for licensure, although these may vary among states, and has at least 10 years of licensed practice in the 15 years prior to application for endorsement in New York. The State Board should not need to review experience or education, if acceptable in other states.

COMMENT: I support the new 74.9 to allow the Department to endorse for licensure as an LCSW in New York, certain individuals who are licensed as an LCSW in other states.

RESPONSE: No response is required.

COMMENT: I support the proposed amendments to 74.7 relating to the supervised practice of a person with a BSW degree.

RESPONSE: No response is required.

## NOTICE OF ADOPTION

### Students with Disabilities

**I.D. No.** EDU-33-10-00004-A

**Filing No.** 1211

**Filing Date:** 2010-11-23

**Effective Date:** 2010-12-08

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

**Action taken:** Amendment of sections 200.2, 200.4, 200.5, 200.6, 200.9, 200.10, 200.11, 200.13, 200.20, 201.2 and 201.11 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 305(1), (2) and (20), 3214(3), 4402 (not subdivided) and 4403(3), 4410(13); and L. 1978, ch. 410

**Subject:** Students with disabilities.

**Purpose:** Mandate relief to schools in certain areas of special education that exceed federal requirements, and to make technical changes.

**Substance of final rule:** The Commissioner of Education proposes to amend sections 200.2, 200.4, 200.5, 200.6, 200.9, 200.10, 200.11, 200.13, 200.20, 201.2 and 201.11 of the Commissioner's Regulations, effective December 8, 2010, relating to the provision of special education to students with disabilities. The following is a summary of the substance of the proposed amendments.

Section 200.2, as amended, corrects cross citations relating to apportionment of public monies; makes technical amendments to update Federal law citations and to change the address where a copy of federal regulations may be obtained within the New York State Education Department; and amends the section to conform to section 3602(8) of the Education Law, relating to requirements for district plans of service.

Section 200.4, as amended, makes technical amendments to update Federal law citations and to change the address where a copy of federal regulations may be obtained within the New York State Education Department and amends the section to conform to a recent statutory change of the name of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities.

Section 200.5, as amended, conforms State regulations to federal requirements relating to meeting notice and parent participation in CSE meetings; corrects a cross citation relating to appeal to a State review officer; and makes technical amendments to update citations to Federal law and to change the address where a copy of federal regulations may be obtained within the New York State Education Department; to conform to a recent statutory change of the name of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities; and to change the address where a State complaint would be submitted.

Section 200.6, as amended, repeals the minimum service delivery requirements for speech and language; authorizes school districts to add up to two additional students to integrated co-teaching classes; and corrects cross citations relating to apportionment of public monies.

Section 200.9, as amended, makes a technical amendment relating to the procedures during the close-down period of an approved private program.

Section 200.10, as amended, makes a technical amendment relating to reimbursement to certain State-operated and State-supported schools for blind, deaf and severely disabled students.

Section 200.11, as amended, makes technical amendments to conform to a recent statutory change of the name of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities.

Section 200.13, as amended, repeals the requirement that each student with autism receive instructional services a minimum of 30 minutes daily in groups not to exceed two, or 60 minutes daily in groups not to exceed six to meet his/her individual language needs.

Section 200.20, as amended, makes technical amendments to repeal the name of the office within the State Education Department office that must conduct a fiscal or program review of a preschool program applying for approval and to make a correction to the referencing of a cross citation.

Section 201.2, as amended, makes technical amendments to update Federal law citations and to change the address where a copy of Controlled Substance Act may be obtained within the New York State Education Department.

Section 201.11, as amended, makes a technical amendment to the name of the State Education Department office where copies of expedited hearing decisions would be sent.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 200.5(e)(2).

**Text of rule and any required statements and analyses may be obtained from:** Chris Moore, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

#### **Revised Regulatory Impact Statement**

Since publication of a Notice of Proposed Rule Making in the State Register on August 18, 2010, a nonsubstantial revision was made to section 200.5(e)(2) of the proposed amendment to change a citation reference to 20 USC 1232(g) to the correct citation of 20 USC 1232g.

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

#### **Revised Regulatory Flexibility Analysis**

Since publication of a Notice of Proposed Rule Making in the State Register on August 18, 2010, a nonsubstantial revision was made to the proposed amendment, as described in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The revision does not require any changes to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Government.

#### **Revised Rural Area Flexibility Analysis**

Since publication of a Notice of Proposed Rule Making in the State Register on August 18, 2010, a nonsubstantial revision was made to the proposed amendment, as described in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The revision does not require any changes to the previously published Rural Area Flexibility Analysis.

#### **Revised Job Impact Statement**

Since publication of a Notice of Proposed Rule Making in the State Register on August 18, 2010, a nonsubstantial revision was made to the proposed amendment, as described in the Statement Concerning the Regulatory Impact Statement submitted herewith. The proposed amendment, as revised, will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the revised amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

#### **Assessment of Public Comment**

Since publication of a Notice of Proposed Rule Making in the State Register on August 18, 2010 the State Education Department received the following comments on the proposed amendments. Other comments received did not relate specifically to the proposed amendments and are not included in this Summary.

##### **General Comments**

##### **1. COMMENT:**

Proposed amendments would provide relief to districts.

##### **DEPARTMENT RESPONSE:**

No response necessary as comment is supportive.

##### **2. COMMENT:**

Oppose service reduction. Proposals appear motivated by budgetary reasons. Given decline in number of students meeting proficiency, now isn't time to eliminate minimum speech requirements or expect co-teaching teachers to be responsible for more of lowest performing, neediest students. No data provided on how money will be saved or how proposals will contain costs without compromising services. Standards shouldn't be lowered for students with disabilities.

##### **DEPARTMENT RESPONSE:**

Proposed amendments wouldn't require a reduction in services and lower standards for students with disabilities but instead ensure Committees on Special Education (CSEs) have appropriate flexibility to make recommendations based on individual student needs.

##### **3. COMMENT:**

Changing Office of Mental Retardation and Developmental Disabilities to Office for People with Developmental Disabilities is appropriate.

##### **DEPARTMENT RESPONSE:**

No response necessary as comment is supportive.

Section 200.2(c)(1) District Plan of Service for Special Education

##### **4. COMMENT:**

Support conforming regulations to statutory language relating to district plans of service.

##### **DEPARTMENT RESPONSE:**

No response necessary as comment is supportive.

Meeting Notice § 200.5(c)(2)(i)

##### **5. COMMENT:**

Some supported, some opposed conforming State regulations to federal regulations relating to meeting notice. Proposal doesn't allow legitimate situations for members to miss meetings; provides technical reason for impartial hearings; may increase costs; and may result in meeting cancellations.

##### **DEPARTMENT RESPONSE:**

Amendment is necessary to conform State regulations to federal requirements. Current State regulations require meeting notice to identify individuals "expected to attend" CSE or Committee on Preschool Special Education (CPSE) meetings, which substantively means the same as federal requirement that parents be notified as to "who will be in attendance." Change should have no impact on current policy, procedures or practices, or lead to increased hearing requests.

Section 200.5(d)(2) – Parent Participation

##### **6. COMMENT:**

Support language allowing districts to have informal/unscheduled conversations to develop ideas/proposals for discussion at CSE meetings.

##### **DEPARTMENT RESPONSE:**

No response necessary as comment is supportive.

Section 200.6(e)(2) – Speech and Language Related Services

##### **7. COMMENT:**

Majority of comments opposed repeal of minimum level of service requirement for speech. Some concerned this will adversely impact students; evidenced-based practice indicates twice a week for 30 minutes is minimum needed for effective treatment; minimum level assists students in accessing classroom curriculum and allows for learning, reinforcement and generalization of skills; and legal minimums are often interpreted as what should be provided. Some supported repealing the minimum. Current requirements don't allow for individualization of services. Repeal minimum to be in line with other related services.

##### **DEPARTMENT RESPONSE:**

Proposed amendment allows CPSEs/CSEs appropriate flexibility to make recommendations for speech services based on students' individual needs and doesn't relieve districts of their obligation to make a free appropriate public education (FAPE) available to each student; nor does it provide districts authority to unilaterally reduce the frequency of a related service on an individualized education program (IEP).

##### **8. COMMENT:**

Concerned that students won't warrant services because districts will say there isn't enough deficit or will interpret proposal to mean services will be terminated after one year.

##### **DEPARTMENT RESPONSE:**

Determinations regarding related services must be made on a case-by-case basis by the CPSE/CSE based upon students' individual needs. We disagree the amendment would negatively affect eligibility determinations. Some students currently ineligible for speech services, because they don't require at least two periods per week, could now become eligible.

##### **9. COMMENT:**

Revise manner services are provided so speech therapists provide services in the classrooms.

##### **DEPARTMENT RESPONSE:**

It would be inconsistent with federal and State law and regulations to dictate location of services. On a case-by-case basis, Committees may rec-

ommend a student receive speech services in a general education classroom.

10. COMMENT:

Minimum service requirements protect students from decisions based on fiscal concerns. Districts may pressure Committees to reduce services to save money or to recommend certain programs/services because of budget, space, lack of staff and ease of implementation.

DEPARTMENT RESPONSE:

Committees must determine special education programs/services needed for a child to receive FAPE on an individual basis. It's inappropriate for districts to make decisions solely on factors such as budget, staffing and administrative convenience.

11. COMMENT:

Some opposed reduction in speech services. No evidence provided the reduction is warranted or less service would be successful.

DEPARTMENT RESPONSE:

Department isn't proposing a reduction in speech services, nor would it be appropriate for districts to reduce services to all students based on repeal of minimum level of service requirement. Proposal allows CSEs/CPSEs appropriate flexibility to recommend services based on individual student needs.

12. COMMENT:

Therapists often expected to under serve or not serve mandated students and reducing mandates will amplify this. Scheduling issues, absences, and staff coverage interfere with mandated services.

DEPARTMENT RESPONSE:

Districts must ensure students have available to them FAPE, consistent with their IEPs, and consider impact of factors such as scheduling, absences and staff coverage on a student's progress and performance and determine how to ensure continued provision of FAPE.

13. COMMENT:

Students need at least 30 minute sessions.

DEPARTMENT RESPONSE:

Nothing precludes Committees from recommending 30 minute sessions or longer based on individual needs.

14. COMMENT:

Speech teachers aren't required CSE members. Speech therapists must be part of decision making and should be required to attend meetings if decisions are being made about speech services. Administrators, as district representative, can refuse programs/services recommended by other Committee members. Speech professional should determine frequency/group size.

DEPARTMENT RESPONSE:

Committees are responsible for determining services needed for a student to receive FAPE. CSEs/CPSEs reach decisions through consensus. Only when Committee cannot reach consensus would the chairperson make a decision. Districts must ensure all individuals necessary to develop an IEP participate in CSE/CPSE meetings, including not less than one special education teacher, or, if appropriate, not less than one special education provider of the student. If a student needs a related service, the district should ensure that a qualified service provider attends the meeting or provides a written recommendation concerning services.

15. COMMENT:

Mandate relief doesn't address IDEA and support individual needs of children.

DEPARTMENT RESPONSE:

Consistent with federal requirements, proposed amendment allows CSEs appropriate flexibility to make recommendations for a student to receive services he/she needs.

16. COMMENT:

Districts can provide speech therapy less than twice a week as a general education support service. If student only receives speech, it could be provided once a week as a declassification support service. Local flexibility exists through innovative program waiver provision in section 200.6(l).

DEPARTMENT RESPONSE:

If CSE/CPSEs determine speech therapy is necessary to address a student's special education needs, such services must be provided through an IEP. Declassification support services are only available to students determined to no longer need special education. Because determination of a student's need for speech services must be made on an individual basis, it's inappropriate for Department to approve an innovative waiver for this purpose.

17. COMMENT:

Classroom teachers could use speech consultations to maintain/carry over skills.

DEPARTMENT:

"Consultations" may be recommended as a support to school personnel on behalf of the student; however, such services wouldn't be a related service. Proposed regulations should not be construed to authorize indirect services to students as a related service.

18. COMMENT:

Increased group size and caseload will adversely impact students.

DEPARTMENT RESPONSE:

Proposed amendments do not include changes to maximum group size or caseload requirements.

§ 200.6(g) Integrated Co-teaching

19. COMMENT:

Some opposed, some supported allowing districts to add two additional students with disabilities to an integrated co-teaching class. Proposal will compromise quality of instruction to all students. There are no criteria for recommending students for a co-teaching class so range of needs can be significant, or for determining appropriateness of additional students in the class. Change allows districts flexibility when developing classes and to still meet needs of students.

DEPARTMENT RESPONSE:

Proposed amendment provides districts flexibility to add one student with a disability through Department notification and a second with prior Department approval, when exceptional circumstances arise. Districts must begin school year in compliance and it would be inappropriate for districts to use this provision on a routine basis. Current regulations require whenever students are placed together for purposes of special education, they must be grouped by similarity of needs.

20. COMMENT:

Proposal doesn't identify variance procedures or criteria for Department approval to add a second student.

DEPARTMENT RESPONSE:

Department will establish integrated co-teaching variance procedures consistent with those for special class size and chronological age variances and monitor notifications and requests for variances to evaluate whether procedures are being applied appropriately.

21. COMMENT:

Don't support increase without there being a percentage of students with disabilities to nondisabled students. Clarify if there'll be a ratio. Some recommended maximum ratios of no more than 60/40, 50/50, or percentage of 10-20% students with disabilities per class.

DEPARTMENT RESPONSE:

There is no regulatory ratio of students with disabilities to nondisabled students in integrated co-teaching classes, and Department declines to establish one. Committees should consider overall size of class enrollment and ratio of students with disabilities to nondisabled students in relation to the student's learning needs when recommending integrated co-teaching services.

22. COMMENT:

Local flexibility exists through innovative program waiver provision in section 200.6(l) of the Regulations.

DEPARTMENT RESPONSE:

Proposed amendment allows districts to provide FAPE to individual students in a timely manner. Section 200.6(l) provides opportunity for districts to apply to the Commissioner to implement an innovative special education program to enhance student achievement and/or opportunities for placement in general education classes and programs. Purposes of these two provisions are different.

§ 200.13(a)(4) Instructional Services to Address the Language Needs of Students with Autism

23. COMMENT:

Many opposed, some supported repeal of minimum daily frequency/duration for instructional services to address individual language needs of students with autism. Speech and language needs are core deficit area for these students. Current requirement ensures students receive minimum amount of services to address individual language needs. Repeal requirement or clarify that speech therapists aren't solely responsible for providing instructional services to meet the language needs of students with autism. Regulations appear to have been developed for moderately and severely disabled students on spectrum.

DEPARTMENT RESPONSE:

While difficulty in the area of communication is a manifestation of the disability for most students with autism, not all students classified with autism need the intensity of instructional services mandated in regulations. Section 200.13 was developed at a time when many children with autism were not receiving educational services equivalent to other students and autism was best understood to include students with significant cognitive and language disabilities. Within past decade, there has been a better understanding and diagnoses of the spectrum of autism related disabilities, and the varying needs of these students. Proposed repeal ensures Committees have flexibility to recommend appropriate frequency/duration of instructional services based on a student's individual language needs, not classification. Proposed amendments retain requirement that instructional services be provided to meet the individual language needs of a student with autism; however, there is no requirement that services be limited to speech therapy.

## 24 COMMENT:

Many districts don't follow current regulation requiring students with autism be provided speech therapy daily.

## DEPARTMENT RESPONSE:

Current regulations do not require instructional services to address a student's language needs be limited to speech therapy.

## Miscellaneous

## 25. COMMENT:

Timing of proposals is intended to minimize meaningful consideration by Regents and shorten opportunity for comment.

## DEPARTMENT RESPONSE:

Department had an extended period of consideration and public input on the proposed changes. Proposed amendments were posted on the Department's website and published in the August 18, 2010 State Register. Pursuant to State Administrative Procedures Act (SAPA) and IDEA public participation requirements, public comment was accepted for 45 days and three public hearings were conducted.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Expedited Teacher Certification Pathway for Science or Mathematics in Grades 5-9 and 7-12

I.D. No. EDU-49-10-00007-P

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

**Proposed Action:** Addition of sections 52.21(b)(3)(xviii), 80-1.1(b)(45), and 80-5.22; and amendment of sections 80-3.3 and 80-3.7(a)(3)(ii)(c) of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 305(1) and (2), 3001(2), 3004(1) and (6) and 3006(1)(b)

**Subject:** Expedited teacher certification pathway for science or mathematics in grades 5-9 and 7-12.

**Purpose:** To provide an expedited pathway for candidates with an advanced degree in STEM areas and postsecondary teaching experience.

**Text of proposed rule:** 1. A new subparagraph (xviii) is added to paragraph (3) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education, effective December 17, 2010, to read as follows:

(xviii) *Alternative teacher certification program leading to initial and professional certificates in certain subject areas (grades 5-9) or (grades 7-12), for individuals with advanced degrees in either science, technology, engineering or mathematics and teaching experience at the post-secondary level.*

(a) *The general requirements in subparagraphs (2)(i) and (iv) of this subdivision shall be applicable. The other requirements of paragraph (2) of this subdivision shall not be applicable.*

(b) *The program shall meet the requirements in each of the following subclauses:*

(1) *Admission requirements.*

(i) *The program shall require candidates to hold a graduate or higher degree in science, technology, engineering or mathematics from a regionally accredited institution of higher education or from an institution authorized by the Board of Regents to confer degrees. Candidates shall have achieved a 3.0 cumulative grade point average, or its equivalent, in the program leading to the graduate or higher degree.*

(ii) *Candidates for a certificate in the classroom teaching service shall have completed a graduate major in the subject of the certificate sought, or in a closely related subject area acceptable to the Commissioner.*

(iii) *The program shall require candidates to show evidence of at least two years of satisfactory teaching experience at the post-secondary level in the certificate area to be taught or in a closely related subject area acceptable to the Department.*

(2) *Pedagogical study.*

(i) *The program shall include at least six credits of undergraduate pedagogical core study or four credits of graduate pedagogical study for the initial certificate in the area of the candidate's certificate, as prescribed for the certificate title in this paragraph, which shall include study in the methods of teaching in the certificate area, teaching students with disabilities; curriculum and lesson planning aligned with the New York State Learning Standards; and classroom management and teaching at the developmental level of students to be taught.*

(ii) *Candidates enrolled in this program who have met all the requirements in this subparagraph except the pedagogical study requirement in subparagraph (b)(2)(ii) of this subparagraph shall be permitted to teach with a transitional G certificate provided that they meet*

*the prescribed requirements for such a certificate in Part 80 of the Commissioner's regulations. Such candidates must complete the required pedagogical study in (b)(2)(ii) of this subparagraph before completion of their first school year of teaching under the transitional G certificate.*

2. A new paragraph (45) of subdivision (b) is added to Section 80-1.1 of the Regulations of the Commissioner of Education, effective December 17, 2010, to read as follows:

(45) *Transitional G certificate means the first teaching certificate obtained by a candidate who holds an appropriate graduate or higher degree in science, technology, engineering or mathematics and has two years of acceptable experience teaching in a post-secondary institution and is enrolled in an alternative teacher certification program pursuant to section 52.21(b)(3)(xviii) of the Commissioner's regulations or is enrolled in pedagogical study as prescribed under section 80-3.7(a)(3)(ii)(c)(iii), that qualifies that individual to teach in the public schools of New York State, subject to the requirements and limitations of this Part, and excluding the provisional certificate, initial certificate, internship certificate, conditional initial certificate, transitional A certificate, transitional B certificate and transitional C certificate.*

3. Subparagraph (i) of paragraph (2) of subdivision (a) of section 80-3.3 of the Regulations of the Commissioner of Education is amended, effective December 17, 2010, to read as follows:

(i) [The] (a) *Except as otherwise provided in subdivision (b) of this section, the candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination liberal arts and sciences test, written assessment of teaching skills, and content specialty test(s) in the area of the certificate, except that a candidate seeking an initial certificate in the title of Speech and Language Disabilities (all grades) shall not be required to achieve a satisfactory level of performance on the content specialty test.*

(b) *Examination requirement for candidates with a graduate or higher degree in science, technology, engineering or mathematics and two years of post-secondary teaching experience in the area of the certificate sought. Any candidate seeking an initial certificate in earth science, biology, chemistry, physics, mathematics or in a closely related field as determined by the Department in (grades 5-9) or (grades 7-12) and who has completed a program registered by the department pursuant to section 52.21(b)(3)(xviii) of the Commissioner's regulations or who is seeking an initial certificate through individual evaluation under section 80-3.7(a)(3)(ii)(c)(iii) shall not be required to achieve a satisfactory level of performance on the written assessment of teaching skills examination or the content specialty test.*

4. Clause (c) of subparagraph (ii) of paragraph (3) of subdivision (a) of section 80-3.7 of the Regulations of the Commissioner of Education is amended, effective December 17, 2010, to read as follows:

(c) *For candidates with a graduate or higher degree in science, technology, engineering or mathematics and two years of postsecondary teaching experience in the certificate area to be taught or in a closely related subject area acceptable to the Department, who apply for a certificate or license on or after February 2, 2011 in earth science, biology, chemistry, physics, mathematics or a closely related field, the candidate shall not be required to meet the general requirements in paragraph (2)(iii)(iv) or (v) of subdivision (a) of this section. However, the candidate shall meet the following requirements:*

(i) *Degree completion. The candidate shall possess a graduate or higher degree in science, technology, engineering or mathematics from a regionally or nationally accredited institution of higher education, a higher education institution that the Commissioner deems substantially equivalent, or from an institution authorized by the Board of Regents to confer degrees and whose programs are registered by the Department. The candidate shall have achieved a 3.0 cumulative grade point average, or its equivalent, in the program leading to the graduate or higher degree. The candidate shall have completed a graduate major in the subject of the certificate sought, or in a related field approved by the department for this purpose.*

(ii) *Post-secondary teaching experience. The program shall require candidates to show evidence of at least two years of satisfactory teaching experience at the post-secondary level in the certificate area to be taught or in a closely related subject area acceptable to the Department.*

(iii) *Pedagogical study. The candidate shall complete at least six credits of undergraduate pedagogical core study or four credits of graduate pedagogical study for the initial certificate in the area of the candidate's certificate, as prescribed for the certificate title in this paragraph, which shall include study in the methods of teaching in the certificate area, teaching students with disabilities; curriculum and lesson planning aligned with the New York State Learning Standards; and classroom management and teaching at the developmental level of students to be taught.*

5. Section 80-5.22 of the Regulations of the Commissioner is added, effective December 17, as follows:

§ 80-5.22 Transitional G certificate for career changers and others holding a graduate or higher degree in science, technology, engineering or mathematics and with at least two years of acceptable post-secondary teaching experience.

(a) General requirements.

(1) Time validity. The transitional G certificate shall be valid for one year.

(2) Limitations. The transitional G certificate shall authorize a candidate to teach only in a school district for which a commitment for employment has been made. In addition, it shall only be valid as long as the candidate is enrolled in study at an institution of higher education to complete the pedagogical study requirements for an initial certificate in this subject area, unless the candidate has completed such study.

(b) The candidate shall meet the requirements in each of the following paragraphs:

(1) Education. A candidate shall hold a graduate or higher degree in science, technology, engineering or mathematics from a regionally or nationally accredited institution of higher education, a higher education institution that the Commissioner deems substantially equivalent, or from an institution authorized by the Board of Regents to confer degrees. A candidate shall complete study in the means for identifying and reporting suspected child abuse and maltreatment, which shall include at least two clock hours of coursework or training in the identification and reporting of suspected child abuse or maltreatment in accordance with the requirements of section 3004 of the Education Law. In addition, the candidate shall complete at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is provided by a provider approved or deemed approved by the Department pursuant to Subpart 57-2 of this Title.

(2) Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination liberal arts and sciences test.

(3) Pedagogical study. The candidate shall submit satisfactory evidence of enrollment at an institution of higher education to complete the pedagogical study requirements for an initial certificate, as prescribed in section 52.21(b)(3)(xviii) or section 80-3.7(a)(3)(ii)(c)(iii) of the Commissioner's regulations.

(4) Post-secondary teaching experience. The program shall require candidates to show evidence of at least two years of satisfactory teaching experience at the post-secondary level in the certificate area to be taught or in a closely related subject area acceptable to the Department.

(5) Employment and support commitment. The candidate shall submit satisfactory evidence of having a commitment from a school district of at least one year of employment as a teacher with the school district in the area of the certificate sought, which shall include mentoring and support.

**Text of proposed rule and any required statements and analyses may be obtained from:** Christine Moore, New York State Education Department, 89 Washington Avenue, Albany, New York 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

**Data, views or arguments may be submitted to:** Peg Rivers, New York State Education Department, Higher Education, 89 Washington Avenue, 9th Floor, Albany, New York 12257, (518) 408-1189, email: privers@mail.nysed.gov

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

#### Regulatory Impact Statement

##### 1. STATUTORY AUTHORITY:

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

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

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

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

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

Subdivision (6) of section 3004 of the Education Law requires the Regents and the Commissioner to develop programs to assist in the expansion of alternative teacher preparation programs.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law

provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

##### 2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above referenced statutes by establishing an alternative certification pathway for candidates with an advanced degree in either science, technology, engineering or mathematics and two years of teaching experience at the post-secondary level, to teach in the certificate area of their advanced degree or one closely related to it, for a period of one year, while the individual completes the pedagogical study requirements for initial certification.

##### 3. NEEDS AND BENEFITS:

The proposed amendment establishes a transitional G certificate to create a mechanism for schools to employ applicants with a graduate degree or higher in science, technology, engineering or mathematics, and two years of experience teaching at the college level in the same area as the certificate requested, or in a closely related field as determined by the Commissioner, to address demonstrated shortage areas in these subjects. School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder, and that the district or BOCES will make it a condition of employment that the candidate be enrolled in study at an institution of higher education to complete the requirements for an initial certificate in this subject area.

The proposed amendment is needed to facilitate the State's ability to address persistent shortages of certified teachers who are qualified to teach in one of the sciences or mathematics at the 5-9 or 7-12 grade level. The proposed amendment is designed to support the Department's continuing efforts to certify a sufficient number of properly qualified candidates to fill the need for science and mathematics teachers in the State's schools.

The transitional G certificate will be valid for one year from its effective date and will not be renewable. It will be limited to employment with an employing entity.

##### 4. COSTS:

(a) Cost to State government. The amendment will not impose any additional cost on State government, including the State Education Department. The State Education Department will use existing staff and resources to process certificate applications.

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

(c) Cost to private regulated parties. A candidate seeking a transitional G certificate will be required to pay a \$100 application fee.

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

##### 5. LOCAL GOVERNMENT MANDATES:

School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder, and that the district or BOCES will make it a condition of employment that the candidate be enrolled in study at an institution of higher education to complete the requirements for an initial certificate in this subject area, unless the candidate has completed such study.

##### 6. PAPERWORK:

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements. Candidates seeking the transitional G certificate must provide evidence that they are enrolled in study at an institution of higher education to complete the requirements for an initial certificate in this subject area, unless the candidate has completed such study. The employing school district or BOCES will be required to certify that the district wants to employ the candidate in a position for which the candidate would need the transitional G certificate to qualify, and that it will make it a condition of employment that the candidate be enrolled in study at an institution of higher education to complete the requirements for an initial certificate in this subject area, unless the candidate has completed such study.

##### 7. DUPLICATION:

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

##### 8. ALTERNATIVES:

No alternative proposals were considered.

##### 9. FEDERAL STANDARDS:

There are no Federal standards that address alternative certification requirements in the areas of science and mathematics.

##### 10. COMPLIANCE SCHEDULE:

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

**Regulatory Flexibility Analysis**

(a) Small Businesses:

The purpose of the proposed amendment is to establish an expedited pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science or mathematics in grades 5-9 and 7-12 to address the demonstrated shortage areas in these subjects and grade levels. The amendment does not impose any reporting, recordkeeping, or compliance requirements and will not have an economic impact on small businesses. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken.

(b) Local Governments:

1. Effect of the rule:

The proposed amendment affects all school districts and BOCES in the State that wish to hire a teacher for employment that holds a transitional G certificate.

2. Compliance requirements:

The purpose of the proposed amendment is to establish an expedited pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science or mathematics in grades 5-9 and 7-12 to address the demonstrated shortage areas in these subjects and grade levels.

The proposed amendment establishes a transitional G certificate which authorizes a qualified applicant, upon meeting the prescribed requirements, a certification to teach at the 5-9 or 7-12 grade level in science, mathematics, or a closely related field as determined by the Commissioner. School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder, and that the district or BOCES will make it a condition of employment that the candidate be enrolled in study at an institution of higher education to complete the requirements for an initial certificate in this subject area, unless the candidate has completed such study.

3. Professional services:

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

4. Compliance costs:

There are no compliance costs for school districts or BOCES that exercise the option of employing a teacher under a transitional G certificate. However, the candidate will be required to pay an application fee of \$100 for the transitional G certificate.

5. Economic and technological feasibility:

Meeting the requirements of the proposed amendment is economically and technologically feasible. As stated above in compliance costs, the amendment imposes no costs on school districts or BOCES.

6. Minimizing adverse impact:

The amendment establishes requirements for the issuance of a transitional G certificate. The State Education Department does not believe that establishing different standards for local governments is warranted. A uniform standard ensures the quality of the State's teaching workforce.

7. Local government participation:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES.

**Rural Area Flexibility Analysis**

1. Types and estimate of number of rural areas:

The proposed amendment will affect candidates, New York State school districts and BOCES in all parts of the State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square mile or less.

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

The purpose of the proposed amendment is to establish an expedited pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science or mathematics in grades 5-9 and 7-12 to address the demonstrated shortage areas in these subjects and grade levels. The proposed amendment also establishes requirements regarding the application for and issuance of the transitional G certification. This certification will authorize a qualified applicant, with an advanced degree in either science, technology, engineering, mathematics or a closely related field as determined by the Commissioner, and two years of teaching experience at the post-secondary level, to teach in the certificate area of their advanced degree or one closely related to it, for the period of one year, while the individual completes the pedagogical study requirements for initial certification. Certificate areas identified for the

transitional G include: Biology, Chemistry, Earth Science, Physics, Mathematics, or a closely related field as determined by the Commissioner, at the 5-9 or 7-12 grade level.

School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder, and that the district or BOCES will make it a condition of employment that the candidate be enrolled in study at an institution of higher education to complete the requirements for an initial certificate in this subject area, unless the candidate has completed such study.

The proposed amendment will not require regulated parties, including those located in rural areas, to hire professional services in order to comply, other than educational services needed to complete college coursework for the transitional G certificate.

3. Costs:

There are no compliance costs for school districts or BOCES that exercise the option of employing a teacher under a transitional G certificate. However, the candidate will be required to pay an application fee of \$100 for the transitional G certificate.

4. Minimizing adverse impact:

The State Education Department does not believe that establishing different standards for candidates who live or work in rural areas is warranted. A uniform standard ensures the quality of the State's teaching workforce.

5. Rural area participation:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives who live and/or work in rural areas, including individuals who are employed as educators in rural school districts and BOCES.

**Job Impact Statement**

The purpose of the proposed amendment is to establish program registration requirements and certification requirements for an expedited pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science and mathematics in grades 5-9 and 7-12.

The proposed amendment is needed to facilitate the Department's continuing ability to certify a sufficient number of properly qualified candidates to address shortage areas in the State's public schools and BOCES. This proposal is intended to increase the supply of teachers who are certified in the sciences and mathematics in grades 5-9 and 7-12, all of which are shortage areas.

Because it is evident from the nature of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

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## Department of Health

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

**Hospital Inpatient Reimbursement**

**I.D. No.** HLT-49-10-00008-P

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

**Proposed Action:** Amendment of Subpart 86-1 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, sections 2803, 2807, 2807-c, 2807-k, 3612 and 3614

**Subject:** Hospital Inpatient Reimbursement.

**Purpose:** Modifies current reimbursement for hospital inpatient services due to the implementation of APR DRGs and rebasing of hospital inpatient rates.

**Substance of proposed rule (Full text is posted at the following State website: [www.health.state.ny.us](http://www.health.state.ny.us)):** General Summary for 86-1.2 through 86-1.89

The amendments to sections 86-1.2 through 86-1.89 of Title 10 (Health) NYCRR are required to implement a new payment methodology for certain hospital inpatient fee-for-service Medicaid services based on All

Patient Refined-Diagnostic Related Groups (APR-DRGs). The new payment methodology proposed by these amendments provides a more transparent and simplified reimbursement system that drives reimbursement consistent with efficiency, quality and public health priorities. It develops one statewide operating base rate using an updated and more reliable cost base rather than current regional and peer group operating base rates which were determined by using extremely outdated costs. The APR-DRG payment system will incorporate patient severity of illness and risk of mortality subclasses to better match patient resource utilization and provide a more precise method for equitable reimbursement.

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

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

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

#### Regulatory Impact Statement

##### Statutory Authority:

The requirement to implement a modernized Medicaid reimbursement system for hospital inpatient services based upon 2005 base year operating costs pursuant to regulations is set forth in section 2807-c(35) of the Public Health Law. In addition, section 2807-c(4)(e-2) of the Public Health Law requires new per diem rates of reimbursement be implemented for certain exempt units and hospitals based on updated reported operating costs. Section 2807-k(5-b)(a)(ii) and (iv); and (b)(i), (iv) and (v) requires schedules of payment to be set forth in regulations for supplemental indigent care distributions made to certain eligible hospitals.

##### Legislative Objectives:

After numerous discussions between the Executive, Legislature, hospital associations and other key stakeholders, the Legislature chose to create a new, modernized reimbursement methodology for the State's Medicaid hospital inpatient system. Pursuant to statute, the APR-DRG methodology was chosen as the new reimbursement system for these services.

##### Needs and Benefits:

The proposed regulations implement the provisions of Public Health Law section 2807-c(35) which requires a new hospital inpatient reimbursement system based on APR-DRGs and rebased costs. This methodology provides a more transparent and simplified reimbursement system that drives reimbursement consistent with efficiency, quality and public health priorities. This new payment methodology will also allow the Department to publish hospital rates more timely, and provide hospitals with greater predictability of their income streams.

The current reimbursement system for hospital inpatient services is extremely outdated, and does not effectively serve the interests of patients, providers, or the Medicaid system. Not only does the system's overall reimbursement greatly exceed the cost of providing such services, the methodology for allocating payments does not appropriately reflect the acuity of the patient, the quality of service, or the efficiency of the hospital. Over the years the current system has accrued numerous groupings, weightings, adjustments, and add-ons that have ultimately distorted the health care delivery system.

Per diem rates of payment by governmental agencies for inpatient services provided by a general hospital or a distinct unit of a general hospital for services in accord with physical medical rehabilitation and chemical dependency rehabilitation; services provided by critical access hospitals; inpatient services provided by specialty long term acute care hospitals; and services provided by facilities designated by the federal department of health and human services as exempt acute care children's hospitals are also developed using an outdated cost base which does not properly reflect current costs incurred for providing such services.

The APR-DRG methodology addresses the inadequacies of the current system by using an updated and more reliable cost base and a patient classification system that incorporates patient severity of illness and risk of mortality subclasses, reflecting the variable costs associated with each individual patient being treated. Utilizing an updated and more precise cost base will have the effect of reducing the total amount of Medicaid reimbursement paid to hospitals for inpatient services, which is found to be significantly overpaid. Accordingly, the State would be able to, consistent with budgetary constraints, reinvest these savings in primary and preventive care and other traditionally under-paid ambulatory care services in order to improve the quality of patient care, ensure adequate access to these services, and avoid more costly inpatient admissions.

##### Costs:

##### Costs to State Government:

Section 2807-c(35) of the Public Health Law requires that the rates of payment for hospital inpatient services result in a net state wide decrease in aggregate Medicaid payments of no less than \$75 million for the period

December 1, 2009 through March 31, 2010 and no less than \$225 million for the period April 1, 2010 through March 31, 2011. Effective for annual periods beginning January 1, 2010, distributions to hospitals for indigent care pool DSH payments will be made as follows: \$269.5 million will be distributed to hospitals, excluding major public hospitals, on a regional basis and within the amounts available for each region, to compensate each eligible hospital's proportional share of unmet need for calendar year 2007; \$25 million will be distributed to hospitals, excluding major publics, having Medicaid discharges of 40% or greater as determined from data reported in the 2007 Institutional Cost Report. The distributions will be proportionately distributed based on each eligible facility's uninsured losses to such losses of all the eligible facilities; \$16 million will be proportionately distributed to non-teaching hospitals based on each eligible facility's uninsured losses to such losses for all non-teaching hospitals statewide.

##### Costs of Local Government:

There will be no additional cost to local governments as a result of these amendments because local districts' share of Medicaid costs is statutorily capped.

##### Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of these amendments.

##### Local Government Mandates:

There are no local government mandates.

##### Paperwork:

There is no additional paperwork required of providers as a result of these amendments.

##### Duplication:

These regulations do not duplicate existing State and Federal regulations.

##### Alternatives:

No significant alternatives are available. The Department is required by the Public Health Law sections 2807-c(4)(e-2) and (35); 2807-k(5-b)(a)(ii) and (iv); and (b)(i), (iv), and (v) to promulgate implementing regulations.

##### Federal Standards:

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

##### Compliance Schedule:

The proposed amendment establishes the new APR-DRG reimbursement methodology for discharges on or after December 1, 2009; there is no period of time necessary for regulated parties to achieve compliance.

#### Regulatory Flexibility Analysis

##### Effect on Small Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the Institutional Cost Report, seven hospitals were identified as employing fewer than 100 employees.

In aggregate, health care providers subject to this regulation will see a decrease in average per discharge Medicaid funding, but this is not anticipated for all affected providers.

This rule will have no direct effect on Local Governments.

##### Compliance Requirements:

No new reporting, record keeping or other compliance requirements are being imposed as a result of these rules. Affected health care providers will bill Medicaid using procedure codes and ICD-9 codes approved by the American Medical Association, as is currently required. Some billing rate codes will change, but this will have a minimal impact on providers.

The rule should have no direct effect on Local Governments.

##### Professional Services:

No new or additional professional services are required in order to comply with the proposed amendments.

##### Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor will there be an annual cost of compliance. As a result of these amendments to 86-1.2 through 86-1.89 there will be an anticipated decrease in statewide aggregate hospital Medicaid revenues for hospital inpatient services. Revenues will shift among individual hospitals.

##### Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are technologically feasible because it requires the use of existing technology. The overall economic impact to comply with the requirements of this regulation is expected to be minimal.

##### Minimizing Adverse Impact:

The proposed amendments reflect statutory intent and requirements. The Legislature considered various alternatives for creating a new Medicaid hospital inpatient reimbursement methodology; however, the enacted budget adopted the APR-DRG methodology.

Small Business and Local Government Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with industry associations representing hospitals and comments were solicited from all affected parties. Informational briefings were held with such associations.

**Rural Area Flexibility Analysis**

Effect on Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	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 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

No new reporting, record keeping, or other compliance requirements are being imposed as a result of this proposal.

Professional Services:

No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Minimizing Adverse Impact:

The proposed amendments reflect statutory intent and requirements. The Legislature considered various alternatives for creating a new Medicaid fee-for-service reimbursement methodology; however, the enacted budget adopted the APR-DRG methodology.

Rural Area Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with the industry associations representing hospitals and comments were solicited from all affected parties. Such associations include members from rural areas.

**Job Impact Statement**

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rules, that they will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulations revise the reimbursement system for inpatient hospital services. The proposed regulations have no implications for job opportunities.

**Insurance Department**

**EMERGENCY  
RULE MAKING**

**Standards for the Management of the New York State Retirement Systems**

**I.D. No.** INS-11-10-00002-E

**Filing No.** 1188

**Filing Date:** 2010-11-19

**Effective Date:** 2010-11-19

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

**Action taken:** Amendment of Part 136 (Regulation 85) of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 314, 7401(a) and 7402(n)

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

**Specific reasons underlying the finding of necessity:** The Second Amendment to Regulation 85 (11 NYCRR 136), effective November 19, 2008, established new standards of behavior with regard to investment of the Common Retirement Fund's assets, conflicts of interest, and procurement. In addition, it created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Insurance Department.

Nevertheless, recent events surrounding how placement agents conduct business on behalf of their clients with regard to the Fund compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. Rather, only an immediate ban on the use of placement agents will ensure sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

This regulation was previously promulgated on an emergency basis on June 18, 2009, September 16, 2009, January 5, 2010, April 2, 2010, May 28, 2010, July 29, 2010, and September 23, 2010. A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

Regulation No. 85 needs to remain effective for the general welfare.

**Subject:** Standards for the management of the New York State Retirement Systems.

**Purpose:** To ban the use of placement agents by investment advisors engaged by the state employees retirement system.

**Text of emergency rule:** Section 136-2.2 is amended to read as follows:  
§ 136-2.2 Definitions.

The following words and phrases, as used in this Subpart, unless a different meaning is plainly required by the context, shall have the following meanings:

[(a) Retirement system shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.]

[(b) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law, which holds the assets of the retirement system.]

[(c)](a) Comptroller shall mean the Comptroller of the State of New York in his capacity as administrative head of the Retirement System and the sole trustee of the [fund] Fund.

[(d) OSC shall mean the Office of the State Comptroller.]

[(e)](b) Consultant or advisor shall mean any person (other than an OSC employee) or entity retained by the [fund] Fund to provide technical or professional services to the [fund] Fund relating to investments by the [fund] Fund, including outside investment counsel and litigation counsel, custodians, administrators, broker-dealers, and persons or entities that identify investment objectives and risks, assist in the selection of [money] investment managers, securities, or other investments, or monitor investment performance.

(c) Family member shall mean any person living in the same household

as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.

(d) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law ("RSSL"), which holds the assets of the Retirement System.

[f](e) Investment manager shall mean any person (other than an OSC employee) or entity engaged by the Fund in the management of part or all of an investment portfolio of the [fund] Fund. "Management" shall include, but is not limited to, analysis of portfolio holdings, and the purchase, sale, and lending thereof. For the purposes hereof, any investment made by the Fund pursuant to RSSL § 177(7) shall be deemed to be the investment of the Fund in such investment entity (rather than in the assets of such investment entity).

(f) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the Fund.

(g) OSC shall mean the Office of the State Comptroller.

[(g)](h) Placement agent or intermediary shall mean any person or entity, including registered lobbyists, directly or indirectly engaged and compensated by an investment manager (other than [an] a regular employee of the investment manager) to promote investments to or solicit investment by [assist the investment manager in obtaining investments by the fund, or otherwise doing business with] the [fund] Fund, whether compensated on a flat fee, a contingent fee, or any other basis. Regular employees of an investment manager are excluded from this definition unless they are employed principally for the purpose of securing or influencing the decision to secure a particular transaction or investment by the Fund. [obtaining investments or providing other intermediary services with respect to the fund.] For purpose of this paragraph, the term "employee" shall include any person who would qualify as an employee under the federal Internal Revenue Code of 1986, as amended, but shall not include a person hired, retained or engaged by an investment manager to secure or influence the decision to secure a particular transaction or investment by the Fund.

(h) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the fund.]

(i) Third party administrator shall mean any person or entity that contractually provides administrative services to the retirement system, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits or paying benefits and maintaining any other retirement system records. Administrative services do not include services provided to the fund relating to fund investments.]

(i) Retirement System shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.

(j) Third party administrator shall mean any person or entity that contractually provides administrative services to the Retirement System, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits, paying benefits or maintaining any other Retirement System records. "Administrative services" do not include services provided to the Fund relating to Fund investments.

[(j)](k) Unaffiliated Person shall mean any person other than: (1) the Comptroller or a family member of the Comptroller, (2) an officer or employee of OSC, (3) an individual or entity doing business with OSC or the [fund] Fund, or (4) an individual or entity that has a substantial financial interest in an entity doing business with OSC or the [fund] Fund. For the purpose of this paragraph, the term "substantial financial interest" shall mean the control of the entity, whereby "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract (except a commercial contract for goods or non-management services) or otherwise; but no individual shall be deemed to control an entity solely by reason of his being an officer or director of such entity. Control shall be presumed to exist if any individual directly or indirectly owns, controls or holds with the power to vote ten percent or more of the voting securities of such entity.

[(k)] Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.]

Section 136-2.4 (d) is amended to read as follows:

(d) Placement agents or intermediaries: In order to preserve the independence and integrity of the [fund] Fund, to [address] preclude potential conflicts of interest, and to assist the Comptroller in fulfilling his or her duties as a fiduciary to the [fund] Fund, [the Comptroller shall maintain a reporting and review system that must be followed whenever the fund] the Fund shall not [engages, hires, invests with, or commits] engage, hire,

invest with or commit to[,] an outside investment manager who is using the services of a placement agent or intermediary to assist the investment manager in obtaining investments by the [fund] Fund. [, or otherwise doing business with the fund. The Comptroller shall require investment managers to disclose to the Comptroller and to his or her designee payments made to any such placement agent or intermediary. The reporting and review system shall be set forth in written guidelines and such guidelines shall be published on the OSC public website.]

Section 136-2.5 (g) is amended to read as follows:

(g) The Comptroller shall:

(1) file with the superintendent an annual statement in the format prescribed by Section 307 of the Insurance Law, including the [retirement system's] Retirement System's financial statement, together with an opinion of an independent certified public accountant on the financial statement;

(2) file with the superintendent the Comprehensive Annual Financial Report within the time prescribed by law, but no later than the time it is published on the OSC public website;

(3) disclose on the OSC public website, on at least an annual basis, all fees paid by the [fund] Fund to investment managers, consultants or advisors, and third party administrators;

[(4)] disclose on the OSC public website, on at least an annual basis, instances where an investment manager has paid a fee to a placement agent or intermediary;]

[(5)](4) disclose on the OSC public website the [fund's] Fund's investment policies and procedures; and

[(6)](5) require fiduciary and conflict of interest reviews of the [fund] Fund every three years by a qualified unaffiliated person.

**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. INS-11-10-00002-P, Issue of March 17, 2010. The emergency rule will expire January 17, 2011.

**Text of rule and any required statements and analyses may be obtained from:** Andrew Mais, New York State Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5257, email: amais@ins.state.ny.us

#### Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for promulgation of this rule derives from sections 201, 301, 314, 7401(a), and 7402(n) of the Insurance Law.

Sections 201 and 301 of the Insurance Law authorize the Superintendent to effectuate any power accorded to him by the Insurance Law, and to prescribe regulations interpreting the Insurance Law.

Section 314 vests the Superintendent with the authority to promulgate standards with respect to administrative efficiency, discharge of fiduciary responsibilities, investment policies and financial soundness of the public retirement and pension systems of the State of New York, and to make an examination into the affairs of every system at least once every five years in accordance with sections 310, 311 and 312 of the Insurance Law. The implementation of the standards is necessarily through the promulgation of regulations.

As confirmed by the Court of Appeals in *Matter of Dinallo v. DiNapoli*, 9 N.Y. 3d 94 (2007), the Superintendent functions in two distinct capacities. The first is as regulator of the insurance industry. The second is as a statutory receiver of financially distressed insurance entities. Article 74 of the Insurance Law sets forth the Superintendent's role and responsibilities in this latter capacity.

Section 7401(a) sets forth the entities, including the public retirement systems, to which Article 74 applies. Section 7402(n) provides that it is a ground for rehabilitation if an entity subject to Article 74 has failed or refused to take such steps as may be necessary to remove from office any officer or director whom the Superintendent has found, after appropriate notice and hearing, to be a dishonest or untrustworthy person.

2. Legislative objectives: Section 314 of the Insurance Law authorizes the Superintendent to promulgate and amend, after consultation with the respective administrative heads of public retirement and pension systems and after a public hearing, standards with respect to the public retirement and pension systems of the State of New York.

This amendment, which in effect bans the use of an investment tool that has been found to be untrustworthy, is consistent with the public policy objectives that the Legislature sought to advance in enacting Section 314, which provides the Superintendent with the powers to promulgate standards to protect the New York State Common Retirement Fund (the "Fund").

3. Needs and benefits: The Second Amendment to Regulation 85 (11 NYCRR 136), effective November 19, 2008, established new standards with regard to investment of the assets of the New York State Common Retirement Fund ("the Fund"), conflicts of interest and procurement. In

addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Insurance Department.

Nevertheless, recent allegations regarding “pay to play” practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund’s control environment is insufficient to protect the integrity of the state employees’ retirement systems. The Third Amendment to Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund’s members and beneficiaries, and safeguard the integrity of the Fund’s investments. Further, the amendment defines “placement agent or intermediary” in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

4. Costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this amendment. There are no costs to the Insurance Department or other state government agencies or local governments. Investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

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

6. Paperwork: No additional paperwork should result from the prohibition imposed by the amendment.

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

8. Alternatives: The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining “placement agent” in more general terms.

In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor’s Office, Comptroller’s Office and Finance Department. These entities agreed with the concerns expressed by the Department and intend to explore remedies most appropriate to the pension funds that they represent.

Initially, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund’s members and beneficiaries and safeguard the integrity of the Fund’s investments. The proposed rule was published in the State Register on March 17, 2010. A Public Hearing was held on April 28, 2010. The following comments were received:

Blackstone Group, a global investment manager and financial advisor, wrote to oppose the proposed ban on the use of placement agents by investment advisors engaged by the New York State Common Retirement Fund (“The Fund”). It stated that the rule would lessen the number of investment opportunities brought before the Fund, adversely affect small, medium-sized and women- and minority-owned investment firms seeking to do business with the Fund, and adversely affect a number of New York-headquartered financial institutions doing business as placement agents.

Blackstone suggested the inclusion of the following provisions in the rule instead:

- A ban on political contributions by any employee of any placement agent seeking to do business with the fund;
- A requirement that any placement agent seeking to do business with the Fund be registered as a broker dealer with the SEC and ensure that its professionals have passed the appropriate Series qualifications administered by Financial Industry Regulatory Authority (“FINRA”);
- A requirement that any placement agent seeking to do business in New York register with the Insurance Department; and
- A requirement that any placement agent representing an investment manager before the Fund fully disclose the contractual arrangement between it and the manager, including the fee arrangement and the scope of services to be provided.

The Securities Industry and Financial Markets Association (“SIFMA”), representing hundreds of securities firms, banks, and asset managers, commented that the proposed rule (1) inadvertently limits the access of smaller fund managers to the Fund; (2) restricts the number and

types of advisers that could be utilized by the Fund; (3) creates an inherent conflict between federal and state law that would make it impossible to do business with the Fund while complying with both; and (4) adds duplicative regulation in an area already substantially regulated at the state level and that is primed for further federal regulation through the imminent imposition of a federal pay-to-play regime on all registered broker-dealers acting as placement agents. In addition, SIFMA provided language that it believes would be consistent with the existing federal requirements on the use of placement agents. SIFMA requested that the Department either exclude from the proposed rule those placement agents who are registered as broker-dealers under the Securities Exchange Act of 1934 or delay the enactment of the proposed rule until the federal and state placement agent initiatives are finalized.

The Department does not have jurisdiction over placement agents, which makes it difficult to implement and enforce requirements on them. The Superintendent did consider other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining “placement agent” in more general terms. At the time, the Superintendent concluded that only an immediate, total ban on the use of placement agents could provide sufficient protection of the Fund’s members and beneficiaries and safeguard the integrity of the Fund’s investments.

9. Federal standards: The Securities and Exchange Commission issued a “Pay-To-Play” regulation for financial advisors on July 1, 2010, which may have an impact on the issues addressed in the proposed rule.

10. Compliance schedule: The emergency adoption of this regulation on June 18, 2009 ensured that the ban would become enforceable immediately. The ban needs to remain in effect on an emergency basis until such time as the amended regulation can be made permanent.

#### *Regulatory Flexibility Analysis*

1. Effect of the rule: This amendment strengthens standards for the management of the New York State and Local Employees’ Retirement System and New York State and Local Police and Fire Retirement System (collectively, “the Retirement System”), and the New York State Common Retirement Fund (“the Fund”).

The Second Amendment to Regulation 85 (11 NYCRR 136), effective November 19, 2008, established new standards with regard to investment of the assets of the New York State Common Retirement Fund (“the Fund”), conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Insurance Department.

Nevertheless, recent allegations regarding “pay to play” practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund’s control environment is insufficient to protect the integrity of the state employees’ retirement systems. The Third Amendment to Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund’s members and beneficiaries, and safeguard the integrity of the Fund’s investments. Further, the amendment defines “placement agent or intermediary” in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

These standards are intended to assure that the conduct of the business of the Retirement System and the Fund, and of the State Comptroller (as administrative head of the Retirement System and as sole trustee of the Fund), are consistent with the principles specified in the rule. Most among all affected parties, the State Comptroller, as a fiduciary whose responsibilities are clarified and broadened, is impacted by the amendment. The State Comptroller is not a “small business” as defined in section 102(8) of the State Administrative Procedure Act.

This amendment will affect investment managers and other intermediaries (other than OSC employees) who provide technical or professional services to the Fund related to Fund investments. The proposal will prohibit investment managers from using the services of a placement agent unless such agent is a regular employee of the investment manager and is acting in a broader capacity than just providing specific investment advice to the Fund. In addition, the amendment is also directed to placement agents, who as a result of this proposal, will no longer be engaged directly or indirectly by investment managers that do business with the Fund. Some investment managers and placement agents may come within the definition of “small business” set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or fewer individuals.

The amendment bans the use of placement agents in connection with

investments by the Fund. This may adversely affect the business of placement agents, who will lose opportunities to earn profits in connection with investments by the Fund. Nevertheless, as a result of recent allegations regarding “pay to play” practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund’s members and beneficiaries and to safeguard the integrity of the Fund’s investments.

This amendment will not impose any adverse compliance requirements or result in any adverse impacts on local governments. The basis for this finding is that this amendment is directed at the State Comptroller; employees of the Office of State Comptroller; and investment managers, placement agents, consultant or advisors - none of which are local governments.

2. Compliance requirements: None.

3. Professional services: Investment managers, consultants and advisors who provide services to the fund, and are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may need to employ other professional services.

4. Compliance costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this amendment. There are no costs to the Insurance Department or other state government agencies or local governments. However, investment managers, consultants and advisors who provide services to the fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

5. Economic and technological feasibility: The rule does not impose any economic and technological requirements on affected parties, except for placement agents who will lose the opportunity to earn profits in connection with investments by the Fund.

6. Minimizing adverse impact: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund. The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. But in the end, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund’s members and beneficiaries and safeguard the integrity of the Fund’s investments.

7. Small business and local government participation: In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor’s Office, Comptroller’s Office and Finance Department.

A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

#### **Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas: Investment managers, placement agents, consultants or advisors that do business in rural areas as defined under State Administrative Procedure Act Section 102(13) will be affected by this proposal. The amendment bans the use of placement agents in connection with investments by the New York State Common Retirement Fund (“the Fund”), which may adversely affect the business of placement agents and of other entities that utilize placement agents and are involved in Fund investments.

2. Reporting, recordkeeping and other compliance requirements, and professional services: This amendment will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, with the exception of requiring investment managers, consultants and advisors who provide services to the fund to discontinue the use of placement agents.

3. Costs: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund.

4. Minimizing adverse impact: The amendment does not adversely impact rural areas.

5. Rural area participation: A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

#### **Job Impact Statement**

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. The amendment bans investment

managers from using placement agents in connection with investments by the New York State Common Retirement Fund (“the Fund”). The amendment may adversely affect the business of placement agents, who could lose the opportunity to earn profits in connection with investments by the Fund. Nevertheless, in view of recent events about how placement agents conduct business on behalf of their clients with regard to the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund’s members and beneficiaries, and to safeguard the integrity of the Fund’s investments.

#### **Assessment of Public Comment**

Comments that were received as a result of the Public Hearing held on April 28, 2010:

Blackstone Group, a global investment manager and financial advisor, wrote to oppose the proposed ban on the use of placement agents by investment advisors engaged by the New York State Common Retirement Fund (“The Fund”). It stated that the rule would lessen the number of investment opportunities brought before the Fund, adversely affect small, medium-sized and women- and minority-owned investment firms seeking to do business with the Fund, and adversely affect a number of New York-headquartered financial institutions doing business as placement agents.

Blackstone suggested the inclusion of the following provisions in the rule instead:

- A ban on political contributions by any employee of any placement agent seeking to do business with the fund;
- A requirement that any placement agent seeking to do business with the Fund be registered as a broker dealer with the SEC and ensure that its professionals have passed the appropriate Series qualifications administered by Financial Industry Regulatory Authority (“FINRA”);
- A requirement that any placement agent seeking to do business in New York register with the Insurance Department; and
- A requirement that any placement agent representing an investment manager before the Fund fully disclose the contractual arrangement between it and the manager, including the fee arrangement and the scope of services to be provided.

The Securities Industry and Financial Markets Association (“SIFMA”), representing hundreds of securities firms, banks, and asset managers, commented that the proposed rule (1) inadvertently limits the access of smaller fund managers to the Fund; (2) restricts the number and types of advisers that could be utilized by the Fund; (3) creates an inherent conflict between federal and state law that would make it impossible to do business with the Fund while complying with both; and (4) adds duplicative regulation in an area already substantially regulated at the state level and that is primed for further federal regulation through the imminent imposition of a federal pay-to-play regime on all registered broker-dealers acting as placement agents. In addition, SIFMA provided language that it believes would be consistent with the existing federal requirements on the use of placement agents. SIFMA requested that the Department either exclude from the proposed rule those placement agents who are registered as broker-dealers under the Securities Exchange Act of 1934 or delay the enactment of the proposed rule until the federal and state placement agent initiatives are finalized.

The Department does not have jurisdiction over placement agents, which makes it difficult to implement and enforce requirements on them. The Superintendent did consider other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining “placement agent” in more general terms. At the time, the Superintendent concluded that only an immediate, total ban on the use of placement agents could provide sufficient protection of the Fund’s members and beneficiaries and safeguard the integrity of the Fund’s investments.

The Department met with representatives from SIFMA on June 28th to gain further understanding of some of the issues raised in opposition to the proposed rule. We subsequently requested additional information from SIFMA. SIFMA provided the Department with additional information based upon actions taken and/or contemplated by pension fund regulators in other States. The Department will continue to assess the comments that have been received and any other information that may be submitted.

The Department is also evaluating the extent to which its proposed rule conforms with the Securities and Exchange Commission’s “Pay-To-Play” regulation for financial advisors that was issued on July 1, 2010. This regulation is effective on September 13, 2010, with full compliance by March 14, 2011 for all affected investment advisers.

We are continuing to research best practices in use with large U.S. public pension funds before any further action will be taken with regards to the proposed rule. A number of policies/practices being researched include limits on the amount of business that may be placed through any single

placement agent, and the feasibility of monetary penalties for investment managers/advisors who seek to circumvent procedures that are established to mitigate the risk of undue influence by politically connected persons.

### NOTICE OF ADOPTION

#### Credit for Reinsurance

**I.D. No.** INS-37-10-00016-A

**Filing No.** 1208

**Filing Date:** 2010-11-23

**Effective Date:** 2011-01-01

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

**Action taken:** Amendment of Part 125 of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 110, 201, 301, 307(a), 308, 332, 1301(a)(9), 1301(c) and 1308

**Subject:** Credit for reinsurance.

**Purpose:** Establish rules governing when an authorized ceding insurer may take credit on its balance sheet for a reinsurance recoverable.

**Substance of final rule:** Sections 125.1, 125.2 and 125.3 are repealed to delete redundant and dated insolvency clause requirements.

The new Section 125.1 is an applicability clause. It provides that this Part shall apply to reinsurance ceded by an insurer authorized to do business in this State, provided that where the state of domicile of a foreign ceding insurer is an NAIC-accredited state, or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance for the insurer's ceded risk, then the foreign ceding insurer may take credit for the reinsurance.

The new Section 125.2 defines certain terms used in this Part.

A new Section 125.3 is proposed to apply principles of prudent reinsurance credit risk management to all licensed ceding insurers subject to the Part.

Section 125.4 is amended to include a new Section 125.4(h) to provide alternative credit for cessions to unauthorized assuming insurers. This section adjusts the credit that the ceding insurer may take in its financial statement based upon the financial strength of the unauthorized assuming insurer. In order to allow the ceding insurer to take full credit for the reinsurance without the assuming insurer posting 100% collateral, the unauthorized assuming insurer in the transaction must:

- 1) maintain a minimum net worth of \$250 million;
- 2) be authorized and meet the standards of solvency and capital adequacy in its domiciliary jurisdiction;
- 3) have a credit rating from at least two rating agencies;
- 4) file documents with the Superintendent evidencing its financial condition; and
- 5) have been assigned a rating from the Superintendent authorizing the ceding insurer to take credit for the reinsurance without the assuming insurer posting 100% collateral.

Moreover, to qualify for the reduced credit with respect to cessions to an unauthorized assuming insurer, the Superintendent and the domiciliary regulator of the unauthorized assuming insurer must have in place an executed memorandum of understanding pursuant to this Part. Further, the domiciliary jurisdiction of an unauthorized assuming insurer shall allow U.S. assuming insurers access to the market of that jurisdiction on terms and conditions that are at least as favorable as those provided in New York laws and regulations for unauthorized assuming insurers.

The reinsurance contract itself must contain an insolvency clause, a designation of a person in New York or the ceding insurer's domestic state for service of process, a requirement that any disputes will be subject to United States courts and laws, and a requirement that the unauthorized assuming insurer will notify the ceding insurer of any changes in its license status or any change in its rating from a credit rating agency.

While this alternative credit for cessions to unauthorized assuming insurers will reduce the collateral requirement in a manner that corresponds to the financial strength of the unauthorized assuming insurer, where an order of rehabilitation, liquidation or conservation is entered against the ceding insurer, the unauthorized assuming insurer must, as a general matter, post full collateral for all outstanding liabilities owed to the ceding insurer.

Section 125.5 is amended to correct various references to other sections.

Section 125.6 is amended to correct various references to other sections.

Section 125.7 is amended to provide that an assuming insurer which is complying with the provisions of subdivision (h) of section 125.4 of this Part shall be issued a certificate of recognition as an accredited reinsurer.

**Final rule as compared with last published rule:** Nonsubstantial changes were made in sections 125.2, 125.3 and 125.4.

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

#### **Revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

Although changes were made to the proposed Tenth Amendment to 11 NYCRR 125 (Regulations No. 17, 20, and 20-A), they do not necessitate changes to the Regulatory Flexibility Statement, Regulatory Flexibility Analysis for Small Business and Local Government, Rural Area Flexibility Analysis, or Job Impact Statement.

#### **Assessment of Public Comment**

The proposed rule was published in the State Register on September 15, 2010, and the 45-day public comment period expired on October 30, 2010. The Department received comments from 9 entities.

The Department conducted extensive outreach to entities representing authorized ceding insurers, and to assuming insurers both authorized and unauthorized to do business in New York. The Department received comments from seventeen entities. A complete review of the comments submitted can be found at the Department's website (<http://www.ins.state.ny.us>).

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## Long Island Power Authority

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### PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### Residential Late Payment Charges

**I.D. No.** LPA-49-10-00013-P

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

**Proposed Action:** The Long Island Power Authority ("Authority") is considering a proposal to modify its Tariff for Electric Service to authorize the application of its existing late payment charge to residential customers.

**Statutory authority:** Public Authorities Law, section 1020-f(z) and (u)

**Subject:** Residential late payment charges.

**Purpose:** To extend the application of late payment charges under LIPA's Tariff to residential customers.

**Public hearing(s) will be held at:** 10:00 a.m., Jan. 26, 2011 at H. Lee Dennison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; and 2:00 p.m., Jan. 26, 2011 at Long Island Power Authority, 333 Earle Ovington Blvd., 2nd Fl., Uniondale, NY.

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

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

**Substance of proposed rule:** The Long Island Power Authority ("Authority") is considering a proposal to modify its Tariff for Electric Service to authorize the application of its existing late payment charge of 1.5% per month to residential customers. The Authority may approve, modify, or reject, in whole or part, the proposal.

**Text of proposed rule and any required statements and analyses may be obtained from:** Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: amccabe@lipower.org

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

**Public comment will be received until:** Five days after the last scheduled public hearing.

#### **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  
HEARING(S) SCHEDULED**

**Daily Service Charges and Monthly Charges Under the Authority's Tariff for Electric Service**

**I.D. No.** LPA-49-10-00014-P

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

**Proposed Action:** The Long Island Power Authority ("Authority") is considering a proposal to modify its Tariff for Electric Service to increase Daily Service Charges and Monthly Charges to cover increases in the costs of Delivery Service.

**Statutory authority:** Public Authorities Law, section 1020-f(z) and (u)

**Subject:** Daily Service Charges and Monthly Charges under the Authority's Tariff for Electric Service.

**Purpose:** To increase Daily Service Charges and Monthly Charges to cover increases in the costs of Delivery Service.

**Public hearing(s) will be held at:** 10:00 a.m., Jan. 26, 2011 at H. Lee Dennison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; and 2:00 p.m., Jan. 26, 2011 at Long Island Power Authority, 333 Earle Ovington Blvd., 2nd Fl., Uniondale, NY.

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

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

**Substance of proposed rule:** The Long Island Power Authority ("Authority") is considering a proposal to modify its Tariff for Electric Service to increase Daily Service Charges and Monthly Charges to cover increases in the costs of Delivery Service, consistent with LIPA's proposed 2011 Budget. The Authority may approve, modify, or reject, in whole or part, the proposal.

**Text of proposed rule and any required statements and analyses may be obtained from:** Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: amccabe@lipower.org

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

**Public comment will be received until:** Five days after the last scheduled public hearing.

**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  
HEARING(S) SCHEDULED**

**New York State Assessment Charge Under the Authority's Tariff**

**I.D. No.** LPA-49-10-00015-P

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

**Proposed Action:** The Long Island Power Authority ("Authority") is considering a proposal to modify its Tariff for Electric Service ("Tariff") to recover New York State governmental costs under its New York State Assessment Charge.

**Statutory authority:** Public Authorities Law, section 1020-f(z) and (u)

**Subject:** New York State Assessment Charge under the Authority's Tariff.

**Purpose:** To recover New York State governmental costs under the Authority's New York State Assessment Charge.

**Public hearing(s) will be held at:** 10:00 a.m., Jan. 26, 2011 at H. Lee Dennison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; and 2:00 p.m., Jan. 26, 2011 at Long Island Power Authority, 333 Earle Ovington Blvd., 2nd Fl., Uniondale, NY.

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

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

**Substance of proposed rule:** The Long Island Power Authority ("Authority") is considering a proposal to modify its Tariff for Electric Service to include within the Authority's recovery under its New York State Assessment Charge, the recovery of the allocable share of New York State governmental costs imposed on the Authority by Section 2975 of the Public Authorities Law. The Authority may approve, modify, or reject, in whole or part, the proposal.

**Text of proposed rule and any required statements and analyses may be obtained from:** Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: amccabe@lipower.org

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

**Public comment will be received until:** Five days after the last scheduled public hearing.

**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  
HEARING(S) SCHEDULED**

**Service Charge Under the Authority's Tariff**

**I.D. No.** LPA-49-10-00016-P

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

**Proposed Action:** The Long Island Power Authority ("Authority") is considering a proposal to modify its Tariff for Electric Service ("Tariff") to create a reduced service charge for qualifying low income residential customers.

**Statutory authority:** Public Authorities Law, section 1020-f(z) and (u)

**Subject:** Service charge under the Authority's Tariff.

**Purpose:** To create a reduced service charge for qualifying low income residential customers.

**Public hearing(s) will be held at:** 10:00 a.m., Jan. 26, 2011 at H. Lee Dennison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; and 2:00 p.m., Jan. 26, 2011 at Long Island Power Authority, 333 Earle Ovington Blvd., 2nd Fl., Uniondale, NY.

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

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

**Substance of proposed rule:** The Long Island Power Authority ("Authority") is considering a proposal to modify its Tariff for Electric Service to create a reduced service charge for qualifying low income residential customers. The Authority may approve, modify, or reject, in whole or part, the proposal.

**Text of proposed rule and any required statements and analyses may be obtained from:** Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: amccabe@lipower.org

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

**Public comment will be received until:** Five days after the last scheduled public hearing.

**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  
HEARING(S) SCHEDULED**

**FPPCA Under the Authority's Tariff**

**I.D. No.** LPA-49-10-00017-P

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

**Proposed Action:** The Long Island Power Authority (“Authority”) is considering a proposal to modify its Tariff for Electric Service (“Tariff”) to modify language from the Fuel and Purchased Power Cost Adjustment Rate (FPPCA).

**Statutory authority:** Public Authorities Law, section 1020-f(z) and (u)

**Subject:** FPPCA under the Authority’s Tariff.

**Purpose:** To modify the Tariff regarding the FPPCA with regard LIPA’s financial target, the associated tolerance band and time period.

**Public hearing(s) will be held at:** 10:00 a.m., Jan. 26, 2011 at H. Lee Dennison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; and 2:00 p.m., Jan. 26, 2011 at Long Island Power Authority, 333 Earle Ovington Blvd., 2nd Fl., Uniondale, NY.

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

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

**Substance of proposed rule:** The Long Island Power Authority (“Authority”) is considering a proposal to modify its Tariff for Electric Service to delete language from the Fuel and Purchased Power Cost Adjustment Rate (FPPCA), including language with regard to the “revenue in excess of expenses” financial target and the associated tolerance band, and modify the associated time periods. The Authority may approve, modify, or reject, in whole or part, the proposal.

**Text of proposed rule and any required statements and analyses may be obtained from:** Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: amccabe@lipower.org

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

**Public comment will be received until:** Five days after the last scheduled public hearing.

**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.

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## Division of the Lottery

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

**Application and Employment After Denial or Revocation of License Permissible Lottery Players and Placement of ATMs**

**I.D. No.** LTR-49-10-00006-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 sections 2836-3.15, 2836-3.16, 2836-20.1(f) and 2836-23.3(a) of Title 21 NYCRR.

**Statutory authority:** New York State Tax Law, sections 1601, 1604, 1612 and 1617-a

**Subject:** Application and employment after denial or revocation of license permissible lottery players and placement of ATMs.

**Purpose:** To clarify video gaming regulations and to comply with accepted industry standards.

**Text of proposed rule:** Sections 2836-3.15 and 2836-3.16 are amended to read as follows:

2836-3.15 [Restriction on application] *Application* and employment after denial or revocation.

(a) Any natural person whose application for a license is denied, or whose license is suspended or revoked by reason of a failure to satisfy the affirmative qualification criteria required by these regulations, or due to a finding by the division that such person is disqualified, or both, may [not] re-apply for such license [for a period of three (3) years from the date of denial or revocation unless otherwise provided by these regulations] at any time.

[Notwithstanding the foregoing:

(1) If the denial or revocation was based upon conviction of a disqualifying offense and reapplication is to be evaluated under petition, reapplication is permitted only after the lapse of ten (10) years from the date of conviction;

(2) If the denial or revocation was based on acts constituting a disqualifying offense pursuant to these regulations and reapplication is to be evaluated under petition, reapplication is permitted after the lapse of ten (10) years from the date of the conduct in question; and

(3) If the division approves an agreement resolving an application for or a complaint seeking the revocation of a license which results in denial or revocation but permits reapplication or employment by a video lottery gaming agent after a stated period of less than three (3) years, eligibility for reapplication or employment shall be governed by the terms of the agreement and not by the provisions of these regulations.]

(b) Any natural person whose license application was denied, or whose license was suspended or revoked by the division on the basis of any of the statutory or regulatory provisions in [subsection] paragraphs (1) through (4) of this [part] subdivision (b) below, may reapply for a license upon satisfaction of the relevant requirements specified below. If the denial, suspension or revocation is based upon two (2) or more of such regulatory provisions, the division shall permit reapplication only upon compliance with the requirements of this [subsection] subdivision as to each such provision. Any person seeking to reapply pursuant to this [subsection] subdivision shall file a certified petition stating with particularity how the specified requirements have been satisfied.

(1) Failure to demonstrate financial stability: Reapplication is permitted upon achieving financial stability.

(2) Failure to satisfy the age requirement: Reapplication is permitted upon attaining the requisite age or upon a division finding that such age will be attained before the processing and approval of said reapplication has been completed.

(3) Pending disposition of a [charges for] charge of a [disqualifying] criminal offense if the Lottery has determined to deny a license application or suspend or revoke a license while such charge is pending: Reapplication is permitted upon disposition of the pending [charges provided the charges do not result in conviction of a disqualifying offense] charge.

(4) Any statutory or regulatory provision which is subsequently repealed or modified: Reapplication is permitted upon a showing that the subsequent repeal or modification of the statutory or regulatory provision obviates the grounds for denial or revocation and justifies the conclusion that the prior [decision] determination should [no longer bar reapplication] not be a basis for denying a license application.

(c) Except as otherwise set forth in these regulations, any person whose application has been denied or whose license has been revoked may reapply upon submission of sufficient evidence demonstrating that the factual circumstances upon which the denial was based have been cured to the satisfaction of the division.

(d) [Except as otherwise set forth in these regulations, any] Any person whose license has been revoked may reapply upon submission [within ninety (90) days of the date of revocation] of sufficient evidence demonstrating that the factual circumstances upon which the denial was based have been cured.

[2836-3.16 Petition for early reapplication.

(a) Any natural person who is barred by these rules from reapplication for at least three (3) years may petition the division for permission to reapply at an earlier date by filing a petition with the division at any time after one (1) year has elapsed from the date of denial or revocation or at such earlier date as the division may order. Any such petition shall state the type of credential sought, include a copy of the original application and the denial or revocation letter, the reasons for such denial and/or revocation, the reasons the applicant believes warrant reconsideration by the division, and any other information the applicant deems relevant.

(b) The division may grant a petition for early reapplication if it finds that the facts and circumstances presented would be reasonably likely to result in licensure, registration, qualification or approval if considered in the context of a plenary hearing. Factors to be considered by the division may include, where appropriate, evidence which would support:

- (1) A finding of rehabilitation; or
- (2) A waiver of disqualification.]

Subdivision (f) of Section 2836-20.1 is amended to read as follows:

(f) No video lottery gaming ticket shall be sold to or purchased by, and no video lottery gaming prize shall be paid to, any of the following persons:

- (1) Any officer or employee of the division; or
- (2) Any principal or key employee, except as may be permitted by the division for good cause shown; or
- (3) Any video lottery gaming or non-gaming employee at the video lottery gaming facility that employs such person and at any other video lottery gaming facility controlled by that agent; or
- (4) Any licensee, registrant, contractor, subcontractor, or consultant,

or officer or employee of a contractor, subcontractor, licensee, registrant or consultant, if such person is directly involved in the operation of video lottery gaming, the operation or observation of video lottery gaming or drawings, or the processing of video lottery gaming prize claims or payments; or

(5) Any person subject to a contract with the division if such contract contains a provision prohibiting such person from purchasing a video lottery gaming ticket or receiving a video lottery gaming prize; or

(6) Any spouse, child, brother, sister or parent residing as a member of the same household in the principal place of abode of any of the foregoing persons *at the same video lottery facility or facilities where the foregoing person is prohibited from purchasing a video lottery gaming ticket or collecting a video lottery gaming prize*. This section shall not be deemed to prohibit the sale of a video lottery gaming ticket or the payment of a video lottery gaming prize to an officer or employee of the division or a video lottery gaming agent or to a contractor, subcontractor, or consultant or to an officer or employee of a contractor, subcontractor, or consultant if such sale or prize payment is not for the individual benefit of such person and is made in connection with an official investigation, audit, or other activity authorized by the director.

(7) The restrictions of this subdivision shall not apply to an employee of a video lottery gaming agent that is not licensed by the division.

(8) Nothing in this section shall prohibit a video lottery gaming agent from establishing a policy that is stricter than the standards described in this subdivision.

Subdivision (a) of Section 2836-23.3 is amended to read as follows:  
2836-23.3 Credit; banking services at the video lottery gaming facility.

(a) The video lottery gaming agent may place a duly authorized automated teller machine (ATM) within a video lottery gaming facility at a location approved by the division[]; however, such ATM shall not be positioned within the video lottery gaming floor[].

**Text of proposed rule and any required statements and analyses may be obtained from:** Julie B. Silverstein Barker, Associate Attorney, New York Lottery, One Broadway Center, PO Box 7500 Schenectady, NY 12301-7500, (518) 388-3408, email: nylrules@lottery.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

Sections 1604 and 1617-a of the New York State Lottery for Education Law (Article 34 of the Tax Law) establish the New York Lottery's (the "Lottery") authority to promulgate regulations governing its games and the operation of video lottery gaming.

The proposed amendments to sections 2836-3.15 and 2836-3.16 of the Lottery's regulations are being made to conform to the public policy of the State which is that there is a presumption of rehabilitation for persons with previous criminal convictions. Pursuant to Section 752 of the Correction Law (Article 23-A), no application for any license or license holder shall be denied or acted upon adversely by reason of the individual's having been previously convicted of one or more criminal offenses or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses unless there is a direct relationship between the previous criminal offenses and the specific license or the issuance or continuation of the license would involve unreasonable risk to property or the safety or welfare of the public. The Lottery does and will continue to assess each application for a Lottery license based on factors enumerated in the Correction Law.

Currently, the Lottery has specific time periods contained within its regulations regarding reapplication for a license and also permit the Lottery the discretion to deviate from such times for good cause. However, in an effort to conform to the presumption of rehabilitation pursuant to the Correction Law, the Lottery is proposing to remove the specific time periods. No one is likely to object to these amendments because the amendments are being made to conform to the public policy of the State which is a presumption of rehabilitation for persons with previous criminal convictions.

The proposed amendments to section 2836-20.1 of the Lottery's regulations are being made to clarify the restriction against licensees playing at video lottery facilities. Currently, the restriction placed upon any spouse, child, brother, sister or parent residing as a member of the same household in the principal place of abode of certain licensees is inadvertently more prohibitive than the restriction placed upon the actual licensees due to a technical drafting error. No one is likely to object to these amendments because the amendments are being made to correct a technical error and do not change the enforcement of the restriction placed upon licensees and their family members living in the same household.

The proposed amendment to section 2836-23.3 is being made to remove a restriction related to placement of Automated Teller Machines

("ATMs") to conform to accepted industry standards. The Lottery's regulations currently prohibit placement of ATMs on the video gaming floor. Generally accepted gaming industry standards permit placement of ATMs and other methods of obtaining funds on gaming floors. No one is likely to object to this amendment because the amendment conforms with commonly and generally accepted standard gaming industry practices.

The Lottery has circulated these proposed amendments to its video lottery agents at all the existing video lottery facilities, as well as, to its agent at the planned video lottery facility at Aqueduct, which are subject to the Lottery's regulations. The agents did not raise any objection to this proposed rulemaking.

#### Job Impact Statement

The proposed amendment of 21 NYCRR Part 2836 does not require a Job Impact Statement because there will be no adverse impact on jobs and employment opportunities in New York. The proposed amendments to the New York Lottery's regulations are being made to conform to the public policy of the State of a presumption of rehabilitation for persons with previous criminal convictions, to clarify the restriction against licensees playing at video lottery facilities, and to remove a restriction related to placement of Automated Teller Machines to conform to accepted industry standards. Such revisions to the regulations will not have any effect on jobs or employment opportunities.

## Power Authority of the State of New York

### ERRATUM

A Notice of Adoption, I.D. No. PAS-06-09-00002-A, pertaining to Rates for the Sale of Power and Energy, published in the November 17, 2010 issue of the *State Register* contained an incorrect effective date. The correct effective date for this rule making is November 2, 2010. The rule making also contained substantial changes which were not noted in the filing. Substance of the rule follows.

**Substance of final rule making:** Pursuant to the New York State Public Authorities Law, Section 1005(5), the Power Authority of the State of New York (the "Authority") has adopted amendments to the Authority's current production service tariffs applicable to its Municipal and Rural Electric Cooperative Systems customers.

The Authority reformatted the service tariffs to include necessary new provisions and updated terminology and improved the organization and formatting.

Changes made to the proposed tariffs include the completion of the Table of Contents, clarifying language in Sections I – IV of Service Tariff No. 38B and Sections I - V of Service Tariff Nos. 38A and 39A, a change in the footer to show the date of issue and effective date of the service tariffs on each page and deletion of the last blank page from each service tariff.

## Public Service Commission

### NOTICE OF ADOPTION

#### Water Rates and Charges

**I.D. No.** PSC-33-09-00009-A

**Filing Date:** 2010-11-18

**Effective Date:** 2010-11-18

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

**Action taken:** On 11/18/10, the PSC adopted an order approving National Aqueous Corporation's amendments to PSC 1—Water, Effective date was subsequently postponed to 3/1/10 and 8/1/10, and suspended to 11/28/10, to increase its annual base rate by \$18,926 or 61.5%.

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

**Subject:** Water rates and charges.

**Purpose:** To approve amendments to PSC 1—Water, effective 11/28/10 to increase its annual base rate by \$18,926 or 61.5%.

**Substance of final rule:** The Commission, on November 18, 2010, adopted an order approving National Aqueous Corporation’s amendments to PSC 1—Water. Effective date was subsequently postponed to March 1, 2010 and August 1, 2010, and suspended to November 28, 2010, to increase its annual base rate by \$18,926 or 61.5%, 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-W-0579SA1)

**NOTICE OF ADOPTION**

**Authorization of a Change in the Eligible Biomass Rules for the Renewable Portfolio Standard (RPS) Program**

**I.D. No.** PSC-51-09-00031-A

**Filing Date:** 2010-11-22

**Effective Date:** 2010-11-22

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

**Action taken:** On 11/18/10, the PSC adopted an order approving, with modifications, the petition of Niagara Generation, LLC to allow clean wood separated from construction and demolition debris at approved material reclamation facilities to be used as biomass fuel.

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

**Subject:** Authorization of a change in the eligible biomass rules for the Renewable Portfolio Standard (RPS) Program.

**Purpose:** To approve a change in the eligible biomass rules for the Renewable Portfolio Standard (RPS) Program.

**Substance of final rule:** The Commission, on November 18, 2010, adopted an order approving, with modifications, the petition of Niagara Generation, LLC to allow clean wood separated from construction and demolition debris at approved material reclamation facilities to be eligible for use as “biomass” fuel in the Renewable Portfolio Standard (RPS) program, 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-0843SA1)

**NOTICE OF ADOPTION**

**Central Hudson’s Tariff Amendments to PSC No. 15 — Electricity, Eff. 12/1/10**

**I.D. No.** PSC-16-10-00024-A

**Filing Date:** 2010-11-23

**Effective Date:** 2010-11-23

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

**Action taken:** On 11/18/10, the PSC adopted an order approving Central Hudson Gas & Electric Corporation’s proposed tariff amendments to PSC No. 15 — Electricity, eff. 12/1/10.

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

**Subject:** Central Hudson’s tariff amendments to PSC No. 15 — Electricity, eff. 12/1/10.

**Purpose:** To approve amendments to PSC No. 15 — Electricity, eff. 12/1/10 regarding three-phase service.

**Substance of final rule:** The Commission, on November 18, 2010, adopted an order approving Central Hudson Gas & Electric Corporation’s amendments to PSC No. 15 — Electricity, effective December 1, 2010 allowing an additional fee for three-phase service, 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.  
(10-E-0129SA1)

**NOTICE OF ADOPTION**

**Transfer of Three Hydro Sites to Eagle Creek Affiliates**

**I.D. No.** PSC-20-10-00013-A

**Filing Date:** 2010-11-22

**Effective Date:** 2010-11-22

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

**Action taken:** On 11/18/10, the PSC adopted an order approving, with conditions, the joint petition of AG-Energy L.P. and others’ request to transfer its three hydroelectric generating facilities.

**Statutory authority:** Public Service Law, sections 2(2-b), (2-c), 70 and 83

**Subject:** Transfer of three hydro sites to Eagle Creek affiliates.

**Purpose:** To modify a previous order for the transfer of three hydro sites to Eagle Creek affiliates.

**Substance of final rule:** The Commission, on November 18, 2010, adopted an order modifying its prior Order, issued July 23, 2010, and the joint petition of AG-Energy L.P., Eagle Creek Ogdensburg (LP) LLC and others to transfer three hydroelectric generating facilities upon the condition that all payments due St. Lawrence Gas Company, Inc. as of the date of the closing of the transaction are made, 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.  
(10-M-0186SA2)

**NOTICE OF ADOPTION**

**Continuation of National Fuel Gas Distribution Corporation’s Conservation Incentive Program**

**I.D. No.** PSC-29-10-00012-A

**Filing Date:** 2010-11-22

**Effective Date:** 2010-11-22

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

**Action taken:** On 11/18/10, the PSC adopted an order approving, with modifications, National Fuel Gas Distribution Corporation’s (Company) request to continue the Company’s Conservation Incentive Program for a fourth program year, December 2010 through November 2011.

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

**Subject:** Continuation of National Fuel Gas Distribution Corporation’s Conservation Incentive Program.

**Purpose:** To approve, with modifications, the continuation of National Fuel Gas Distribution Corporation's Conservation Incentive Program.

**Substance of final rule:** The Commission, on November 18, 2010, adopted an order approving, with modifications, National Fuel Gas Distribution Corporation's (Company) request to continue the Company's Conservation Incentive Program for a fourth program year, December 2010 through November 2011, 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-G-0141SA4)

### NOTICE OF ADOPTION

#### Approve the Use of the ABB Optical Metering Unit for Use in New York State

**I.D. No.** PSC-33-10-00009-A

**Filing Date:** 2010-11-23

**Effective Date:** 2010-11-23

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

**Action taken:** On 11/18/10, the PSC adopted an order approving the application of ABB Inc. to permit the use of the ABB Optical Metering Unit for use in New York State.

**Statutory authority:** Public Service Law, section 67(1)

**Subject:** Approve the use of the ABB Optical Metering Unit for use in New York State.

**Purpose:** To approve the use of the ABB Optical Metering Unit for use in New York State.

**Substance of final rule:** The Commission, on November 18, 2010, adopted an order approving the application of ABB Inc. to permit the use of the ABB Optical Metering Unit for use in New York State.

**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.

(10-E-0351SA1)

### NOTICE OF ADOPTION

#### Implementation of Hourly Pricing for Customers with Demand Greater than 300 kW

**I.D. No.** PSC-36-10-00011-A

**Filing Date:** 2010-11-18

**Effective Date:** 2010-11-18

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

**Action taken:** On 11/18/10, the PSC adopted an order approving, Central Hudson Gas and Electric Corporation's Plan to expand Hourly Pricing Provisions to customers with demand greater than 300 kW in any two months during the twelve months ended June 30, 2010.

**Statutory authority:** Public Service Law, sections 2, 5, 65 and 66

**Subject:** Implementation of hourly pricing for customers with demand greater than 300 kW.

**Purpose:** To approve the implementation of hourly pricing for customers with demand greater than 300 kW.

**Substance of final rule:** The Commission, on November 18, 2010, adopted an order approving, Central Hudson Gas and Electric Corporation's Plan to expand Hourly Pricing Provisions to customers with demand greater than 300 kW in any two months during the twelve months ended June 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.

(09-E-0588SA3)

### NOTICE OF ADOPTION

#### Street Lighting

**I.D. No.** PSC-37-10-00011-A

**Filing Date:** 2010-11-18

**Effective Date:** 2010-11-18

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

**Action taken:** On 11/18/10, the PSC adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC No. 15—Electricity, effective December 1, 2010, for the installation of Light Emitting Diodes (LED).

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

**Subject:** Street Lighting.

**Purpose:** To approve amendments to PSC No. 15—Electricity, effective December 1, 2010, for the installation of Light Emitting Diodes.

**Substance of final rule:** The Commission, on November 18, 2010, adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC No. 15—Electricity, effective December 1, 2010 to add a new pricing option under (SC) No. 8—Public Street and Highway Lighting applicable to the installation of Light Emitting Diodes (LED).

**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.

(10-E-0420SA1)

### NOTICE OF ADOPTION

#### Corning's Request for Approval for Certain Stock Acquisitions

**I.D. No.** PSC-37-10-00012-A

**Filing Date:** 2010-11-19

**Effective Date:** 2010-11-19

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

**Action taken:** On 11/18/10, the PSC adopted an order denying Corning Natural Gas Corporation's (Corning) request for clarification of the August 20, 2010 Order and granting it request for rehearing.

**Statutory authority:** Public Service Law, section 70

**Subject:** Corning's request for approval for certain stock acquisitions.

**Purpose:** To deny Corning's request for clarification and approve its request for rehearing of the August 20, 2010 Order.

**Substance of final rule:** The Commission, on November 18, 2010,

adopted an order denying Coming Natural Gas Corporation's (Coming or Company) request for clarification of the August 20, 2010 Order and granting its request for rehearing and the Company's CEO may exercise options for his remaining 56,000 shares pursuant to Public Service Law Section 70, 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. (10-G-0224SA2)

### NOTICE OF ADOPTION

**Approval of Financing**

**I.D. No.** PSC-38-10-00004-A

**Filing Date:** 2010-11-18

**Effective Date:** 2010-11-18

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

**Action taken:** On 11/18/10, the PSC adopted an order approving the petition of NRG Energy, Inc. for authorization to incur corporate debt up to a maximum amount of \$15.0 billion.

**Statutory authority:** Public Service Law, section 69

**Subject:** Approval of financing.

**Purpose:** To approve corporate financing.

**Substance of final rule:** The Commission, on November 18, 2010, adopted an order approving the petition of NRG Energy, Inc. for authorization to incur corporate debt up to a maximum amount of \$15.0 billion, 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. (10-E-0405SA1)

### NOTICE OF ADOPTION

**Denying the Petition of NiGen Seeking a Mid-Stream Price Adjustment in a Main Tier Incentive Contract in RPS**

**I.D. No.** PSC-38-10-00005-A

**Filing Date:** 2010-11-19

**Effective Date:** 2010-11-19

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

**Action taken:** On 11/18/10, the PSC adopted an order denying the August 19, 2010 petition of Niagara Generation, LLC (NiGen) seeking a mid-stream price adjustment in a Main Tier incentive contract in the Renewable Portfolio Standard (RPS) program.

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

**Subject:** Denying the petition of NiGen seeking a mid-stream price adjustment in a Main Tier incentive contract in RPS.

**Purpose:** To deny the petition of NiGen seeking a mid-stream price adjustment in a Main Tier incentive contract in RPS.

**Substance of final rule:** The Commission, on November 18, 2010 adopted an order denying the August 19, 2010, petition of Niagara Generation, LLC (NiGen) seeking a mid-stream price adjustment in a Main Tier incen-

tive contract in the Renewable Portfolio Standard (RPS) program, 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. (03-E-0188SA26)

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

**Whether to Approve Electric Submetering at 1259 Fifth Avenue, 1309 Fifth Avenue, and 1660 Madison Avenue, New York, NY**

**I.D. No.** PSC-49-10-00009-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 whether to approve, deny, or modify the October 21, 2010 filing of the plan to submeter electricity at 1259 Fifth Avenue, 1309 Fifth Avenue, and 1660 Madison Avenue, New York, New York, filed by Frawley Plaza, LLC.

**Statutory authority:** Public Service Law, arts. 2, 51, 53 and 66

**Subject:** Whether to approve electric submetering at 1259 Fifth Avenue, 1309 Fifth Avenue, and 1660 Madison Avenue, New York, NY.

**Purpose:** Whether to approve electric submetering at 1259 Fifth Avenue, 1309 Fifth Avenue, and 1660 Madison Avenue, New York, NY.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, submetering and the submetering plan, filed by Frawley Plaza, LLC on October 21, 2010 at 1259 Fifth Avenue, 1309 Fifth Avenue, and 1660 Madison Avenue, New York, New York. The Commission shall consider all related matters contained in the filing.

**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: secretary@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-0836SP7)

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

**Minor Rate Filing**

**I.D. No.** PSC-49-10-00010-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 the Village of Endicott to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, P.S.C. No. 1—Electricity.

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

**Subject:** Minor Rate Filing.

**Purpose:** To increase annual electric revenues by approximately \$300,000 or 10.3%.

**Substance of proposed rule:** The Commission is considering a proposal filed by the Village of Endicott (Endicott) which would increase its annual electric revenues by about \$300,000 or 10.3%. The proposed filing has an effective date of May 1, 2011. The Commission may adopt in whole or in part, modify or reject Endicott's proposal.

**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: Secretary@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.

(10-E-0588SP1)

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

**Eligibility of Customers to Participate in EEPS Programs**

**I.D. No.** PSC-49-10-00011-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 whether to authorize New York State Utilities to modify customer eligibility for previously-approved Energy Efficiency Portfolio Standard (EEPS) programs.

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

**Subject:** Eligibility of customers to participate in EEPS programs.

**Purpose:** To encourage cost effective electric energy conservation in the state.

**Substance of proposed rule:** The Commission is considering whether to adopt, in whole or in part, to reject, or to take any other action with respect to New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation's petition submitted on November 3, 2010 seeking to modify certain energy efficiency programs previously approved by the Commission as part of the Energy Efficiency Portfolio Standard (EEPS) proceeding in Cases 07-M-0548 et al. The utilities request authorization to modify their Non-residential Commercial & Industrial (C&I) Custom Rebate Programs (approved in Cases 08-E-1129 and 08-E-1130) to eliminate a requirement that customers have a minimum electricity demand of 100 kilowatts to be eligible to participate. The Commission may make these or related changes to the EEPS program for these utilities and/or for other New York utilities as well.

**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: Secretary@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.

(07-M-0548SP28)

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

**Petition for the Submetering of Electricity**

**I.D. No.** PSC-49-10-00012-P

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

**Proposed Action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by FC Beekman Associates, LLC to submeter electricity at 8 Spruce Street, New York, New York.

**Statutory authority:** Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

**Subject:** Petition for the submetering of electricity.

**Purpose:** To consider the request of FC Beekman Associates, LLC to submeter electricity at 8 Spruce Street, New York, New York.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by FC Beekman Associates, LLC to submeter electricity at 8 Spruce Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

**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: Secretary@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.

(10-E-0559SP1)

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**State University of New York**

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**EMERGENCY  
RULE MAKING**

**State University of New York Tuition and Fees Schedule**

**I.D. No.** SUN-39-10-00012-E

**Filing No.** 1183

**Filing Date:** 2010-11-17

**Effective Date:** 2010-11-17

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

**Action taken:** Amendment of section 302.1 of Title 8 NYCRR.

**Statutory authority:** Education Law, section 355(2)(b) and (h)

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

**Specific reasons underlying the finding of necessity:** Due to fiscal conditions, there is an immediate need for tuition increases for students at SUNY to maintain program accessibility and quality. This amendment must proceed on an emergency basis because appropriate notice must be given to affected parties.

**Subject:** State University of New York Tuition and Fees Schedule.

**Purpose:** To amend the Tuition and Fees Schedule to increase tuition for students in all programs in the State University of New York.

**Text of emergency rule:** Amendments to section 302.1 of Title 8 NYCRR.

Section 302.1. Tuition and fees at State-operated units of State University.

The payment of tuition and fees in the State-operated units of the State University shall be governed by the following definitions, regulations, and schedule of rates to be charged.

(a) Definitions. For the purpose of establishing rental schedules, tuition fees and other charges, the following definitions shall apply:

(1) Semester. A period of attendance in which the school year is customarily divided in two equal sessions. In some cases an optional third semester is available.

(2) [Quarter. A period of attendance in which the school year is customarily divided in three equal sessions. In some cases a fourth optional quarter is available.

(3) Student.

[(i)] A student at a college operating on a semester basis is any person registered for 12 or more semester hours of work in a regular program whether on campus or at another location.

[(ii)] A student at a college operating on a quarter basis is any person registered for 12 or more quarter hours.]

[(4)] Special student.

(i) A special student at a college operating on a semester basis is any person registered for fewer than 12 semester hours of work.

(ii) [A special student at a college operating on a quarter basis is any person registered for fewer than 12 quarter hours.

(iii) A student attending a summer session, which is not a regular [quarter or ]semester, is a special student for the purpose of this definition.

[(5)] Change of status. A person who registers and commences classes initially as a student but whose program is later curtailed for academic reasons, does not change status during that [quarter or ]semester to that of special student.

[(6)] Residence. A person whose domicile has been in the State of New York for a period of at least one year immediately preceding the time of registration for any period of attendance shall be a New York resident for the purpose of determining the tuition rate payable for such period. All other persons shall be presumed to be out-of-state residents for such purpose, unless domiciliary status is demonstrated in accordance with guidelines adopted by the Chancellor or designee.

(b)(1) Students enrolled in degree-granting undergraduate programs leading to an associate degree and nondegree granting programs of at least one regular academic term in duration which have been approved as eligible for tuition assistance program awards.

Tuition

(i) Students, New York State residents: \$2,485 per semester or \$1,657 per quarter.

(ii) Students, out-of-state residents: \$6,435 per semester or \$4,290 per quarter.

(iii) Special students, New York State residents: \$207 per semester credit hour or \$138 per quarter credit hour.

(iv) Special students, out-of-state residents: \$536 per semester credit hour or \$358 per quarter credit hour.

(v) The president of a college of technology or a college of agriculture and technology may establish differing rates of tuition for the college for students enrolled in degree- granting programs leading to an associate degree and non-degree granting programs, with the approval of the chancellor or designee, based on considerations which may include but are not limited to time, location, cost, services provided, enrollment management and access, so long as such tuition rates do not exceed the tuition rates specified in this subdivision.

(2) Students enrolled in degree-granting undergraduate programs leading to a baccalaureate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for tuition assistance program awards.

Tuition

(i) Students, New York State residents: \$2,485 per semester or \$1,657 per quarter.

(ii) Students, out-of-state residents: \$6,435 per semester or \$4,290 per quarter.

(iii) Special students, New York State residents: \$207 per semester credit hour or \$138 per quarter credit hour.

(iv) Special students, out-of-state residents: \$536 per semester credit hour or \$358 per quarter credit hour except that for non-matriculated students (as defined in section 145-2.4 of this Title), the president of a State-operated institution may establish a differing tuition rate(s), with the approval of the chancellor or designee, in accordance with guidelines to be issued by the chancellor, provided that such tuition rate(s) does not exceed the rate specified in this paragraph and is not lower than 15 percent above the rate in subparagraph (iii) of this paragraph. Tuition and fees charged to such non-matriculated students shall be set to cover total direct instructional costs for such students.

(c)(1) Students enrolled in graduate programs leading to a master's, doctor's or equivalent degree with the exception of those degrees set forth in paragraph (2) of this subdivision.

Tuition

(i) Students, New York State residents: \$4,185 per semester or \$2,790 per quarter.

(ii) Students, out-of-state residents: \$6,625 per semester or \$4,417 per quarter.

(iii) Special students, New York State residents: \$349 per semester credit hour or \$233 per quarter credit hour.

(iv) Special students, out-of-state residents: \$552 per semester credit hour or \$368 per quarter credit hour.

(2) Students enrolled in graduate programs leading to a master of business administration degree (M.B.A.).

Tuition

(i) Students, New York State residents: \$4,305 per semester or \$2,870 per quarter.

(ii) Students, out-of-state residents: \$6,880 per semester or \$4,587 per quarter.

(iii) Special students, New York State residents: \$359 per semester credit hour or \$239 per quarter credit hour.

(iv) Special students, out-of-state residents: \$573 per semester credit hour or \$382 per quarter credit hour.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

\* \* \* \*

(d) Students enrolled in the professional program of pharmacy.

Tuition

(1) Students, New York State residents: \$8,310 per semester or \$5,540 per quarter.

(2) Students, out-of-state residents: \$14,375 per semester or \$9,583 per quarter.

(3) Special students, New York State residents: \$693 per semester credit hour or \$462 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: \$1,198 per semester credit hour or \$799 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

\* \* \* \*

(e) Students enrolled in the professional program of law (J.D. and LL.M).

Tuition

(1) Students, New York State residents: \$8,005 per semester or \$5,337 per quarter.

(2) Students, out-of-state residents: \$12,130 per semester or \$8,087 per quarter.

(3) Special students, New York State residents: \$667 per semester credit hour or \$445 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: \$1,011 per semester credit hour or \$674 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

\* \* \* \*

(f) Students enrolled in medicine programs.

Tuition

(1) Students, New York State residents: \$11,400 per semester or \$7,600 per quarter.

(2) Students, out-of-state residents: \$20,320 per semester or \$13,547 per quarter.

(3) Special students, New York State residents: \$950 per semester credit hour or \$633 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: \$1,693 per semester credit hour or \$1,129 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

\* \* \* \*

(g) Students enrolled in dentistry programs.

Tuition

(1) Students, New York State residents: \$9,825 per semester or \$6,550 per quarter.

(2) Students, out-of-state residents: \$19,710 per semester or \$13,140 per quarter.

(3) Special students, New York State residents: \$819 per semester credit hour or \$546 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: \$1,643 per semester credit hour or \$1,095 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(h) Students enrolled in the professional program of physical therapy and students enrolled in the doctor of nursing practice degree program.

Tuition

(1) Students, New York State residents: \$6,925 per semester or \$4,617 per quarter.

(2) Students, out-of-state residents: \$11,095 per semester or \$7,397 per quarter.

(3) Special students, New York State residents: \$577 per semester credit hour or \$385 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: \$925 per semester credit hour or \$616 per quarter credit hour or equivalent.

Credit Hour Equivalent

The Chancellor shall determine the equivalent of a credit hour.

(i) Students enrolled in optometry programs.

Tuition

(1) Students, New York State residents: \$8,260 per semester or \$5,507 per quarter.

(2) Students, out-of-state residents: \$15,860 per semester or \$10,573 per quarter.

(3) Special students, New York State residents: \$688 per semester credit hour or \$459 per quarter credit hour or equivalent.

(4) Special students, out-of-state residents: \$1,322 per semester credit hour or \$881 per quarter credit hour or equivalent.

The Chancellor shall determine the equivalent of a credit hour.]

*Tuition charges as listed in the following table for categories of students, terms and programs, and as modified, amplified or explained in footnotes 1 and 2 are effective with the 2010 Fall term and thereafter.*

	Charge per Semester		Charge per Semester credit hour <sup>1</sup>	
	New York State residents	Out-of-State residents	New York State residents	Out-of-State residents
I. Students enrolled in degree-granting undergraduate programs leading to an associate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for Tuition Assistance Program Awards	\$2,485	\$6,690 <sup>2</sup> \$4,550 <sup>2</sup>	\$207 \$175 <sup>3</sup>	\$558 \$379 <sup>2</sup> \$175 <sup>3</sup>
II. Students enrolled in degree-granting undergraduate programs leading to a baccalaureate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for Tuition Assistance Program Awards	\$2,485	\$6,690	\$207	\$558
III. Students enrolled in graduate programs (other than Masters of Business Administration) leading to a Master's, Doctor's or equivalent degree	\$4,185	\$6,890	\$349	\$574
IV. Students enrolled in a graduate program leading to a Masters of Business Administration (MBA)	\$4,690	\$7,570	\$391	\$631
V. Students enrolled in the professional program of pharmacy	\$9,060	\$17,250	\$755	\$1,438
VI. Students enrolled in the professional program of law	\$8,725	\$14,555	\$727	\$1,213
VII. Students enrolled in the professional program of medicine	\$12,425	\$24,385	\$1,035	\$2,032

VIII. Students enrolled in the professional program of dentistry	\$10,710	\$23,650	\$893	\$1,971
IX. Students enrolled in the professional program of physical therapy and doctor of nursing practice	\$7,550	\$13,315	\$629	\$1,110
X. Students enrolled in the professional program of optometry	\$8,690	\$16,685	\$724	\$1,390

<sup>1</sup> The Chancellor shall determine the equivalent of a credit hour.

<sup>2</sup> In accordance with chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge this lower rate for out-of-state students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree.

<sup>3</sup> In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge this lower rate for special students (part-time) enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs, and taking classes at off-campus locations or during the summer or winter intercessions. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree.

([j]c) Intercollegiate athletics fee. The chancellor, or designee, is authorized to approve the request of the chief administrative officer at a State-operated campus to establish a campus intercollegiate athletics fee and, thereafter, any increases to such fee. When approved, the fee shall be mandatory for all undergraduate students, and, if so provided for in the request, for all graduate students enrolled at that campus. A pro rata portion shall be paid by part-time students. The fee proceeds shall be deposited in an appropriate State University account, or may be paid to authorized campus foundation or auxiliary service corporation accounts for the purpose of operating the respective campus's division 1 intercollegiate athletics program or operating its intercollegiate athletics program during the transition period leading to division 1, in accordance with a contract subject to the approval of the Office of the State Comptroller, and shall be administered in accordance with State University policy. Any request to establish a campus intercollegiate athletics fee shall demonstrate campus support pursuant to a written consultative process prepared by the chief administrative officer which shall include a student referendum. The chief administrative officer shall assure equitable athletic opportunities are available in the campus intercollegiate athletics program to all qualified individuals.

([k]d) Health services fee. The chief administrative officer at each State-operated campus which operates student health services shall establish a health services fee with the approval of the Chancellor, or designee. The fee shall be established following approval by the Chancellor, or designee, of a three-year plan for funding student health services at each campus to be determined by campus location, enrollment and the level of health services required. When approved, the fee shall be assessed upon all students enrolled in undergraduate and graduate programs at the campus. A pro rata portion shall be paid by part-time students. In each plan the chief administrative officer shall identify categories of students who may be exempted from the fee if their courses of study do not permit access to the student health services available on campus. Any increases to the fee shall be approved by the Chancellor or designee.

([l]e) Notwithstanding anything contained in this section to the contrary, members of the Armed Forces of the United States on full-time active duty and stationed in New York State and their spouses and dependents, whether or not residents of New York State as defined in paragraph (a)(6)(5) of this section, shall be charged tuition at the applicable resident student rate as set forth in this section.

([m]f) Time and method of payment; additional guidelines. The Chancellor, or designee, shall issue regulations concerning the time and method of payment of all fees included in this section, and shall issue such other guidelines as shall be necessary to implement the definitions, regulations and schedule of rates adopted herewith. Such regulations and guidelines shall provide that, except where otherwise authorized, no person shall receive credit or other official recognition for work completed satisfactorily, or be allowed to reregister, until all tuition, fees and all

other charges authorized by State University have been paid, or university student loan obligations have been satisfied.

**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. SUN-39-10-00012-P, Issue of September 29, 2010. The emergency rule will expire January 15, 2011.

**Text of rule and any required statements and analyses may be obtained from:** Lisa S. Campo, State University of New York, State University Plaza, 353 Broadway, Albany, New York 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

#### **Regulatory Impact Statement**

1. **Statutory Authority:** Education Law, Sections 355(2)(b) and 355(2)(h). Section 355(2)(b) authorizes the State University Trustees to make and amend rules and regulations for the governance of the State University and institutions therein. Section 355(2)(h) authorizes the State University Trustees to regulate the admission of students, tuition charges and other fees and charges, curricula and all other matters pertaining to the operation and administration of each State-operated institution of the University.

2. **Legislative Objectives:** The present measure will provide essential financial support for the operations of the State University of New York, in furtherance of its statutorily defined mission as set forth in Article 8 of the Education Law.

3. **Needs and Benefits:** The present measure establishes a series of tuition increases in the degree programs of the State University of New York as necessitated by budget cuts that have been imposed on the University as a result of the dire economic conditions in this State.

The tuition changes authorized by this measure affect out-of-state students in associate, baccalaureate and graduate programs, including the Master of Business Administration, and both resident and out-of-state students in the professional schools within the State University of New York including the Schools of Law and Pharmacy at the State University of New York at Buffalo, the four medical schools of the State University, the Schools of Dental Medicine, the Professional Programs in Physical Therapy and Nursing Practice at State University of New York at Buffalo and Stony Brook, and the College of Optometry.

This measure is needed in order to provide essential financial support for the State-operated campuses of the State University of New York. The present amendment will increase tuition for out-of-state residents enrolled in associate's degree programs to \$9,100 per year; for out-of-state resident baccalaureate degree students to \$13,380 per year; and for out-of-state resident master's and doctoral degree students to \$13,780. For out-of-state resident students enrolled in Master of Business Administration degree programs, a tuition rate of \$14,310 per year is established.

Tuition increases at the professional schools within the State University of New York are also affected by this amendment. Tuition for New York State residents at the School of Law will increase to \$17,450 per year (\$29,110 out-of-state residents), and at the Pharmacy School to \$18,120 per year (\$34,500 out-of-state residents).

The measure also increases tuition by \$2,050 per year to \$24,850 for New York State residents and by \$8,130 to \$48,770 for out-of-state residents enrolled in the four medical schools of the State University of New York.

The amendment also increases tuition for students in the professional dental program (D.D.S.) at the Universities at Buffalo and Stony Brook. Under this measure, tuition will increase \$1,770 per year to \$21,420 for New York State residents and \$7,880 per year to \$47,300 for out-of-state residents. Tuition for students enrolled in the Professional Program of Optometry at the College of Optometry is increased by \$860 to \$17,380 for residents and by \$1,650 to \$33,370 for out-of-state residents.

Finally, the amendment increases tuition for students pursuing the terminal Professional Degree in Physical Therapy and the Doctorate in Nursing Practice. The new annual rate is \$15,100 for New York State residents and \$26,630 for out-of-state residents.

4. **Costs:** Students enrolled in these programs of the State University of New York will be required to pay additional tuition ranging from \$350 per year for out-of-state resident associate degrees to \$8,130 for out-of-state resident students at the Schools of Medicine. In setting the new tuition schedule, the State University has examined its appropriation levels, the prevailing tuition rates charged by other public universities and the status of various State and Federal student financial aid programs.

5. **Local Government Mandates:** There are no local government mandates. The amendment does not affect students enrolled in the community colleges operating under the program of the State University of New York.

6. **Paperwork:** No parties will experience any new reporting responsibilities. State University of New York publications and documents containing notices regarding costs of attendance will need to be revised to reflect these changes.

7. **Duplication:** None.

8. **Alternatives:** Delays in tuition increases as well as higher increases were considered, however, there is no acceptable alternative to the proposed increases. The revenue from these tuition increases is necessary in order for the University to maintain quality of instruction and essential services to students, especially for the high cost professional programs.

9. **Federal Standards:** None.

10. **Compliance Schedule:** Compliance with the amendment will go into effect for the Fall 2010 semester. Bills reflecting the increases will be sent out to registered students by the campuses and payment of these bills is due in accordance with State University policy.

#### **Regulatory Flexibility Analysis**

No regulatory flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

#### **Rural Area Flexibility Analysis**

No rural area flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on rural areas. The rule will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping, professional services or other compliance requirements on rural areas.

#### **Job Impact Statement**

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs tuition charges for State University of New York and will not have any adverse impact on the number of jobs or employment.

## **EMERGENCY RULE MAKING**

### **State University of New York Tuition and Fees Schedule**

**I.D. No.** SUN-39-10-00022-E

**Filing No.** 1182

**Filing Date:** 2010-11-17

**Effective Date:** 2010-11-17

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

**Action taken:** Amendment of section 302.5 of Title 8 NYCRR.

**Statutory authority:** Education Law, section 355(2)(b) and (h)

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

**Specific reasons underlying the finding of necessity:** Amendment of these regulations needs to proceed on an emergency basis because tuition increases are intended to be effective for the Fall 2010 semester, and billing for these new rates has already occurred.

**Subject:** State University of New York Tuition and Fees Schedule.

**Purpose:** To amend the Tuition and Fees Schedule and establish a special tuition rate for certain nonresident students at Maritime College.

**Text of emergency rule:** Amendments to section 302.5 of Title 8 NYCRR.

Tuition charge for nonresident students at Maritime College.

(a) The chancellor hereby is authorized to execute in the name and under the seal of the State University on behalf of the Maritime College thereof, an agreement with the United States of America, acting through the Maritime Administration of the Department of Transportation, under the Maritime Academy Act of 1958 (Public Law 85-672) and applicable regulations, for annual payments in support of the Maritime College, including agreement to admit students resident in other states, and for subsidy payments with respect to students attending the Maritime College and further including agreements with other states to participate in a regional maritime academy whereby students from participating states are charged [the tuition rate for State residents] *a special tuition rate of 150% of the tuition [rate] for State residents; provided, however, that students from participating states who have matriculated during or prior to the State University's 2009-10 fiscal year shall be charged a special tuition rate of 125% of the tuition rate for State students*, in accordance with Federal requirements.

(b) The increased annual payment in support of the Maritime College upon condition of admitting students residents in other states shall be received in discharge of such amount of the established nonresident tuition charge rate as shall reduce it to the *special rate described in*

paragraph (a) above [rate charged State residents] in the case of such students admitted under Federal requirements.

**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. SUN-39-10-00022-P, Issue of September 29, 2010. The emergency rule will expire January 15, 2011.

**Text of rule and any required statements and analyses may be obtained from:** Lisa S. Campo, State University of New York, State University Plaza, 353 Broadway, Albany, New York 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

**Regulatory Impact Statement**

1. Statutory Authority: Education Law, Sections 355(2)(b) and 355(2)(h). Section 355(2)(b) authorizes the State University Trustees to make and amend rules and regulations for the governance of the State University and institutions therein. Section 355(2)(h) authorizes the State University Trustees to regulate the admission of students, tuition charges and other fees and charges, curricula and all other matters pertaining to the operation and administration of each State-operated institution of the University. Education Law, Section 352 (3), includes the Maritime College as part of the State University. Since 1997, Maritime College has been recognized by the federal government as a Regional Maritime Academy. See 46 USC, Chapter 515, et seq.

2. Legislative Objectives: The present measure will provide essential financial support for the operations of the State University of New York, in furtherance of its statutorily defined mission as set forth in Article 8 of the Education Law.

3. Needs and Benefits: The present measure will allow Maritime College flexibility in setting tuition rates for nonresident students from States in its region. SUNY Maritime’s region is comprised of thirteen states and the District of Columbia. The proposal will allow the president of the College, with the approval of the Chancellor, to adjust the tuition rate for “in-region” students to a rate that is greater than the in-state tuition rate and less than the out-of-state tuition rate for the Fall 2010 semester and later.

The amendment to the regional tuition rate will impact an estimated 270 returning students, who will be charged 125% of SUNY’s current in-State tuition and 90 new students who will be charged 150% of the current tuition rate.

The increase in tuition is needed to help cover reductions in both State funding and the federal stipend from the U.S. Maritime Administration (MARAD). Funding for State-operated colleges has been reduced by \$170 million for 2010-2011. State support for SUNY Maritime College was \$11,529,600 in 2008-09; and \$10,702,400 in 2009-10 (a reduction of \$827,200). In return for agreeing to be a regional maritime college, the College receives a stipend or Direct Payment from MARAD. The amount of the stipend has varied in recent years from \$200,000 to \$400,000. The amount in the proposed federal budget for Fiscal Year 2011 is \$333,333, a reduction of \$66,667 from the previous year. Despite the Direct Payments, the “lost” tuition opportunity, based upon the 359 regional students currently enrolled, is \$2,506,111.

4. Costs: The “in-region” tuition rate will be adjusted to a rate that is greater than the in-state tuition rate and less than the out-of-state tuition rate. The in-region rate for current students will be 125 percent of the in-state rate (\$6,210). The in-region rate for students enrolling Fall 2010 or later will be 150 percent of the in-state rate (\$7,460). The new rates will be effective for the Fall 2010 semester and thereafter. Despite the increase, the students continue to benefit from tuition rates that are lower than tuition for most other maritime colleges as well as other state university schools within the maritime region and other peer level engineering schools.

The tuition at other Maritime Colleges is as follows:

Maritime College	In-State Tuition	In-Region Tuition	Out-of-State Tuition
Massachusetts	\$1,342.00 <small>(plus \$5,267 in other mandatory fees)</small>	\$2,348.00	\$14,992.00
California	\$4,026.00	N/A	\$15,186.00
<b>New York</b>	<b>\$4,970.00</b>	<b>\$6,210.00</b> <small>(current students)</small> <b>\$7,460.00</b> <small>(students enrolling Fall 2010 or later)</small>	<b>\$12,870.00</b>
Texas	\$5,248.20	N/A	\$13,558.20
Maine	\$8,280.00	\$12,420.00	\$17,000.00
Great Lakes	\$8,290.00	N/A	\$8,649.00

\$8,736.00 \$9,116.00

The in-state / out-of-state tuition at other Engineering Colleges varies as follows:

College	In-State Tuition	In-Region Tuition	Out-of-State Tuition
CCNY	\$4,600	N/A	\$9,960
<b>SUNY Maritime</b>	<b>\$4,970</b>	<b>\$6,210</b> (current students) <b>\$7,460</b> (students enrolling Fall 2010 or later)	<b>\$12,870</b>
Purdue	\$8,638	N/A	\$25,118
Rutgers	\$9,546	N/A	\$20,178
Penn State	\$14,416	N/A	\$25,946

The in-state/out-of-state tuition rates for State University Systems that are included within Maritime’s region are shown below:

State University System	In-State Tuition	Out-of-State Tuition
Louisiana	\$1,996	\$6,282
North Carolina	\$2,813	\$11,757
Connecticut	\$3,789	\$8,635
Florida	\$4,340	\$11,700
<b>SUNY Maritime</b>	<b>\$4,970</b>	<b>\$12,870</b>
District of Columbia	\$5,370	\$12,300
Mississippi	\$5,700	\$16,518
Alabama	\$6,468	\$12,084
Maryland	\$7,056	\$15,072
Delaware	\$8,540	\$22,240
South Carolina	\$9,517	\$19,007
Rhode Island	\$9,528	\$26,026
New Jersey	\$9,546	\$20,456
Virginia	\$9,870	\$31,870
Pennsylvania	\$12,708	\$18,674

5. Local Government Mandates: There are no local government mandates. The amendment does not affect students enrolled in the community colleges operating under the program of the State University of New York.

6. Paperwork: No parties will experience any new reporting responsibilities. State University of New York publications and documents containing notices regarding costs of attendance will need to be revised to reflect these changes.

7. Duplication: None.

8. Alternatives: The alternative of reducing resources available to the campus by the amount that would accrue by an increase in tuition rates was considered. However, given the reductions in State support imposed on the campus by deficit reduction actions an increase in the tuition rate for “in-region” students is the better alternative. A “town meeting” regarding proposed increases in tuition and fees was held at the College. Members of the Student Government Association, undergraduate and graduate students, and members of the regiment and regular students were present and voiced support for the increases. The new tuition rate for 2010-2011 is on the College’s website.

9. Federal Standards: SUNY Maritime is a regional maritime academy pursuant to 46 USCA Chapter 515, section 51503 (Pub. L 109-304, section 8(b)). This federal law does not require states with regional academies to set any specific tuition levels for in-region students. The requisite agreement between New York State and the participating states in the Maritime region required the designation in writing of the state which was to conduct the affairs of the regional academy and an agreement to admit students from other states to the extent of at least ten percent (10%). The tuition charged to region member states was not specified in the federal law or regulations. This proposal conforms to the federal standards and interstate agreement.

10. Compliance Schedule: Compliance with the amendment will go into effect for the Fall 2010 semester. Bills reflecting the increases will be sent out to affected students by the campus and payment of these bills will be due in accordance with State University policy.

**Regulatory Flexibility Analysis**

No regulatory flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

**Rural Area Flexibility Analysis**

No rural area flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on rural areas. The rule will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping, professional services or other compliance requirements on rural areas.

**Job Impact Statement**

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs tuition charges for State University of New York and will not have any adverse impact on the number of jobs or employment.

**NOTICE OF ADOPTION**

**State University of New York Tuition and Fees Schedule**

**I.D. No.** SUN-39-10-00012-A

**Filing No.** 1184

**Filing Date:** 2010-11-17

**Effective Date:** 2010-12-08

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

**Action taken:** Amendment of section 302.1 of Title 8 NYCRR.

**Statutory authority:** Education Law, section 355(2)(b) and (h)

**Subject:** State University of New York Tuition and Fees Schedule.

**Purpose:** To amend the Tuition and Fee Schedule to increase tuition for students in all programs in the State University of New York.

**Text or summary was published** in the September 29, 2010 issue of the Register, I.D. No. SUN-39-10-00012-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Lisa S. Campo, Senior Paralegal, State University of New York, Office of the University Counsel, University Plaza, Albany, New York 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**State University of New York Tuition and Fees Schedule**

**I.D. No.** SUN-39-10-00022-A

**Filing No.** 1185

**Filing Date:** 2010-11-17

**Effective Date:** 2010-12-08

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

**Action taken:** Amendment of section 302.5 of Title 8 NYCRR.

**Statutory authority:** Education Law, section 355(2)(b) and (h)

**Subject:** State University of New York Tuition and Fees Schedule.

**Purpose:** To amend the Tuition and Fees Schedule and establish a special tuition rate for certain nonresident students at Maritime College.

**Text or summary was published** in the September 29, 2010 issue of the Register, I.D. No. SUN-39-10-00022-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Lisa S. Campo, Senior Paralegal, State University of New York, Office of the University Counsel, University Plaza, Albany, New York 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

**Assessment of Public Comment**

The agency received no public comment.

**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-35-10-00004-A

**Filing No.** 1187

**Filing Date:** 2010-11-18

**Effective Date:** 2010-11-18

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 October 1, 2010 through December 31, 2010.

**Text or summary was published** in the September 1, 2010 issue of the Register, I.D. No. TAF-35-10-00004-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 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

**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**

**City of New York Withholding Tables and Other Methods Applicable January 1, 2011**

**I.D. No.** TAF-39-10-00002-A

**Filing No.** 1186

**Filing Date:** 2010-11-18

**Effective Date:** 2010-12-08

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

**Action taken:** Amendment of section 291.1(b) and Appendix 10-C of Title 10 NYCRR.

**Statutory authority:** Tax Law, sections 171, subdivision First; 671(a)(1); 697(a); 1309 (not subdivided); and 1312(a); Administrative Code of the City of New York, sections 11-1771(a); 11-1797(a); L. 2010, ch. 57, part EE, section 4

**Subject:** City of New York withholding tables and other methods applicable January 1, 2011.

**Purpose:** To provide current City of New York withholding tables and other methods.

**Text or summary was published** in the September 29, 2010 issue of the Register, I.D. No. TAF-39-10-00002-P.

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

**Text of rule and any required statements and analyses may be obtained from:** 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

**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-49-10-00001-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 January 1, 2011 through March 31, 2011.

**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 (lx) to read as follows:

Motor Fuel			Diesel Motor Fuel			
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate	
(lx) October-December 2010	15.6	23.6	39.9	16.0	24.0	38.55
(lxi) January - March 2011	15.9	23.9	40.9	16.0	24.0	39.25

**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: ax\_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**

**Cigarette and Tobacco Products Taxes**

**I.D. No.** TAF-49-10-00002-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 sections 70.2, 78.4, 89.1 and 89.2 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, subdivision First and 475 (not subdivided)

**Subject:** Cigarette and tobacco products taxes.

**Purpose:** To reference current statute for definitions and penalties and eliminate obsolete provisions.

**Text of proposed rule:** Section 1. Subdivision (a) of section 70.2 is amended to read as follows:

(a) "Cigarette" [means any roll for smoking made wholly or in part of tobacco or of any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any substance or material other than tobacco] *shall have the same meaning as is found in section 470(1) of the Tax Law.*

Section 2. The title of section 78.4 and subdivision (a) of section 78.4 are amended to read as follows:

Section 78.4 [Possession or control of] *Penalties relating to*

unstamped or unlawfully stamped packages of cigarettes *and unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions.* (Tax Law, section 481(1)(b))

(a) In addition to any other penalty imposed by the Tax Law, any person who has in its possession or control, unstamped or unlawfully stamped packages of cigarettes *or unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions* is subject to a penalty [of not more than \$150 for each 200 such cigarettes or fraction thereof in excess of 1,000 cigarettes. The Department of Taxation and Finance may, in its discretion, remit all or any part of the penalty imposed] *as provided for in Tax Law section 481(1)(b).*

Section 3. Subdivision (b) of section 78.4 is REPEALED, and subdivision (c) of such section is relettered subdivision (b).

Section 4. Section 89.1 is amended to read as follows:

Section 89.1 General. (Tax Law, sections 471-b, 471-c)

Except as otherwise provided in this Subchapter or the Tax Law, all tobacco products:

(a) possessed in New York State by any person for sale; or

(b) used in New York State by any person;

are subject to the tobacco products tax imposed pursuant to article 20 of such law. [The tobacco products tax is imposed at the rate of 37 percent of the wholesale price of the tobacco product.]

Section 5. The introductory paragraph to section 89.2 and subdivision (a) of such section are amended to read as follows:

Any term defined in this Subchapter relating to the cigarette tax shall have the same meaning when used with respect to the tobacco products tax. [However, for such purpose] *For purposes of the tobacco products tax, the following terms shall have the meanings indicated [herein] below.*

(a) "Tobacco products" [means any cigar or roll for smoking, other than a cigarette, made in whole or in part of tobacco, and any tobacco other than cigarettes, intended for consumption by smoking, chewing or as snuff] *shall have the same meaning as is found in section 470(2) of the Tax Law.*

**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: ax\_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.

**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 rule review of the 2004 amendments to Parts 70, 72, 73, 74, 78, 82 and 85 of the Cigarette Tax regulations and the Cigarette Marketing Standards regulations, as published in Subchapter I of Chapter I of Title 20 NYCRR. The 2004 amendments required a licensed wholesale dealer of cigarettes that also sells cigarettes at retail to be registered as a retail dealer of cigarettes and display its certificate of registration as a retail dealer at each retail location. The amendments also reflected other statutory changes. The 2004 amendments were adopted by the Commissioner on January 22, 2004, and published in the State Register on February 11, 2004, (I.D. # TAF-45-03-00004-A).

As a result of its 2009 review, the department determined that one of the provisions addressed in the 2004 amendments was dated and could not be continued without modification. Section 481.1(b) of the Tax Law provided for penalties for unstamped or unlawfully stamped packages of cigarettes. Chapter 604 of the Laws of 2008 amended sec-

tion 481.1(b) to add penalties for unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions. Accordingly, section 78.4 of the rule is being updated to reflect the statutory changes.

It should be noted that section 73.2 of the Cigarette Tax Regulations was repealed based on statutory changes (see I.D. # TAF-27-09-00010-A) and the remainder of the amendments made in 2004 to this rule are current and are continued without modification.

#### **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 are not controversial in nature.

Part MM-1 of Chapter 57 of the Laws of 2008 amended the definitions of cigarette and tobacco products in Article 20 of the Tax Law. Part QQ-1 of Chapter 57 of the Laws of 2008 amended Article 20 to change the method of calculating the tobacco products tax on snuff. Chapter 604 of the Laws of 2008 amended Article 20 to add penalties for unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions. Part I-1 of Chapter 57 of the Laws of 2009, increased the rate of tax on tobacco products other than snuff. Part D of Chapter 134 of the Laws of 2010 amended Article 20 of the Tax Law to revise the definitions of cigarette and tobacco products, change the method of calculating the tobacco products tax on little cigars, and increase the rate of tax imposed on various tobacco products.

The purpose of this rule is to update the regulations to reference these statutory provisions and eliminate obsolete and unnecessary provisions.

#### **Job Impact Statement**

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no impact on jobs and employment opportunities.

Article 20 of the Tax Law was recently amended revising the definitions of cigarette and tobacco products; adding penalties for unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions; changing the method of calculating the tobacco products tax on snuff and little cigars; and increasing the rate of tax imposed on various tobacco products. The purpose of this rule is to update the regulations to reference these statutory provisions and eliminate obsolete and unnecessary provisions.

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

### **Discretionary Adjustments to the Method of Allocation**

**I.D. No.** TAF-49-10-00003-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 sections 4-6.1 and 19-8.4 of Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subd. First, 210(8), 1096(a) and 1454(a)(6)

**Subject:** Discretionary adjustments to the method of allocation.

**Purpose:** Update the administrative procedures concerning taxpayer requests for discretionary adjustments to the method of allocation.

**Text of proposed rule:** Section 1. Subdivision (c) of section 4-6.1 of such regulations is amended to read as follows:

(c) A taxpayer may not vary the statutory business allocation percentage or alternative business allocation percentage formulas described in sections [4-2.2 of this Part and 210(3-a)(a) of the Tax Law, respectively,] 210(3)(a) and 210(3-a)(a) of the Tax Law without the [prior] consent of the commissioner. A taxpayer making a request for an adjustment of its business allocation percentage or alternative business allocation percentage *that does not have such consent prior to the time it files its report* must file its report and compute its tax in accordance with the statutory formulas. A request to vary the statutory formula must be [attached to the report setting] *submitted separately from the report as prescribed by the Department and must set forth full information on which the request is based*, together with a computation of the amount of tax which would be due under the proposed method].

Section 2. Section 19-8.4 of such regulations is amended to read as follows:

Section 19-8.4 Power of the [Tax Commission] *Commissioner of Taxation and Finance* to adjust or change the method of allocation. (Tax Law, Section 1454(a)(6))

(a) When it appears that the entire net income allocation percentage, the alternative entire net income allocation percentage or the asset allocation percentage described in [this Part] *section 1454 of the Tax Law* does not properly reflect the activity, business, income or assets of the taxpayer in New York State, the [Tax Commission, in its] *commissioner, in his or her* discretion, may adjust the entire net income allocation percentage, the alternative entire net income allocation percentage or the asset allocation percentage by:

- 1) excluding one or more factors; or
- 2) including one or more factors.

(b) The [Tax Commission] *commissioner* is authorized, in [its] *his or her* discretion, to permit or require the allocation of entire net income, alternative entire net income or taxable assets by a different method of allocation when it appears to the [Tax Commission] *commissioner* that such method of allocation will effect a fair and proper allocation of the taxpayer's income or assets reasonably attributable to New York State.

(c) A taxpayer may not adjust the entire net income allocation percentage, the alternative entire net income allocation percentage or the asset allocation percentage described in [this Part] *section 1454 of the Tax Law*, or use a different method of allocating its entire net income, alternative entire net income or taxable assets within and without New York State, without the [written] consent of the [Tax Commission] *commissioner*. A request to adjust the entire net income allocation percentage, the alternative entire net income allocation percentage or the asset allocation percentage, or to use a different method of allocation, must be [sent to:

State Tax Commission  
Central Office Audit Bureau  
Corporation Tax Section  
Building 9  
W. Averell Harriman State Office Campus  
Albany, New York 12227

The request] *submitted separately from the report as prescribed by the Department* and must set forth complete information on which the request is made[, together with a computation of the amount of tax which would be due under the proposed method]. A taxpayer making a request for an adjustment of any of its allocation percentages, or to use a different method of allocation, *that does not have such consent prior to the time it files its report*, must compute and pay its tax in accordance with the entire net income allocation percentage, the alternative entire net income allocation percentage and the asset allocation percentage described in [this Part] *section 1454 of the Tax Law*, and it must file its return in accordance with the instructions shown on the return.

(d) If a taxpayer has been permitted or required to adjust the entire net income allocation percentage, alternative entire net income allocation percentage or asset allocation percentage described in [this Part] *section 1454 of the Tax Law*, or to use a different method of allocating its entire net income, alternative entire net income or taxable assets within and without New York State, the taxpayer must continue to use such permitted or required method in subsequent taxable years. If the facts materially change, the taxpayer must notify the [Tax Commission] *commissioner* of such change. If such permitted or required method no longer properly reflects the activity, business, income or assets of the taxpayer, the taxpayer must request permission, or the [tax Commission] *commissioner* may require the taxpayer, to change such permitted or required method.

(e) See section [18-1.3 of this Title] *1462(g) of the Tax Law* concerning other powers of the [Tax Commission] *commissioner* to adjust entire net income, alternative entire net income and taxable assets.

**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](mailto: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 rule as written because it merely updates the administrative procedures concerning taxpayer requests for discretionary adjustments to the method of allocation for purposes of the Business Corporation Franchise Tax and the Franchise Tax on Banking Corporations.

The existing regulations direct taxpayers to make a request with the filing of their report and compute the tax due under the statutory formulas.

The Department has not viewed this as an exclusive method of making the request and, in fact, submitting the request with the report is problematic as the request would not be submitted directly to the Department personnel responsible for evaluating the request. The amendments provide that a taxpayer request be made separate and apart from the filing of the report as prescribed by the Department and eliminate the requirement that taxpayers must in every instance submit the computation of tax under the proposed method. The Department will issue further guidance to advise taxpayers where to submit their requests. Additionally, a taxpayer that receives the commissioner's consent prior to the filing of its report would be able to file using the approved methodology. Some technical and clarifying changes have also been made.

**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 rule simply updates the administrative procedures concerning taxpayer requests for discretionary adjustments to the method of allocation.

**Job Impact Statement**

The proposed amendments are technical in nature to eliminate confusion and conflict with the recent amendment to Section 348.2. The changes eliminate reference to the effective date of the previous Chiropractic Fee Schedule and conforms the section so it is the same as the sections regarding the effective date for the other fee schedule. Specifically, the Chair has adopted a new Chiropractic Fee schedule to be effective for services rendered on and after December 1, 2010. However, Section 348.1 refers to a fee schedule in effect on October 1, 1997. In order to eliminate confusion and any conflicts between Sections 348.1 and 348.2, Section 348.1 has to be amended to eliminate October 1, 1997. This change will not have any impact on jobs, so it will not have an adverse impact.

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## Workers' Compensation Board

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

**Chiropractic Fee Schedule**

**I.D. No.** WCB-49-10-00018-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 348.1 of Title 12 NYCRR.

**Statutory authority:** Workers' Compensation Law, sections 13(a), 13-1 and 117(a)

**Subject:** Chiropractic Fee Schedule.

**Purpose:** To conform section 348.1 to the amendment of section 348.2 for the adoption of a new Chiropractic Fee Schedule effective December 1, 2010.

**Text of proposed rule:** [This chiropractic fee schedule is applicable to chiropractic services rendered on or after October 1, 1997, regardless of the date of accident.] The fee schedule applicable to chiropractic services [rendered on a date prior to October 1, 1997] shall be the chiropractic fee schedule in effect on the date on which the chiropractic services were rendered, regardless of the date of accident.

**Text of proposed rule and any required statements and analyses may be obtained from:** Cheryl M Wood, Esq., NYS Workers' Compensation Board, 20 Park Street, Room 400, Albany, New York 12207, (518) 408-0469, email: regulations@wcb.state.ny.us

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

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

**Consensus Rule Making Determination**

The NYS Workers' Compensation Board is proposing to amend Section 348.1 of the Title 12 NYCRR to eliminate the reference to an October 1, 1997, effective date for the chiropractic fee schedule, as a new fee schedule was adopted in a regulation effective for services provided on and after December 1, 2010. In a proposed rule making published on September 22, 2010, the Chair amended Section 348.2 to adopt a new Official New York Workers' Compensation Chiropractic Fee Schedule, updated December 1, 2010. The Notice of Adoption was published in the November 24, 2010, *State Register* and the new Chiropractic Fee Schedule will be effective for services rendered on and after December 1, 2010. However, Section 348.1 was inadvertently not amended to remove the reference to an October 1, 1997, effective date. In fact, Section 348.1 should have been amended so there was no need to reference any date, the same as similar sections for the other fee schedules had already been amended in 2008. It is not likely that anyone will object to the rule as written, as it eliminates confusion over the effective date of the new Chiropractic Fee Schedule and eliminates the conflict between Sections 348.1 and 348.2. Further, it is not legal for a fee schedule adopted in a rule that is not effective until December 1, 2010, to be effective for services rendered before that date. Therefore, there are no legal grounds for an objection to this rule.