

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; or C for first Continuation.)

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

Department of Agriculture and Markets

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Asian Long Horned Beetle Quarantine

I.D. No. AAM-31-03-00004-P

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

Proposed action: Amendment of sections 139.2(a) and 139.3(b)(1) of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

Subject: Asian long horned beetle quarantine.

Purpose: To add four species (*Celtis*, *Fraxinus*, *Platanus* and *Sorbus*) to the list of regulated host materials subject to regulation under the quarantine and delete eight species (*Hibicus Syriacus* L., *Malus*, *Milia*, *Morus*, *Prunus*, *Pyrus*, *Robinia* and citrus) from that list.

Public hearing(s) will be held at: 11:00 a.m., Sept. 25, 2003 at Department of Agriculture and Markets, One Winners Circle, Capital Plaza, Colonie, NY

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

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

Text of proposed rule: Subdivision (a) of Section 139.2 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(a) That area in the boroughs of Manhattan, Brooklyn and Queens in the City of New York and bounded by a line beginning at a point where the Brooklyn Battery Tunnel intersects the Manhattan shoreline of the East River, then west and north along the shoreline of the Hudson River to its intersection with Martin Luther King Jr. Boulevard, then east along Martin Luther King Jr. Boulevard and across the Triborough Bridge to its intersection with the west shoreline of Randall's and Ward's Island, then east and south along the shoreline of Randall's and Ward's Island to its intersection with the Triborough Bridge, then east along the Triborough Bridge to its intersection with the Queens shoreline, then north and east along the Queens shoreline to its intersection with the City of New York and Nassau County line, then southeast along the City of New York and Nassau County line to its intersection with the Grand Central Parkway, then west along the Grand Central Parkway to its intersection with the Jackie Robinson Parkway, then west along the Jackie Robinson Parkway to its intersection with [Woodhaven Boulevard, then south along Woodhaven Boulevard to its intersection with Atlantic Avenue, then west along Atlantic Avenue to its intersection with the Eastern Parkway Extension, then south, and west along the Eastern Parkway Extension and Eastern Parkway to its intersection with Grand Army Plaza, then west along the south side of Grand Army Plaza to its intersection with Union Street then west along Union Street to its intersection with Van Brunt Street, then south along Van Brunt Street to its intersection with Hamilton Avenue and the] *Park Lane, then south along Park Lane to its intersection with Park Lane South, then south and west along Park Lane South to its intersection with 112th Street, then south along 112th Street to its intersection with Atlantic Avenue, then west along Atlantic Avenue to its intersection with 106th Street, then south along 106th Street to its intersection with Liberty Avenue, then west along Liberty Avenue to its intersection with Euclid Avenue then south along Euclid Avenue to its intersection with Linden Boulevard, then west along Linden Boulevard to its intersection with Caton Avenue, then west on Caton Avenue to its intersection with Prospect Expressway, then north and west along Prospect Expressway to its intersection with the Gowanus Expressway, then north and west along the Gowanus Expressway to its intersection with the Brooklyn Battery Tunnel, then north along Hamilton Avenue and the Brooklyn Battery Tunnel to its intersection with the East River, then north along the Brooklyn Battery Tunnel across the East River to the point of beginning.*

Paragraph 1 of subdivision (b) of section 139.3 of Title 1 of the Official Codes, Rules and Regulations of the State of New York is amended to read as follows:

(1) Firewood (all hardwood species) and all host material living, dead, cut or fallen, inclusive of nursery stock, logs, green lumber, stumps, roots, branches and debris of a half inch or more in diameter of the following genera: *Acer* (Maple); *Aesculus* (Horse Chestnut); *Albizia* (Silk Tree or Mimosa); *Betula* (Birch); [*Hibicus syriacus* L. (Rose of Sharon); *Malus* (Apple); *Melia* (Chinaberry); *Morus* (Mulberry);] *Populus* (Poplar); [*Prunus* (Cherry); *Pyrus* (Pear); *Robinia* (Locust);] *Salix* (Willow); *Ulmus* (Elm) [and citrus] ; *Celtis* (*Hackberry*); *Fraxinus* (*Ash*); *Platanus* (*Plane Tree, Sycamore*) and *Sorbus* (*Mountain Ash*) are regulated articles.

Text of proposed rule and any required statements and analyses may be obtained from: Robert Mungari, Director, Division of Plant Industry, Department of Agriculture and Markets, One Winners Circle, Albany, NY 12235, (518) 457-2087

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

1. Statutory authority:

Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of Article 14 of said Law. Said Section also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law as he may deem necessary.

2. Legislative objectives:

The proposed modification of the quarantine accords with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help to prevent the spread within the State of an injurious insect, the Asian Long Horned Beetle.

3. Needs and benefits:

The Asian Long Horned Beetle, *Anoplophora glabripennis*, an insect species non-indigenous to the United States was detected in the Greenpoint section of Brooklyn, New York in August of 1996. Subsequent survey activities delineated other locations in and about Amityville, Queens and Manhattan.

As a result, 1 NYCRR Part 139 was adopted, establishing a quarantine of the areas in which the Asian Long Horned Beetle had been observed. The boundaries of those areas are described in 1 NYCRR section 139.2. Subsequent observations of the beetle have resulted in a need to modify the boundaries of the quarantine areas in Brooklyn and Queens described in 1 NYCRR section 139.2. This rule contains the needed modifications. This rule also amends 1 NYCRR section 139.3(b)(1) to add *Celtis* (Hackberry), *Fraxinus* (Ash), *Platanus* (Plane tree, Sycamore) and *Sorbus* (Mountain Ash) to the list of regulated host materials subject to regulation under the quarantine. These materials have been found to be subject to infestation by the Asian Long Horned Beetle. Finally, this rule deletes *Habicus Syriacus* L. (Rose of Sharon), *Malus* (Apple), *Melia* (Chinaberry), *Morus* (Mulberry), *Prunus* (Cherry), *Pyrus* (Pear), *Robinia* (Locust) and *cirtus* from the list of regulated host materials subject to regulation under the quarantine. The United States Department of Agriculture (USDA) has tested and determined that these species are not a host to the Asian Long Horned Beetle.

4. Costs:

(a) Costs to the State government: none

(b) Costs to local government: none

(c) Costs to private regulated parties:

Nurseries exporting host material from the quarantined area, other than pursuant to compliance agreement, will require an inspection and the issuance of a federal or state phytosanitary certificate. This service is available at a rate of \$25 per hour. Most inspections will take one hour or less. It is anticipated that there will be 25 or fewer such inspections each year with a total annual cost of less than \$1000.

Most shipments will be made pursuant to compliance agreements for which there is no charge.

Tree removal services must chip host material or transport such material under a limited permit to a federal/state disposal site for processing.

Firewood from hardwood species within the quarantined area may not move outside that area due to the fact that it is not practical at this time to determine for certification purposes that the material is free from infestations.

The modification of the quarantine area in the borough of Brooklyn will affect one nursery located within the area.

The modification of the list of regulated host materials subject to infestation by the Asian Long Horned Beetle will affect fewer than 100 nurseries, arborists, tree removal services and firewood dealers located within all the quarantined areas.

(d) Costs to the regulatory agency:

(i) The initial expenses the agency will incur in order to implement and administer the regulation: None

(ii) It is anticipated that the Department will be able to administer the quarantine with existing staff.

5. Local government mandates: Yard waste, storm clean-up and normal tree maintenance activities involving twigs and/or branches of ½" or more in diameter of host species will require proper handling and disposal, *i.e.*, chipping and/or incineration if such materials are to leave the area under quarantine. An effort is underway to identify centralized disposal sites that would accept such waste from cities, villages and other municipalities at no additional cost.

6. Paperwork: Regulated articles inspected and certified to be free of Asian Long Horned Beetle moving from quarantined area must be accompanied by a state or federal phytosanitary certificate of a limited permit to be undertaken pursuant to a compliance agreement.

7. Duplication: None

8. Alternatives: The failure of the State to modify the proposed quarantine to reflect the areas in which the Asian Long Horned Beetle has been observed could result in exterior quarantines by foreign and domestic trading partners as well as a federal quarantine of the entire State. It could also place the State's own natural resources (forest, urban and agricultural) at risk from the spread of Asian Long Horned Beetle that could result from the unrestricted movement of regulated articles from the areas covered by the modified quarantine. In light of these factors there does not appear to be any viable alternative to the modification of quarantine proposed in this rulemaking.

9. Federal standards: The rule does not exceed any minimum standards for the same or similar subject areas.

10. Compliance schedule: It is anticipated that regulated persons will be able to comply with the rule immediately.

Regulatory Flexibility Analysis

1. Effect on small business:

The small businesses affected by the changes in the quarantined area are the nurseries, arborists, tree removal services and firewood dealers located within that modified quarantined area. It is estimated that there is one such business within that area. The local governments involved in that modification of the boundaries of the quarantine areas are the City of New York and the boroughs of Brooklyn and Queens.

The small businesses affected by the changes to the list of regulated host materials subject to infestation by the Asian Long Horned Beetle are the nurseries, arborists, tree removal services and firewood dealers located within all the quarantined areas. It is estimated that there are fewer than 100 such businesses within these quarantined areas. The local governments involved are the City of New York, and the boroughs of Brooklyn, Queens and Manhattan.

Although it is not anticipated that local governments will be involved in the shipment of regulated articles from the quarantine area, in the event that they do, they would be subject to the same quarantine requirements as other regulated parties.

2. Compliance requirements:

All regulated parties in the modified quarantined areas will be required to obtain certificates and limited permits in order to ship regulated articles from quarantined areas. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

3. Professional services:

In order to comply with the proposed rule small businesses and local governments shipping regulated articles from the modified quarantined areas will require professional inspection services, which will be provided by the Department and the USDA.

4. Compliance costs:

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the proposed rule: None

(b) Annual cost for continuing compliance with the proposed rule:

Nurseries exporting host material from the modified quarantined area, other than pursuant to a compliance agreement, will require an inspection and the issuance of a federal or state phytosanitary certificate. This service is available at a rate of \$25 per hour. Most such inspections will take one hour or less. It is anticipated that there will be 25 or fewer such inspections

each year, with a total cost of less than \$1,000. Most shipments will be made pursuant to compliance agreements for which there is no charge.

Tree removal services must chip host material or transport such material under a limited permit to a federal/state disposal site for processing.

Firewood from hardwood species within the quarantined area may not move outside that area due to the fact that it is not practical at this time to determine for certifications purposes that the material is free from infestation.

Local governments shipping regulated articles from the modified quarantined areas would incur similar costs.

5. Minimizing adverse impact:

The Department has designed the rule to minimize adverse economic impact on small businesses and local governments by limiting the modified quarantined areas to only those areas where the Asian Long Horned Beetle has been detected; by limiting the regulated articles to only those susceptible to infestation by the Asian Long Horned Beetle and to firewood and by limiting the inspection and permit requirements to only those necessary to detect the presence of Asian Long Horned Beetle and prevent its movement in host materials from the quarantined areas. As set forth in the regulatory impact statement, the rule provides for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These agreements, for which there is no charge, are another way in which the rule was designed to minimize adverse impact. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

6. Small business and local government participation:

The Department has contacted various representatives of nurseries, arborists, the forestry industry, and local government to discuss the quarantine. It has also had extensive consultation with the United States Department of Agriculture.

The Department is involved in a continuing outreach program involving all of the parties affected by the rule. The quarantine has been discussed with the members of the Department's Plant Industry Advisory Committee, which includes representatives of the various types of regulated parties affected by the rule. In addition, a press release was issued at the time the original quarantine was imposed announcing the steps the State is taking to address the problem presented by the Asian Long Horned Beetle. Department representatives also attended a public meeting in Brooklyn, New York at which these issues were discussed and input was received. This outreach program will continue.

7. Assessment of the economic and technological feasibility of compliance with the rule by small businesses and local governments: The economic and technological feasibility of compliance with the rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Regulated parties shipping host materials from the quarantined areas, other than pursuant to a compliance agreement will require an inspection and the issuance of a phytosanitary certificate. Most shipments, however, will be made pursuant to compliance agreements for which there is no charge.

Rural Area Flexibility Analysis

The rule will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This finding is based upon the fact that the modified quarantine area and the addition of species to the list of regulated host materials subject to regulation under the quarantine imposed by the rule, is limited to portions of the Boroughs of Manhattan, Brooklyn and Queens in the City of New York, areas which do not fall within the definition of "rural areas" set forth in section 481(7) of the Executive Law.

Job Impact Statement

The rule will not have a substantial adverse impact on jobs and employment opportunities. The modification of the quarantine area and the addition of species to the list of regulated host materials subject to regulation under the quarantine, are designed to prevent the spread of the Asian Long Horned Beetle to other parts of the State. A spread of the infestation would have very adverse economic consequences to the nursery, forestry, fruit and maple product industries of the State, both from the destruction of the regulated articles upon which these industries depend, and from the more restrictive quarantines that could be imposed by the federal government, other states and foreign countries. By helping to prevent the spread of the Asian Long Horned Beetle, the rule will help to prevent such adverse economic consequences and in so doing, protect the jobs and employment

opportunities associated with the State's nursery, forestry, fruit and maple product industries.

Forest related activities in New York State provide employment for approximately 122,400 people. Of that number, 73,740 jobs are attributable to forest-based recreation and approximately 48,670 jobs are associated with the wood-based forest economy, including manufacturing. The forest-based economy generates payrolls of more than \$1.789 billion with \$1.133 billion attributable to forest-based manufacturing and \$655.3 million for forest recreation. Forest-based economic activity accounts for 2% of New York's employment and 1% of the State's payroll. Wood energy also makes an important contribution to the State's economy. In 1985, wood energy accounted for 3,647 direct jobs and \$78.4 million in direct income.

The nursery industry employed 6,011 persons in New York State in 1985. Approximately \$40.1 million in wages were paid by the industry. As set forth in the regulatory impact statement, the cost of the rule to regulated parties is relatively small. The responses received during the Department's outreach to regulated parties indicate that the rule will not have a substantial adverse impact on jobs and employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Licensing of Farm Products Dealers

I.D. No. AAM-31-03-00003-P

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

Proposed action: This is a consensus rule making to amend section 380.1 of Title 1 NYCRR. This rule is proposed pursuant to SAPA § 207(3), Review of Existing Rules.

Statutory authority: Agriculture and Markets Law, section 18

Subject: Licensing of farm products dealers.

Purpose: To eliminate obsolete language which provides that license fees and agriculture producers security fund fees for renewal of licenses expiring on June 30, 1998 shall be pro-rated.

Text of proposed rule: Section 380.1 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

Application for a license to act as a dealer pursuant to article 20 of the Agriculture and Markets Law shall be submitted to the commissioner on or before April 1st in each year for the license year beginning May 1st following. [License fees and agricultural producers security fund fees for the renewal of licenses expiring on June 30, 1998 shall be prorated to reflect the commencement of the new license year on May 1, 1998.]

Text of proposed rule and any required statements and analyses may be obtained from: Kim Blot, Director, Division of Agriculture Protection and Development Services, Department of Agriculture and Markets, One Winners Circle, Albany, NY 12235, (518) 457-7076

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 and Reasoned Justification for Modification of the Rule

Section 380.1 of Title One of NYCRR provides that application for a license to act as a dealer pursuant to Article 20 of the Agriculture and Markets Law shall be submitted to the Commissioner on or before April 1st in each year for the license year beginning May 1st following. Section 380.1 also provides that license fees and agricultural producers security fund fees for renewal of licenses expiring on June 30, 1998 shall be prorated to reflect the commencement of the new license year on May 1, 1998.

Pursuant to section 207 of the State Administrative Procedure Act (SAPA), the Department has reviewed section 380.1 and determined that the regulation should be modified to delete the obsolete language which provides that license fees and security fund fees for renewal of licenses expiring on June 30, 1998 shall be pro-rated. The Department concludes that the language in question is obsolete because the license period to which it applies has since expired and, as such, this proposal is a consensus rule within the meaning of section 102(11) of SAPA since no person is likely to object to the amendment as written because the rule would repeal a regulatory provision which is no longer applicable to any person.

Accordingly, for the reasons set forth above, the amendment to section 380.1 to delete the obsolete language is justified.

Job Impact Statement

The rule will not have a substantial adverse impact on jobs and employment opportunities. The rule merely repeals obsolete language which provides that the license fees and agricultural producers security fund fees for renewal of licenses expiring on June 30, 1998 shall be pro-rated. The language in question is obsolete because the license period to which it applies has since expired.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-31-03-00002-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Adirondack Park Agency," by deleting therefrom the title of Environmental Program Specialist 1.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 12, 2003 under the notice of proposed rule making I.D. No. CVS-06-03-00005-P.

State Consumer Protection Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Enrollment on the No Telemarketing Sales Calls Statewide Registry

I.D. No. CPR-31-03-00006-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 4602(g) of Title 21 NYCRR.

Statutory authority: Executive Law, section 553(1)(d); and General Business Law, section 399-z(5)

Subject: Enrollment on the no telemarketing sales calls statewide registry.

Purpose: To amend the rules regarding the length of time a consumer may remain on the registry and allow consumers to take no action upon a notice of renewal and remain on the registry instead of requiring an affirmative opt-in.

Text of proposed rule: § 4602.2 Enrollment on the no telemarketing sales calls statewide registry.

(a) The agency shall establish, maintain, and publish a toll-free number for consumers to call to notify the agency that the consumer wishes to be included on the registry.

(b) The agency shall establish and maintain Internet access for consumers to notify the agency that the consumer wishes to be included on the registry. The web site shall be published to the general public.

(c) The agency shall establish and maintain a mailing address and facsimile number for consumers to mail or fax the agency to notify it that the consumer wishes to be included on the registry. The mailing address and facsimile number shall be publicized to the general public.

(d) Enrollment on the registry shall be free to all consumers who reside in New York State.

(e) Any consumer who wishes to be removed from the registry may contact the agency in writing or via an electronic signature in compliance with the Electronic Signature and Records Act ("ESRA") or other applicable law.

(f) The agency shall update such registry at least quarterly.

(g) Enrollment on the registry shall be for a term of [three (3)] five (5) years from the start of the quarter following date of enrollment (e.g., if the date of enrollment is April 1, 2001, then the start of the next quarter following the date of enrollment would be July 1, 2001 and the [three] five-year term calculated from that date). The agency shall use its best efforts to notify enrolled consumers prior to the end of the [three] five-year enrollment term of the option to [re-enroll] *remove their name and telephone number from the Registry*. Those consumers who do not [re-enroll] *request in writing via United States Mail, facsimile or electronic mail to the New York State Consumer Protection Board that their name and telephone number be removed from the Registry* prior to the end of the [three] five-year enrollment term shall [be removed from] *remain on the registry*.

(h) All information or data received by the agency from a consumer related to enrollment on the registry shall be confidential and afforded reasonable privacy protections except as necessary to accomplish the purposes and administration of the registry.

Text of proposed rule and any required statements and analyses may be obtained from: Lisa R. Harris, Consumer Protection Board, Deputy General Counsel, Five Empire State Plaza, Corning Tower, Suite 2101, Albany, NY 12223, (518) 474-3011, e-mail: lisa.harris @consumer.state.ny.us

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Subdivision 1(d) of section 553 of the Executive Law, Powers and duties of the board and the executive director, grants general rulemaking authority to the Consumer Protection Board to implement other powers and duties by regulation and otherwise as prescribed by any provision of law. Section 399-z(5) of the General Business Law gives the Board authority to prescribe rules and regulations to administer section 399-z of the General Business Law relating to the Do Not Call program.

2. LEGISLATIVE OBJECTIVES:

The objective of the no telemarketing sales calls, or Do Not Call, law is to give New York residents an effective mechanism for preventing unsolicited and unwanted telemarketing calls. The proposed amendments carry out the intent of the statute by extending the consumer enrollment period, modifying re-enrollment procedures, and making it easier for consumers to remove their numbers from the Registry by using electronic mail.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendments to these regulations is to enhance and further achieve the statutory objectives of the legislation. These amendments will extend the Do Not Call registration period and allow consumers to stay on the Registry with no further action beyond notification. The benefits of the proposed amendments include maintaining the registrations of a larger number of consumers, making it easier for consumers to re-enroll making it easier for consumers to remove their numbers from the Registry, and relieving the administrative and financial burden on the Do Not Call Program by having a five year enrollment period versus a three year enrollment period.

4. COSTS:

(a) Costs to State Government. There will be no additional costs to the Board.

(b) Costs to private regulated parties: There will be no costs to private regulated parties. The Board will carefully consider any and all comments received as a result of these proposed regulations.

(c) Costs to local governments: The proposed regulations will not impose any costs on local government.

5. LOCAL GOVERNMENT MANDATES:

The proposed rules do not impose any program, service, duty, or responsibility upon local government.

6. PAPERWORK:

No additional paperwork will be required than would be for a three year enrollment term or re-registration.

7. DUPLICATION:

The proposed regulations do not duplicate any existing State requirements. The proposed regulations do mirror the proposed Federal requirements. As of August 1, 2003, it is anticipated that the Federal Trade Commission will begin taking registration for the Federal do-not-call program and the registration period will be five years.

8. ALTERNATIVES:

The proposed amendment meets the needs of consumers as well as the Board. It allows consumers to remain on the Registry for five years and eliminates the requirement of having to affirmatively act to stay on the Registry. These amendments also allow consumers to remove their numbers from the Registry by electronic mail. The Consumer Protection Board acknowledges that the technological advances that have occurred in recent years allow consumers to take advantage of electronic communication. Therefore, the Consumer Protection Board has incorporated electronic notification as a means of removing a consumer telephone number from the Registry. These amendments will make the Do Not Call program effective and efficient at serving New York State consumers. The Board will carefully consider all comments received as a result of these proposed regulations. The Board has held meetings with representatives from the New York State Retail Council, the New York State Business Council, AT&T, Worldcom, and the American Teleservices Association and has received oral comment on this proposal. The Board will continue to accept and consider all comments submitted in response to this proposal.

9. FEDERAL STANDARDS:

The proposed amendments do not conflict with any federal standards.

10. COMPLIANCE SCHEDULE:

The proposed amendments become effective upon the adoption and publication in the *State Register*.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The proposed regulations will have no effect on local governments, and will not impose reporting, recordkeeping or other compliance requirements on local governments. The basis of this finding is that these regulations are directed to consumers.

2. COMPLIANCE REQUIREMENTS:

The proposed amendments will allow consumers easier access to retain and renew their do-not-call registrations.

3. PROFESSIONAL SERVICES:

The Board believes that affected small businesses will not be required to retain additional professional services with respect to the proposed amendments.

4. COMPLIANCE COSTS:

There are no compliance costs to consumers.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

No technological change would be required.

6. MINIMIZING ADVERSE IMPACT:

The adverse impact has been minimized in the proposed amendments to the regulations by making it easier for consumers to retain their registration on the Do Not Call Registry. The proposed amendment meets the needs of consumers as well as the Board. It allows consumers to remain on the Registry for five years and eliminates the requirement of having to affirmatively act to stay on the Registry. These amendments also allow consumers to remove their numbers from the Registry by electronic mail. The Consumer Protection Board acknowledges that the technological advances that have occurred in recent years allow consumers to take advantage of electronic communication. Therefore, the Consumer Protection Board has incorporated electronic notification as a means of removing a consumer telephone number from the Registry. These amendments will

make the Do Not Call program effective and efficient at serving New York State consumers. The Board will carefully consider all comments received as a result of these proposed regulations. The Board has held meetings with representatives from the New York State Retail Council, the New York State Business Council, AT&T, Worldcom, and the American Teleservices Association and has received oral comment on this proposal. The Board will continue to accept and consider all comments submitted in response to this proposal.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Board will carefully consider any comments submitted to it in response to this proposal. However, these amendments do not affect small business or local government.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

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

2. REPORTING, RECORDKEEPING OR OTHER COMPLIANCE REQUIREMENTS:

The proposed regulations impose no new reporting requirements.

3. COSTS:

There are no costs nor any special impact on rural areas.

4. MINIMIZING ADVERSE IMPACT:

The proposed regulations do not impose any additional burden on persons located in rural areas and the Board does not believe that the proposed regulations will have an adverse impact on rural areas. The proposed amendment meets the needs of consumers as well as the Board. It allows consumers to remain on the Registry for five years and eliminates the requirement of having to affirmatively act to stay on the Registry. These amendments also allow consumers to remove their numbers from the Registry by electronic mail. The Consumer Protection Board acknowledges that the technological advances that have occurred in recent years allow consumers to take advantage of electronic communication. Therefore, the Consumer Protection Board has incorporated electronic notification as a means of removing a consumer telephone number from the Registry. These amendments will make the Do Not Call program effective and efficient at serving New York State consumers. The Board will carefully consider all comments received as a result of these proposed regulations. The Board has held meetings with representatives from the New York State Retail Council, the New York State Business Council, AT&T, Worldcom, and the American Teleservices Association and has received oral comment on this proposal. The Board will continue to accept and consider all comments submitted in response to this proposal.

5. RURAL AREA PARTICIPATION:

The amendments have no unique features such that rural area participation was required. The Board will carefully consider any comments filed in response to this proposal, and make changes to the extent necessary to reflect any impacts on rural areas.

Job Impact Statement

1. JOB IMPACT EXEMPTION (JIE):

The proposed regulations should not have a substantial adverse impact, defined as a decrease of 100 jobs (SAPA § 201-a(6)(c)). The Board estimates that telemarketing firms should be able to comply with the proposed amendments using existing resources. Because it is evident from the nature of these amendments that they would have little impact on the number of jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

2. JOB IMPACT STATEMENT (JIS):

This requirement is not applicable. See the Job Impact Exemption section.

3. JOB IMPACT REQUEST FOR ASSISTANCE (JIRA):

This requirement is not applicable. See the Job Impact Exemption section.

Education Department

EMERGENCY RULE MAKING

Students with Limited English Proficiency

I.D. No. EDU-19-03-00014-E

Filing No. 781

Filing date: July 22, 2003

Effective date: July 22, 2003

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

Action taken: Amendment of Part 154 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 215 (not subdivided), 2117(1), 3204(2), (2-a), (3) and (6), 3602(10) and (22), 3713(1) and (2)

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary to conform the Commissioner's Regulations, relating to students with limited English proficiency (LEP), to the federal No Child Left Behind Act of 2001, which requires that the English proficiency of all LEP students be measured annually as part of the school accountability provisions of the Act. The U.S. Department of Education has approved the use of the new New York State English as a Second Language Achievement Test (NYSESLAT) as the required measure for LEP students. In addition to amending the Commissioner's regulations to reflect use of the NYSESLAT, the proposed rule is also necessary to amend the Commissioner's regulations to reflect use of the Language Assessment Battery- Revised (LAB-R) for purposes of initial identification of LEP students.

With the adoption of the LAB-R and the NYSESLAT, local educational agencies will be required to assess the LEP student's English language proficiency level for purposes of initial identification and continued eligibility, using the LAB-R and the NYSESLAT, respectively. The results of these tests will be reported in terms of designated levels of proficiency, not percentile scores. Since the current standard (40th percentile) established in Part 154 of the Commissioner's Regulations is not consistent with these designated proficiency levels, it is necessary to amend the regulations to conform to the use of the LAB-R and NYSESLAT and thereby ensure the proper identification and assessment of students with limited English proficiency, and the reporting of data concerning such students and those students who are entitled to receive bilingual or English as a second language instruction.

The proposed rule was adopted as an emergency measure, effective May 2, 2003, at the April 28-29, 2003 meeting of the Board of Regents, and will expire on July 30, 2003, 90 days after its filing with the Department of State. The proposed rule is to be adopted as a permanent rule at the July 17-18, 2003 Regents meeting, which is the first meeting scheduled after expiration of the 45-day public comment period provided for in State Administrative Procedure Act section 202(1)(a). However, pursuant to SAPA section 202(5), the permanent adoption cannot become effective until after its publication in the State Register on August 6, 2003. A lapse in the rule's effective date could disrupt administration of the State's LEP program and otherwise result in the State's noncompliance with federal requirements under the No Child Left Behind Act of 2001. A second emergency adoption is therefore necessary to ensure that the rule remains continuously in effect until the effective date of its adoption as a permanent rule.

Emergency action to adopt the proposed rule is necessary for the preservation of the general welfare to ensure that the amendments to Part 154 of the Commissioner's Regulations, relating to students with limited English proficiency (LEP), that were adopted at the April 2003 Regents meeting remain continuously in effect until the effective date of their adoption as a permanent rule, and thus provide for the State's continuing compliance with the federal No Child Left Behind Act of 2001.

Subject: Students with limited English proficiency.

Purpose: To establish criteria for the identification and assessment of students with limited English proficiency through use of, respectively, the Language Assessment Battery-Revised (LAB-R) test and the New York State English as a Second Language Test (NYSESLAT); establish curricu-

lum and reporting requirements for such students; and update provisions in the regulations concerning such students.

Substance of emergency rule: The State Education Department proposes to amend Part 154 of the Regulations of the Commissioner of Education as an emergency measure, effective July 22, 2003. The following is a summary of the provisions of the proposed rule.

Section 154.2 provides for general definitions. Included are definitions of pupils with limited English proficiency, initial identification, annual English language assessment, free-standing English as a second language program, bilingual education program and exceptions. Section 154.2(a) relating to the definition of "pupils with limited English proficiency" (LEP) is revised to replace, for purposes of determining LEP, a score at or below the 40th percentile, or its equivalent, on an English language assessment instrument approved by the Commissioner, with a score below a state designated level of proficiency on the Language Assessment Battery-Revised (LAB-R) or the New York State English as a Second Language Achievement Test (NYSESLAT).

Section 154.2(b) and (c) are revised to provide for the initial identification of, and annual English language assessment of, a pupil with limited English proficiency, based upon such pupil scoring below a state designated level of proficiency on, respectively, the LAB-R or the NYSESLAT.

Section 154.2(d) and (e) have been deleted since the provisions were applicable to the 1999-2000 and the 2000-2001 school years and are no longer needed.

Sections 154.2(f) and (g) prescribe requirements for grades seven through twelve for the 1999-2000 school year and for grades kindergarten through six in the 2000-2001 and thereafter. The proposed rule will update the provisions to remove references to the expired school years and to make the provisions applicable to grades kindergarten through twelve.

Section 154.2(f) is relettered as section 154.2(d). Paragraph (1) of section 154.2(d), as relettered, is revised to provide that the learning standards for English language arts (ELA) and English as a second language (ESL), and key ideas and performance indicators for such standards shall serve as the basis for the ELA and ESL curriculums, respectively.

Section 154.2(g) is relettered as section 154.2(e). Paragraph (1) of section 154.2(e), as relettered, is revised to provide that the learning standards for ELA and ESL, and key ideas and performance indicators for such standards shall serve as the basis for native language arts and ESL curricula.

Section 154.3 prescribes requirements for all school districts whether or not they claim State LEP Aid. Section 154.3 is revised to provide that each board of education shall provide a description of the nature and scope of the instructional programs and services currently available to LEP pupils to help them acquire English proficiency, submit to the commissioner a report by building of the number of pupils initially identified as LEP and the number of LEP pupils served in the preceding school year, submit a report by building of the number of pupils annually evaluated as being LEP in the preceding school year, and submit a report by building of the number and qualifications of teachers and support personnel providing services to LEP pupils.

Section 154.4 prescribes requirements for districts claiming State LEP Aid. Section 154.4(j) is revised to provide that a pupil whose score on the LAB-R or the NYSESLAT is a result of a disability shall be provided special education programs and services in accordance with the pupil's individualized education program.

Section 154.4(k) relating to variances is deleted. There are no records indicating that a request for a variance under this Part has ever been submitted to the Department, therefore, the proposed rule proposes to eliminate this provision.

Section 154.5 provided a one-year extension during the 1999-2000 school year for the implementation of the additional English language requirements. The proposed rule proposes to eliminate that provision since it is no longer applicable.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. EDU-19-03-00014-P, Issue of May 14, 2003. The emergency rule will expire August 7, 2003.

Text of emergency rule and any required statements and analyses may be obtained from: Mary Gammon, Legal Assistant, Office of Counsel, Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

Education Law section 215 authorizes the Regents and the Commissioner to require school districts to prepare and submit reports containing such information as they may prescribe.

Education Law section 2117(1) empowers the and the Commissioner to require school districts to submit any information they deem appropriate.

Education Law section 3204(2) and (2-a) require instructional programs for pupils with limited English proficiency (LEP) at school districts that claim State aid for such instruction, and that such programs be conducted in accordance with regulations of the Commissioner. Education Law section 3204(3) and (6) authorizes and requires the Commissioner to establish standards in regulations for such programs of instruction to LEP children.

Education Law section 3602(10) requires school districts to use the total apportionment of LEP aid for locally administered programs in accordance with the Commissioner's regulations. Education Law section 3602(22) authorizes the Commissioner to adopt regulations regarding approval of programs for LEP pupils for purposes of eligibility to receive LEP aid.

Education Law section 3713(1) and (2) authorizes the State and school districts to accept Federal law making appropriations for educational purposes and authorizes the Commissioner to cooperate with Federal agencies to implement such law.

LEGISLATIVE OBJECTIVES:

The amendment is consistent with the authority conferred by the above statutes, and is necessary to conform the Commissioner's Regulations to the federal No Child Left Behind Act of 2001, Pub. L. 107-110.

NEEDS AND BENEFITS:

The amendment will establish criteria for the identification and assessment of students with limited English proficiency (LEP) through use of, respectively, the Language Assessment Battery- Revised test and the New York State English as a Second Language Test; establish curriculum and reporting requirements for such students; and update provisions in the regulations concerning such students.

The amendment is necessary to conform the Commissioner's Regulations, relating to students with limited English proficiency, to the federal No Child Left Behind Act of 2001 (NCLB), which requires that the English proficiency of all LEP students be measured annually as part of the school accountability provisions of the Act. The U.S. Department of Education has approved the use of the new New York State English as a Second Language Achievement Test (NYSESLAT) as the required measure for LEP students. In addition to amending the Commissioner's Regulations to reflect use of the NYSESLAT, the amendment is also necessary to reflect use of the Language Assessment Battery-Revised (LAB-R) for purposes of initial identification of LEP students.

The amendment will require local educational agencies (LEAs) to assess the LEP student's English language proficiency level for purposes of initial identification and continued eligibility, using the LAB-R and the NYSESLAT, respectively. The results of these tests will be reported in terms of designated levels of proficiency, not percentile scores. Since the current standard (40th percentile) established in the Commissioner's Regulations is not consistent with these designated proficiency levels, it is necessary to amend the regulations to conform to the use of the LAB-R and NYSESLAT and thereby ensure the proper identification and assessment of LEP students, and the reporting of data concerning such students and those students who are entitled to receive bilingual or English as a second language instruction.

The first administration of the NYSESLAT is scheduled for May 14-30, 2003. The results of this test will be the only data the schools will have available to make decisions as to which students are LEP and entitled to services during the upcoming school year. This determination, based on the results of the NYSESLAT, is not reflected in the current Part 154 Regulations. School districts are required to comply with Part 154 requirements as a condition to their receipt of State Limited English Proficiency Aid and, for a large number of districts, as a condition to their receipt of other State Categorical funds and Title III, Part A LEP and Immigrant funds under The No Child Left Behind Act of 2001. As a result, it is critically important to expedite the submission and approval of the amendment.

The amendment also provides that the learning standards for English language arts and English as a second language serve as the basis for the

ELA and ESL curricula, thus strengthening and improving the bilingual education and freestanding ESL for LEP students. The amendment is geared to secure opportunities for LEP students to achieve the same educational goals and standards as the general school population.

The amendment is also necessary to update certain references and to delete certain outdated references and provisions.

COSTS:

(a) Costs to State: None.

(b) Costs to local government: The administration and scoring of the LAB-R test will occur during the school day and will not represent an additional expense to LEAs. LEAs will be responsible for charges associated with NYSESLAT scoring and reporting procedures. Based upon an average scoring and reporting cost of \$2.00 per student, the estimated cost for the approximately 193,000 students to be assessed by the NYSESLAT would be \$386,000. In addition, there will be incidental costs to LEAs for staff training on the administration and scoring of the test. Based upon discussion with representative school districts, it is estimated that the costs of staff training will range between \$75 to \$100 per trainee. Because the number of staff involved in providing services to LEP students varies among school districts it is not possible to estimate how many individuals will require training. At present, 1,742 teachers and 274 administrators have received training.

(c) Costs to private, regulated parties: None.

(d) Cost to regulating agency for implementation and continued administration: It is estimated that during the 2003-2004 school year, approximately 64,000 students will be tested for initial identification as LEP using the LAB-R. The estimated total costs to the Education Department associated with this test have been calculated at approximately \$90,932, consisting of \$74,026 in printing costs and \$16,906 in shipping costs. The administration and scoring of the test will take place during the school day and therefore will not represent an additional expense to the Education Department.

Preliminary estimates indicate that approximately 193,000 students will be assessed using the NYSESLAT. The estimated cost to the Department associated with the development and administration of the NYSESLAT for the 2002-2003 school year has been calculated at \$694,395, including the following categories:

(1) Printing charges - \$174,013 total costs, including costs for Operational Test, \$70,320; Teacher's Guide, \$22,520; Writing Scoring Guide, \$24,620; Speaking Scoring Guide, \$4,220; Large Type Operational Exam, \$1,950; Research Tests \$7,790; and Teachers' Guide, \$7,790; and field tests, \$34,803.

(2) Shipping charges - the shipping charges for both the operational and the field tests have been estimated at approximately \$60,382.

(3) Contracts associated with the development and field testing of the NYSESLAT: NCS Pearson, \$35,000; Educational Testing Service, \$125,000; and the Field Test Scoring, \$300,000.

It is anticipated that the costs to the Department and to school districts that are associated with the LAB-R and the NYSESLAT will be covered through state and federal funds, primarily through Title III, Part A - LEP and Immigrant funds under the No Child Left Behind Act of 2001. It is recognized that not all school districts receive Title III funds, therefore, the state may also utilize other funds, including but not limited to State Limited English Proficiency Aid, School Building Bilingual Excel grants and Two Way Bilingual Education funds. Other existing streams of funding, such as the federal Title I funding, will be redirected to cover the expenses associated with these tests.

For the 2003-2004 school year and thereafter, it is expected that the costs to the Department that are associated with these tests will decrease by approximately \$130,580, since some of the costs incurred were related to the initial development and field-testing phases of the assessments, which will not be necessary in subsequent years.

LOCAL GOVERNMENT MANDATES:

Consistent with the provisions of Education Law section 3204(2), the amendment will require LEAs to assess the level of English proficiency of all LEP students, for purposes of initial identification and continued eligibility, using the LAB-R and the NYSESLAT, respectively.

Sections 154.2(f) and (g) prescribe requirements for grades seven through twelve for the 1999-2000 school year and for grades kindergarten through six in the 2000-2001 and thereafter. The amendment will update the provisions to remove references to the expired school years and to make the provisions applicable to grades kindergarten through twelve.

Section 154.2(f) is relettered as section 154.2(d). Paragraph (1) of section 154.2(d), as relettered, is revised to provide that the learning standards for English language arts (ELA) and English as a second language

(ESL), and key ideas and performance indicators for such standards shall serve as the basis for the ELA and ESL curriculums, respectively.

Section 154.2(g) is relettered as section 154.2(e). Paragraph (1) of section 154.2(e), as relettered, is revised to provide that the learning standards for ELA and ESL, and key ideas and performance indicators for such standards shall serve as the basis for native language arts and ESL curricula.

Section 154.4 prescribes requirements for districts claiming State LEP Aid. Section 154.4(j) is revised to provide that a pupil whose score on the LAB-R or the NYSESLAT is a result of a disability shall be provided special education programs and services in accordance with the pupil's individualized education program.

PAPERWORK:

Section 154.3 is revised to provide that each board of education shall provide a description of the nature and scope of the instructional programs and services currently available to LEP pupils to help them acquire English proficiency, submit to the commissioner a report by building of the number of pupils initially identified as LEP and the number of LEP pupils served in the preceding school year, submit a report by building of the number of pupils annually evaluated as being LEP in the preceding school year, and submit a report by building of the number and qualifications of teachers and support personnel providing services to LEP pupils.

DUPLICATION:

The amendment does not duplicate, overlap or conflict with State and Federal rules or requirements. School districts, BOCES and charter schools are required to comply with Part 154 requirements as a condition to their receipt of State Limited English Proficiency Aid and, for a large number of districts, as a condition to their receipt of other State Categorical funds and Title III, Part A LEP and Immigrant funds under the federal No Child Left Behind Act of 2001.

ALTERNATIVES:

There were no significant alternatives to the amendment. The amendment is necessary to conform the Commissioner's Regulations, relating to students with limited English proficiency (LEP), to the federal No Child Left Behind Act of 2001, which requires that the English proficiency of all LEP students be measured annually as part of the school accountability provisions of the Act. The U.S. Department of Education has approved the use of the new New York State English as a Second Language Achievement Test (NYSESLAT) as the required measure for LEP students. In addition to amending the Commissioner's Regulations to reflect use of the NYSESLAT, the amendment is also necessary to amend the Commissioner's Regulations to reflect use of the Language Assessment Battery-Revised (LAB-R) for purposes of initial identification of LEP students.

FEDERAL STANDARDS:

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

COMPLIANCE SCHEDULE:

It is anticipated that regulated parties can achieve compliance with the amendment by its effective date.

Regulatory Flexibility Analysis

EFFECT OF RULE:

Small Businesses:

The proposed rule applies to school districts, boards of cooperative educational services and charter schools that serve students with limited English proficiency (LEP). The proposed rule does not impose any economic impact, or other compliance requirements on small businesses. Because it is evident from the nature of the proposed rule that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

The proposed rule applies to all local educational agencies (LEAs) in the State, including school districts, boards of cooperative educational services (BOCES) and charter schools, that enroll LEP students in grades K-12. As of the 2002-2003 school year there were 379 LEAs that submitted program reports under Part 154 of the Regulations of the Commissioner. The number of LEP students, reported as enrolled in those local educational agencies during the 2001-2002 school year, was approximately 193,000.

COMPLIANCE REQUIREMENTS:

The proposed rule is necessary to conform the Commissioner's Regulations, relating to students with limited English proficiency (LEP), to the federal No Child Left Behind Act of 2001, ("the Act"), which requires that the English proficiency of all limited English proficient (LEP) students be measured annually as part of the school accountability provisions of the

Act. LEAs, including school districts, BOCES and charter schools, are required to comply with the NCLB as a condition to receipt of federal funding under Title I of the ESEA, as amended.

Sections 154.2(f) and (g) prescribe requirements for grades seven through twelve for the 1999-2000 school year and for grades kindergarten through six in the 2000-2001 and thereafter. The proposed rule will update the provisions to remove references to the expired school years and to make the provisions applicable to grades kindergarten through twelve.

Section 154.2(f) is relettered as section 154.2(d). Paragraph (1) of section 154.2(d), as relettered, is revised to provide that the learning standards for English language arts (ELA) and English as a second language (ESL), and key ideas and performance indicators for such standards shall serve as the basis for the ELA and ESL curriculums, respectively.

Section 154.2(g) is relettered as section 154.2(e). Paragraph (1) of section 154.2(e), as relettered, is revised to provide that the learning standards for ELA and ESL, and key ideas and performance indicators for such standards shall serve as the basis for native language arts and ESL curricula.

Section 154.4 prescribes requirements for districts claiming State LEP Aid. Section 154.4(j) is revised to provide that a pupil whose score on the LAB-R or the NYSESLAT is a result of a disability shall be provided special education programs and services in accordance with the pupil's individualized education program.

Section 154.3 is revised to provide that each board of education shall provide a description of the nature and scope of the instructional programs and services currently available to LEP pupils to help them acquire English proficiency, submit to the commissioner a report by building of the number of pupils initially identified as LEP and the number of LEP pupils served in the preceding school year, submit a report by building of the number of pupils annually evaluated as being LEP in the preceding school year, and submit a report by building of the number and qualifications of teachers and support personnel providing services to LEP pupils.

PROFESSIONAL SERVICES:

Full implementation of the requirement for administering, scoring and reporting the results of the new assessments will require training approximately 1,000 teachers. A turnkey training model has been established, whereby, Department staff trains selected LEA personnel and they in turn will locally train selected personnel at the LEA, primarily, bilingual education and English as a second language teachers.

COMPLIANCE COSTS:

The administration and scoring of the LAB-R test will occur during the school day and will not represent an additional expense to LEAs. LEAs will be responsible for charges associated with NYSESLAT scoring and reporting procedures. Based upon an average scoring and reporting cost of \$2.00 per student, the estimated cost for the approximately 193,000 students to be assessed by the NYSESLAT would be \$386,000. In addition, there will be incidental costs to LEAs for staff training on the administration and scoring of the test. Based upon discussion with representative school districts, it is estimated that the costs of staff training will range between \$75 to \$100 per trainee. Because the number of staff involved in providing services to LEP students varies among school districts it is not possible to estimate how many individuals will require training. At present, 1,742 teachers and 274 administrators have received training.

It is anticipated that the costs associated with the LAB-R and the NYSESLAT will be covered through state and federal funds, primarily through Title III, Part A - LEP and Immigrant funds under the No Child Left Behind Act of 2001. It is recognized that not all school districts receive Title III funds, therefore, the state may also utilize other funds, including but not limited to State Limited English Proficiency Aid, School Building Bilingual Excel grants and Two Way Bilingual Education funds. Other existing streams of funding, such as the federal Title I funding, will be redirected to cover the expenses associated with these tests.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule does not impose any new technological requirements on LEAs. Economic feasibility is addressed under the Compliance Costs section above.

MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to conform the Commissioner's Regulations, relating to students with limited English proficiency (LEP), to the federal No Child Left Behind Act of 2001, ("the Act"), which requires that the English proficiency of all limited English proficient (LEP) students be measured annually as part of the school accountability provisions of the Act. The proposed rule does not duplicate, overlap or conflict with State and federal rules or requirements. School districts, BOCES and charter schools are required to comply with Part 154 requirements as a condition

to their receipt of State Limited English Proficiency Aid and, for a large number of LEAs, as a condition to their receipt of other State Categorical funds and Title III, Part A LEP and Immigrant funds under the federal No Child Left Behind Act of 2001. The proposed rule has been carefully drafted to meet these specific federal and State requirements.

The proposed rule is necessary for the uniform and proper identification and assessment of students with limited English proficiency and the reporting of timely data concerning such students and those students who are entitled to receive bilingual education or English as a second language instruction.

The proposed rule is geared to strengthening and improving the bilingual education and freestanding ESL for LEP students and to secure opportunities for LEP students to achieve the same educational goals and standards as the general school population. Since LEAs are directly responsible for the instruction of LEP students, it is not feasible to apply any of the approaches for minimizing adverse economic impacts pursuant to State Administrative Procedure Act section 202-b(1).

LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts and BOCES through the offices of the district superintendents of each supervisory district in the State. Comments were also solicited from charter school principals. Copies will be provided to the State Committee of Practitioners (COP), which consists of teachers, parents, district and building-level administrators, members of local school boards, and pupil personnel services staff, who are representative of all constituencies from various geographical locations across the State. The COP includes teachers and paraprofessionals from around the State representing a variety of grade levels and subject areas, directors of teacher-preparation institutions, officials and educators representing the New York City Board of Education, several other urban and rural school systems, nonpublic schools, parent advocacy groups, teacher union representatives and community-based organizations.

School personnel, including teachers and administrators from LEAs throughout the State have been consulted and participated in the development and field-testing of the two new adopted assessments. District Superintendents and Superintendents of Public Schools have received numerous pieces of correspondence in writing and through the Department's web page concerning these tests. In addition, the Department has also provided a series of training sessions on the nature of the tests and the administration, scoring and data reporting procedures associated with each test.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed rule generally applies to school districts, boards of cooperative educational services and charter schools that serve students with limited English proficiency and that receive funding as local educational agencies (LEAs) pursuant to the federal Elementary and Secondary Education Act of 1965, as amended, and the No Child Left Behind Act of 2001 (NCLB), including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed rule is necessary to conform the Commissioner's Regulations, relating to students with limited English proficiency (LEP), to the federal No Child Left Behind Act of 2001, ("the Act"), which requires that the English proficiency of all limited English proficient (LEP) students be measured annually as part of the school accountability provisions of the Act. LEAs, including school districts, BOCES and charter schools, are required to comply with the NCLB as a condition to receipt of federal funding under Title I of the ESEA, as amended.

Sections 154.2(f) and (g) prescribe requirements for grades seven through twelve for the 1999-2000 school year and for grades kindergarten through six in the 2000-2001 and thereafter. The proposed rule will update the provisions to remove references to the expired school years and to make the provisions applicable to grades kindergarten through twelve.

Section 154.2(f) is relettered as section 154.2(d). Paragraph (1) of section 154.2(d), as relettered, is revised to provide that the learning standards for English language arts (ELA) and English as a second language (ESL), and key ideas and performance indicators for such standards shall serve as the basis for the ELA and ESL curriculums, respectively.

Section 154.2(g) is relettered as section 154.2(e). Paragraph (1) of section 154.2(e), as relettered, is revised to provide that the learning standards for ELA and ESL, and key ideas and performance indicators for such standards shall serve as the basis for native language arts and ESL curricula.

Section 154.4 prescribes requirements for districts claiming State LEP Aid. Section 154.4(j) is revised to provide that a pupil whose score on the LAB-R or the NYSESLAT is a result of a disability shall be provided special education programs and services in accordance with the pupil's individualized education program.

Section 154.3 is revised to provide that each board of education shall provide a description of the nature and scope of the instructional programs and services currently available to LEP pupils to help them acquire English proficiency, submit to the commissioner a report by building of the number of pupils initially identified as LEP and the number of LEP pupils served in the preceding school year, submit a report by building of the number of pupils annually evaluated as being LEP in the preceding school year, and submit a report by building of the number and qualifications of teachers and support personnel providing services to LEP pupils.

With respect to professional services requirements, full implementation of the requirement for administering, scoring and reporting the results of the new assessments will require training approximately 1,000 teachers. A turnkey training model has been established, whereby, Department staff trains selected LEA personnel and they in turn will locally train selected personnel at the LEA, primarily, bilingual education and English as a second language teachers.

COSTS:

The administration and scoring of the LAB-R test will occur during the school day and will not represent an additional expense to LEAs. LEAs will be responsible for charges associated with NYSESLAT scoring and reporting procedures. Based upon an average scoring and reporting cost of \$2.00 per student, the estimated cost for the approximately 193,000 students to be assessed by the NYSESLAT would be \$386,000. In addition, there will be incidental costs to LEAs for staff training on the administration and scoring of the test. Based upon discussion with representative school districts, it is estimated that the costs of staff training will range between \$75 to \$100 per trainee. Because the number of staff involved in providing services to LEP students varies among school districts it is not possible to estimate how many individuals will require training. At present, 1,742 teachers and 274 administrators have received training.

It is anticipated that the costs associated with the LAB-R and the NYSESLAT will be covered through state and federal funds, primarily through Title III, Part A - LEP and Immigrant funds under the No Child Left Behind Act of 2001. It is recognized that not all school districts receive Title III funds, therefore, the state may also utilize other funds, including but not limited to State Limited English Proficiency Aid, School Building Bilingual Excel grants and Two Way Bilingual Education funds. Other existing streams of funding, such as the federal Title I funding, will be redirected to cover the expenses associated with these tests.

MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to conform the Commissioner's Regulations, relating to students with limited English proficiency (LEP), to the federal No Child Left Behind Act of 2001, ("the Act"), which requires that the English proficiency of all limited English proficient (LEP) students be measured annually as part of the school accountability provisions of the Act. The proposed rule does not duplicate, overlap or conflict with State and federal rules or requirements. School districts, BOCES and charter schools are required to comply with Part 154 requirements as a condition to their receipt of State Limited English Proficiency Aid and, for a large number of LEAs, as a condition to their receipt of other State Categorical funds and Title III, Part A LEP and Immigrant funds under the federal No Child Left Behind Act of 2001. The proposed rule has been carefully drafted to meet these specific federal and State requirements.

The proposed rule is necessary for the uniform and proper identification and assessment of LEP students and the reporting of timely data concerning such students and those students who are entitled to receive bilingual education or English as a second language instruction.

The proposed rule is geared to strengthening and improving the bilingual education and freestanding ESL for LEP students and to secure opportunities for LEP students to achieve the same educational goals and standards as the general school population. Since LEAs, including those located in rural areas, are directly responsible for the instruction of LEP students, it is not feasible to apply any of the approaches for minimizing adverse economic impacts pursuant to State Administrative Procedure Act section 202-b(1).

RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from the Department's Rural Advisory Committee and Nonpublic Schools Advisory Council, whose memberships include schools located in rural areas. Comments were also solicited from charter school principals. Copies of the proposed

rule will be provided to the State Committee of Practitioners (COP), which consists of teachers, parents, district and building-level administrators, members of local school boards, and pupil personnel services staff, who are representative of all constituencies from various geographical locations across the State. The COP includes teachers and paraprofessionals from around the State representing a variety of grade levels and subject areas, directors of teacher-preparation institutions, officials and educators representing the New York City Board of Education, several other urban and rural school systems, nonpublic schools, parent advocacy groups, teacher union representatives and community-based organizations.

School personnel, including teachers and administrators from LEAs throughout the State have been consulted and participated in the development and field-testing of the two new adopted assessments. District Superintendents and Superintendents of Public Schools have received numerous pieces of correspondence in writing and through the Department's web page concerning these tests. In addition, the Department has also provided a series of training sessions on the nature of the tests and the administration, scoring and data reporting procedures associated with each test.

Job Impact Statement

The proposed rule applies to school districts, boards of cooperative educational services (BOCES) and charter schools and will establish criteria for the identification and assessment of students with limited English proficiency through use of, respectively, the Language Assessment Battery-Revised (LAB-R) test and the New York State English as a Second Language Test (NYSESLAT); establish curriculum and reporting requirements for such students; and update provisions in the regulations concerning such students. The proposed rule will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

EMERGENCY RULE MAKING

Licensure of Psychologists

I.D. No. EDU-24-03-00004-E

Filing No. 774

Filing date: July 22, 2003

Effective date: Sept. 1, 2003

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

Action taken: Amendment of sections 52.10, 72.1, 72.2(b)-(c) and 72.6; repeal of section 72.4; and addition of new section 72.4 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 210 (not subdivided), 6506(1), 6507(2)(a) and (4)(a), 7601-a(1) and (2), 7603(2), and 7604(1) and (1-a)

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

Specific reasons underlying the finding of necessity: The proposed amendment implements the requirements of Chapter 676 of the Laws of 2002, relating to the licensure of psychologists. Chapter 676 adds section 7601-a to the Education Law, effective September 1, 2003, providing a new route for obtaining a limited permit to practice psychology. This route permits an individual who has arranged for an acceptable supervised experience required for licensure to obtain a limited permit to participate in the experience.

Emergency action is necessary for the preservation of the general welfare in order to implement the requirements of Chapter 676 of Laws of 2002 by its effective date, September 1, 2003, by establishing necessary requirements that applicants for limited permits in psychology must meet to ensure their competency to practice psychology in New York State. The amendment requires applicants for limited permits to complete doctoral degree requirements, be of good moral character, and have arranged for an acceptable supervised experience while practicing under the limited permit. Chapter 676 repealed the statutory provision that permitted certain applicants for licensure in psychology to be employed as psychology assistants to meet the experience requirement for licensure, and substituted the requirement that such applicants obtain a limited permit. Without emergency action, effective September 1, 2003, such applicants would not be permitted to obtain supervised experience in the practice of psychology necessary for licensure in this field.

To be able to issue limited permits in psychology as mandated by statute, the State Education Department will have to immediately begin reviewing applications for the limited permit. Application reviews cannot begin until the necessary forms and computer systems are in place. The specific requirements contained in these regulations must be included in these forms and systems. Without emergency action, the Department will not be able to issue limited permits to individuals by the date mandated in statute, September 1, 2003.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at its September 2003 meeting, which is the first scheduled meeting after the expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: Licensure of psychologists.

Purpose: To establish requirements for limited permits to practice psychology, remove outdated registration requirements for educational programs leading to licensure in this profession, delete a provision concerning professional study for admission to the licensure examination, and repeal the regulatory definition of the practice of psychology which is now established in statute.

Text of emergency rule: 1. Section 52.10 of the Regulations of the Commissioner of Education is amended, effective September 1, 2003, as follows:

Section 52.10 Psychology.

[(a) . . .]

[(b) On or after January 1, 2002, in] *In* addition to meeting all applicable provisions of this Part, to be registered as a program recognized as leading to licensure which meets the requirements in section 72.1 of this Title, it shall be a doctoral degree program which shall require at least three years of full-time study or the equivalent; including seminars, tutorials, or other graduate level coursework representing two years of full-time study or the equivalent. The program shall include coursework in scientific and professional ethics and standards of practice, and issues of cultural and ethnic diversity; and at least three *graduate* semester hours or five graduate quarter hours in each of the following seven substantive content areas: biological basis of behavior; cognitive-affective basis of behavior; social basis of behavior; individual differences; psychometrics; history and systems of psychology; and research design, methodology, and statistics. In addition, the program shall include one year of supervised practicum, internship, field experience, or applied research, which is appropriate to the practice of psychology, as such practice is defined in section [72.6 of this Title] 7601-a of the Education Law.

2. Subdivision (c) of section 72.1 of the Regulations of the Commissioner of Education is repealed, effective September 1, 2003.

3. Subdivision (b) of section 72.2 of the Regulations of the Commissioner of Education is amended, effective September 1, 2003, as follows:

(b) Content.

(1) The experience shall consist of a planned programmed sequence of supervised employment or engagement in appropriate psychology activities performed in accordance with the definition of the practice of psychology contained in section [72.6 of this Part] 7601-a of the Education Law and satisfactory in quality, breadth, scope and nature.

(2) . . .

4. Subdivision (c) of section 72.2 of the Regulations of the Commissioner of Education is amended, effective September 1, 2003, as follows:

(c) Setting. For a setting to be acceptable, it shall meet the following requirements:

(1) The setting shall provide services defined in the practice of psychology, as set forth in section [72.6 of this Part] 7601-a of the Education Law.

(2) . . .

(3) The setting shall provide titles to the unlicensed individuals gaining experience for licensure that conform to the requirements set forth in section 7605 of the Education Law. [Except for persons held exempt by subdivision (1) of section 7605 of the Education Law, a setting shall not designate the unlicensed person with the title of assistant psychologist unless that person, having been awarded a doctoral degree in psychology, has met the education requirements for licensure as set forth in section 72.1 of this Part; is fulfilling the experience requirement for licensure at the setting; and has met the other requirements set forth in subdivision (3) of section 7605 of the Education Law.] Employment titles which do not include the word psychology or a derivation thereof may be used if the experience is consistent with the definition of the practice of psychology in section [72.6 of this Part] 7601-a of the Education Law, as attested to by the supervisor.

(4) . . .

5. Section 72.4 of the Regulations of the Commissioner of Education is repealed and a new section 72.4 is added, effective September 1, 2003, as follows:

72.4 Limited permits.

(a) *The department may issue a limited permit to practice psychology to an applicant who meets the requirements of subdivisions (b) or (c) of this section.*

(b) *Upon recommendation of the State Board for Psychology, the department may issue a limited permit to practice psychology to an applicant who meets the requirements of this subdivision.*

(1) *The applicant shall:*

(i) *file with the department an application on a form provided by the department together with the statutory fee for the limited permit;*

(ii) *be of good moral character, as determined by the department;*

(iii) *hold a certificate or license to practice psychology issued by another state or country, and be qualified for admission to the examination for licensure as a psychologist, as prescribed in section 72.3 of this Part; and*

(iv) *have resided in New York State for a period of not more than six months prior to the filing of the application for the limited permit.*

(2) *The limited permit issued pursuant to this subdivision shall be valid for a period of not more than 12 months, or until 10 days after notification to the applicant of failure of the professional licensing examination or until the results of a licensing examination for which the applicant is eligible are officially released, whichever comes first. Such limited permit shall not be renewable.*

(c) *Upon recommendation of the State Board for Psychology, the department may issue a limited permit to practice psychology to an applicant who meets the requirements of this subdivision.*

(1) *The applicant shall:*

(i) *file with the department an application on a form provided by the department together with the statutory fee for the limited permit;*

(ii) *be of good moral character, as determined by the department;*

(iii) *have completed all doctoral degree requirements, including the doctoral dissertation, for a program that meets the professional study requirements for licensure in psychology in accordance with section 72.1 of this Part, except that the applicant shall not be required to have actually received the degree;*

(iv) *submit adequate documentation that the applicant has arranged for a supervised experience, acceptable pursuant to section 72.2 of this Part, and needs the limited permit to participate in the experience. Such documentation shall identify the individual who has responsibility for supervising the applicant's experience while under the limited permit, and include a signed statement by the supervisor certifying that he or she will provide supervision of the applicant's experience.*

(2) *The limited permit issued pursuant to this subdivision shall be valid for an aggregate of not more than three years. Such limited permit may be renewed by the department for a maximum additional period of one year, provided that the applicant documents that he or she has arranged for a supervised experience, acceptable pursuant to section 72.2 of this Part, needs the limited permit to participate in the experience, and has good cause that prevented the applicant from meeting the experience requirement for licensure while under the original limited permit, including but not limited to, any of the following reasons: a specific physical or mental disability certified by an appropriate health care professional; or extended active duty with the Armed Forces of the United States; or other good cause which in the judgment of the department made it impossible for the applicant to complete the experience requirement for licensure while under the original limited permit.*

6. Section 72.6 of the Regulations of the Commissioner of Education is repealed, effective September 1, 2003.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. EDU-24-03-00004-P, Issue of June 18, 2003. The emergency rule will expire October 1, 2003.

Text of emergency rule and any required statements and analyses may be obtained from: Mary Gammon, Legal Assistant, Office of Counsel, Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@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.

Section 210 of the Education Law authorizes the Board of Regents to register domestic and foreign institutions in terms of New York Standards.

Subdivision (1) of section 6506 of the Education Law authorizes the Board of Regents to supervise the admission to and the practice of the professions and to promulgate rules to carry out such supervision.

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

Paragraph (a) of subdivision (4) of section 6507 of the Education Law authorizes the State Education Department to register or approve educational programs designed for the purpose of providing professional preparation which meets standards established by the Department.

Subdivisions (1) and (2) of section 7601-a of the Education Law, as added by Chapter 676 of the Laws of 2002, define the practice of psychology.

Subdivision (2) of section 7603 of the Education Law requires an applicant for a license as a psychologist to fulfill education requirements which include a doctoral degree in psychology granted on the basis of completing a program in psychology registered by the State Education Department or its substantial equivalent, in accordance with Commissioner's regulations.

Subdivisions (1) and (1-a) of section 7604 of the Education Law authorize the State Education Department to issue limited permits to practice psychology.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes which confer upon the Commissioner of Education the authority to establish in regulation requirements relating to licensure in psychology. Specifically, as authorized by statute, the proposed amendment removes outdated registration requirements for educational programs leading to licensure in psychology and prescribes educational requirements that must be met for admission to the licensure examination in psychology. In addition, as authorized by statute, the amendment establishes requirements for limited permits to practice as a psychologist. The amendment also deletes the regulatory definition of the practice of psychology which is now prescribed in statute, and replaces references to the regulatory definition with references to the statutory definition.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to establish requirements for limited permits to practice psychology, remove outdated registration requirements for educational programs leading to licensure in this profession, delete a provision concerning professional study for admission to the licensure examination, and repeal the regulatory definition of the practice of psychology which is now established in statute.

The amendment is needed to implement the requirements of Chapter 676 of the Laws of 2002. This Chapter established a new route for obtaining a limited permit to practice psychology in section 7604(1-a) of the Education Law. This route will permit an individual who has arranged for an acceptable supervised experience required for licensure to obtain a limited permit to participate in the experience. The amendment is needed to implement the requirements for this new route, in accordance Education Law section 7604(1-a). The amendment is also needed to state the requirements for the existing route for obtaining a limited permit to practice psychology, as authorized by subdivision (1) of section 7604 of the Education Law, so that each route may be clearly understood. This route is for applicants who are licensed in another state or country and meet the requirements for admission to the licensing examination.

Chapter 676 of the Laws of 2002 also establishes a statutory definition for the practice of psychology in section 7601-a of the Education Law. The amendment is needed to repeal the regulatory definition and to replace the regulatory reference with the statutory reference throughout Part 72.

The amendment is also needed to remove a provision relating to the professional study of psychology for admission to the licensing examination. This provision permitted an applicant whose program of professional study lacked required coursework to be admitted to the licensing examination if he or she were in an approved remedial program to make up the deficiency. This provision was added when the licensing examination was given only twice per year, and enabled an applicant to take the examination while making up professional study deficiencies to prevent undue delay in licensure. Currently, the licensing examination is administered electronically on a daily basis. Therefore, there is no longer a need for this provision. The State Board for Psychology has recommended that this provision

be repealed and that all applicants be required to complete professional study prior to being admitted to the licensing examination.

4. COSTS:

(a) Costs to State Government: The amendment will not impose any additional costs on State government. The State Education Department will use existing staff and resources to process requests for limited permits to practice as a psychologist under the new requirements.

(b) Costs to local government: None.

(c) Costs to private regulated parties: The proposed amendment will not impose any cost on private regulated parties, including licensees. The amendment implements statutory requirements and removes outdated provisions. It will not impose any additional costs on regulated parties.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment concerns requirements for licensure and limited permits to practice psychology. It does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment requires applicants for a limited permit to practice as a psychologist under the new requirements authorized by section 7604(1-a) of the Education Law to submit an application to the State Education Department. In addition, these applicants will have to submit adequate documentation that the applicant has arranged for a supervised experience, acceptable pursuant to section 72.2 of the Commissioner's regulations, and that the applicant needs the limited permit to participate in that experience. Such documentation will have to identify the individual who has responsibility for the applicant's experience while under the limited permit, and include a signed statement by the supervisor certifying that he or she will provide supervision of the applicant's experience.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment, and none were considered because of the nature of the amendment, which removes outdated provisions and implements statutory requirements.

9. FEDERAL STANDARDS:

There are no Federal standards regarding the subject matter of the proposed amendment, licensure in psychology.

10. COMPLIANCE SCHEDULE:

Regulated parties will be required to comply with the proposed amendment on its effective date. No additional period of time is necessary to enable regulated parties to meet the requirements of the amendment.

Regulatory Flexibility Analysis

The proposed amendment removes outdated curricular requirements for registered college programs leading to licensure in psychology, and establishes requirements that individuals must meet for licensure or limited permits to practice psychology. It will not impose any reporting, record-keeping, or other compliance requirements, or have any adverse economic impact on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will not affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to 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:

The amendment will implement the requirements of Chapter 676 of the Laws of 2002. This Chapter established a new route for obtaining a limited permit as a psychologist in section 7604(1-a) of the Education Law. This route will permit an individual who has arranged for an acceptable supervised experience required for licensure, including those who are located in rural areas, to obtain a limited permit to participate in the experience. The applicant will have to file with the State Education Department an application on a form provided by the Department together with the statutory fee

for the limited permit; be of good moral character, as determined by the department; have completed all doctoral degree requirements, including the doctoral dissertation, for a program that meets the professional study requirements for licensure in psychology, except that the applicant shall not be required to have actually received the degree; submit adequate documentation that the applicant has arranged for an acceptable supervised experience and needs the limited permit to participate in the experience. The limited permit issued pursuant to this subdivision shall be valid for an aggregate of not more than three years but may be renewed for a maximum additional period of one year for good cause.

The amendment also prescribes requirements for the existing route to a limited permit to practice as a psychologist, authorized by subdivision (1) of section 7604 of the Education Law. This route is for applicants, including those located in rural areas, who are licensed in another state or country and meet the requirements for admission to the licensing examination. The applicant will have to file an application together with the statutory fee for the limited permit; be of good moral character, as determined by the department; hold a certificate or license to practice psychology issued by another state or country, be qualified for admission to the examination for licensure as a psychologist; and have resided in New York State for a period of not more than six months prior to the filing of the application for the limited permit. This limited permit will be valid for a period of not more than 12 months, or until 10 days after notification to the applicant of failure of the professional licensing examination or until the results of a licensing examination for which the applicant is eligible are officially released, whichever comes first. This limited permit will not be renewable.

The amendment will also remove a provision relating to the professional study of psychology for admission to the licensing examination. This provision permitted applicants whose program of professional study lacked required coursework to be admitted to the licensing examination if they were in an approved remedial program to make up the deficiency. The amendment will require these applicants to meet the professional study requirement prior to being admitted to the licensure examination.

The proposed amendment will not require regulated parties in rural areas or elsewhere to hire professional services in order to comply.

3. COSTS:

The proposed amendment does not impose any initial capital costs or any additional annual costs on public or private entities located in rural areas, including applicants for licensure or limited permit in psychology.

4. MINIMIZING ADVERSE IMPACT:

The amendment concerns requirements that an individual must meet to be licensed or receive a limited permit in psychology. The Department has determined that such requirements should apply to all applicants seeking licensure or a limited permit, no matter their geographic location, to ensure professional competency across the State. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from statewide organizations representing all parties having an interest in the practice of psychology. Included in this group were the State Board for Psychology and professional associations representing the psychology profession. These entities have members who live or work in rural areas. In addition, every educational institution that offers programs leading to licensure in psychology, including those located in rural areas of the State, were asked to comment on the proposed amendment.

Job Impact Statement

The proposed amendment will establish requirements for limited permits to practice psychology, remove outdated registration requirements for educational programs leading to licensure in this profession, delete a provision concerning professional study for admission to the licensure examination in psychology, and repeal the regulatory definition of the practice of psychology which is now established in statute.

The amendment will have no impact on the number of jobs or employment opportunities in psychology or in any other field in New York State. The amendment concerns requirements that individuals must meet for licensure or limited permits to practice psychology. It will not result in an increase or decrease in the number of jobs or employment opportunities in this field. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in psychology or any other field, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

EMERGENCY RULE MAKING

Modified Temporary Licenses for Classroom Teaching

I.D. No. EDU-29-03-00009-E

Filing No. 776

Filing date: July 22, 2003

Effective date: July 22, 2003

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

Action taken: Repeal of section 80-5.10 and addition of new section 80-5.10 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 305(1) and (2), and (7); 3004(1); 3006(1)(b) and (c) and (2)(a)(iii); 3009(1) and 3010

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

Specific reasons underlying the finding of necessity: The purpose of the proposed amendment is to eliminate the current provision for the issuance of temporary licenses and to add a new provision establishing the requirements for the issuance of modified temporary licenses, permitting uncertified teachers who meet prescribed requirements to teach in subject matter shortage areas in the schools of the State. The candidate for the modified temporary license would have to meet educational, assessment, and other prescribed requirements. The modified temporary license would permit the candidate to teach for a one-year period, upon documentation that no certified teacher is available for employment in that position. The modified temporary licenses would only be available in the 2003- 2004 and 2004-2005 school years.

The amendment creates a time-limited mechanism to meet the critical need for classroom teachers in demonstrated shortage areas, by employing candidates who have not yet completed all of the requirements for a regular teaching certificate but who have demonstrated significant progress in meeting those requirements.

In accordance with the policy of the Board of Regents, temporary licenses are no longer being issued. This action is necessary because, despite strenuous teacher recruitment efforts and the enactment of a number of Regents initiatives creating additional pathways for teacher certification, a persistent shortage of certified teachers remains in New York City and certain upstate regions, including in the subject matter areas of math, science, bilingual education and special education. This action is necessary in order to avert an impending crisis of classroom staffing, particularly in the New York City schools. The Chancellor of the City School District of the City of New York City, in correspondence to the Commissioner of Education and in an appearance before the Board of Regents on June 17, 2003, requested that the Regents authorize the issuance of modified temporary licenses in order to meet an estimated shortage of 1,000 to 3,000 teachers in the fall of 2003.

The recommended action is proposed as an emergency measure because such action is necessary for the preservation of the general welfare to ensure that there are sufficient teachers to meet the staffing needs of public schools this fall in order to avoid a disruption in the educational programs of the State's schools. Employing entities need to know immediately the requirements for the modified temporary licenses in order that they may recruit teachers and apply for the modified temporary licenses in a timely manner before the beginning of school in September 2003. In addition, candidates for the modified temporary license need to know the requirements so that they may meet them before school begins in the fall.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at its September 10-12, 2003 meeting.

Subject: Modified temporary licenses for classroom teaching.

Purpose: To eliminate the current provision for the issuance of temporary licenses and add a new provision to establish the requirements for the issuance of modified temporary licenses, permitting uncertified teachers who meet prescribed requirements to teach in subject matter shortage areas in the schools of the State.

Text of emergency rule: Section 80-5.10 of the Regulations of the Commissioner of Education is repealed and a new section 80-5.10 is added, effective July 22, 2003, as follows:

80-5.10 Modified Temporary License.

(a) *The Commissioner may issue a modified temporary license when the requirements of this section are met. Such modified temporary license*

shall be valid for up to one year, and shall be available and limited for use in the 2003-2004 and 2004-2005 school years only. Such modified temporary licenses may only be issued in certificate titles in the classroom teaching service with a demonstrated shortage of certified teachers as determined by the department and shall be limited to employment with the employing entity.

(b) *Pursuant to section 3006 of the Education Law, the Commissioner may issue a modified temporary license, which permits an uncertified teacher to be employed by a board of education, board of cooperative educational services, county vocational education and extension board, or other entity required by law to employ certified teachers, when the following conditions are met:*

(1) *no certified and qualified teacher is available after extensive and documented recruitment; and*

(2) *the Chancellor, in the case of the City School District of the City of New York; or the superintendent, in the case of other employing boards; or the chief education officer, in the case of another entity required by law to employ certified teachers, has submitted for approval an application for a modified temporary license, accompanied by the fee prescribed in section 3006 of the Education Law, which includes the following:*

(i) *the employing entity's justification for the employment of the uncertified person;*

(ii) *evidence that the candidate has achieved a satisfactory level of performance on the New York State Teacher Certification Examination liberal arts and sciences test;*

(iii) *until February 1, 2004, evidence that the uncertified person has the minimum degree level required for the corresponding provisional certificate, and after February 1, 2004, evidence that the uncertified person has the minimum degree level required for the corresponding initial certificate;*

(iv) *until February 1, 2004, evidence that the uncertified person has completed at least 27 semester hours of coursework required in the content core and/or pedagogical core for the provisional certificate in the title of the modified temporary license sought, and after February 1, 2004, evidence that the uncertified person has completed at least 27 semester hours of coursework required in the content core and/or pedagogical core for the initial certificate in the title of the modified temporary license sought;*

(v) *official transcripts of all collegiate study completed to date by the uncertified teacher; and*

(vi) *a certification by the Chancellor, in the case of the City School District of the City of New York; or by the superintendent, in the case of other employing boards; or by the chief education officer, in the case of another entity required by law to employ certified teachers, of the following facts:*

(a) *that no certified and qualified teacher is available after extensive and documented recruitment;*

(b) *for candidates that are currently or were previously employed by the employing entity as a teacher, that the candidate has a record of satisfactory service;*

(c) *for candidates that are not currently or were not previously employed by the employing entity as a teacher, that the candidate has been subject to a rigorous interview and screening process;*

(d) *that the candidate will not be assigned or otherwise permitted to teach in a building that is a School Under Registration Review, as defined in section 100.2(p) of this Title, or that is a School in School Improvement Status or School in Corrective Action Status, as defined in Part 120 of this Title, unless the candidate is currently employed in such building as a teacher and has rendered satisfactory service there as a teacher;*

(e) *that the candidate will not be assigned to a position supported by Title 1 funds in violation of section 119 of the No Child Left Behind Act of 2001 or 34 CFR 200.55.*

(c) *After approval of the application, the department shall transmit the modified temporary license to the employing entity.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. EDU-29-03-00009-P, Issue of July 23, 2003. The emergency rule will expire October 1, 2003.

Text of emergency rule and any required statements and analyses may be obtained from: Mary Gammon, Legal Assistant, Office of Counsel, Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@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 (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.

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.

Paragraph (c) of subdivision (1) of section 3006 of the Education Law provides the Commissioner of Education with the authority to issue temporary teaching licenses.

Subparagraph (iii) of paragraph (a) of subdivision (2) of section 3006 of the Education Law establishes an application fee that the Commissioner of Education may charge for a temporary license.

Subdivision (1) of section 3009 of the Education Law provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or any part thereof, be collected by a district tax except as provided in the Education Law.

Section 3010 of the Education Law provides that any trustee or member of a board of education who applies, or directs, or consents to the application of, any district money to the payment of an unqualified teacher's salary, thereby commits a misdemeanor.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment to the Regulations of the Commissioner of Education carries out the objectives of the above-referenced statutes by establishing requirements for modified temporary licenses that would permit uncertified teachers who meet prescribed requirements to teach in the schools of the State.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to eliminate the current provision for the issuance of temporary licenses and to add a new provision establishing the requirements for the issuance of modified temporary licenses, permitting uncertified teachers who meet prescribed requirements to teach in subject matter shortage areas in the schools of the State. The candidate for the modified temporary license would have to meet educational, assessment, and other prescribed requirements. The modified temporary license would permit the candidate to teach for a one-year period, upon documentation that no certified teacher is available for employment in that position. The amendment creates a time-limited mechanism to meet the critical need for classroom teachers in demonstrated shortage areas, by employing candidates who have not yet completed all of the requirements for a regular teaching certificate but who have demonstrated significant progress in meeting those requirements. The modified temporary licenses would only be available in the 2003-2004 and 2004-2005 school years.

This action is necessary because, despite strenuous teacher recruitment efforts and the enactment of a number of Regents initiatives creating additional pathways for teacher certification, a persistent shortage of certified teachers remains in New York City and certain upstate regions, including in the subject matter areas of math, science, bilingual education and special education. This action is necessary in order to avert an impending crisis of classroom staffing, particularly in the New York City schools.

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 applications for modified temporary licenses.

(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. The application fee for the modified temporary license of \$50 is established in section 3006 of the Education Law. In addition, the candidate will also have to pay a \$70 fee for the New York State Teacher Certification Examination liberal arts and sciences test.

(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:

The amendment will provide New York State school districts and BOCES a pool of candidates, not otherwise available, from which to draw teachers. School districts and BOCES that which to draw from this pool will have to apply to the State Education Department for a modified temporary license for the uncertified teacher.

6. PAPERWORK:

Schools that wish to employ a teacher under a modified temporary license must apply to the State Education Department. This application requires the employing entity to include the employing entity's justification for the employment of an uncertified person, evidence that the candidate passed the New York State Teacher Certificate Examination liberal arts and sciences test, met minimum degree requirements, official transcripts of all collegiate study completed by the candidate, and a certification to a number of facts prescribed in the regulation.

7. DUPLICATION:

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

8. ALTERNATIVES:

The proposal responds to a request from the Chancellor of the City School District of the City of New York for the modified temporary license to address immediate personnel shortages facing that school district. No alternative proposals were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that deal with the subject matter of this amendment.

10. COMPLIANCE SCHEDULE:

Regulated parties must comply with the proposed amendment on its effective date. Because of the permissive nature of the amendment, it is unnecessary to afford regulated parties additional time to comply.

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

The proposed amendment establishes requirements for modified temporary license that would permit a candidate to teach in the public schools and other schools where teacher certification is required. 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 an uncertified teacher for employment under a modified temporary license.

2. Compliance requirements:

The amendment will provide New York State school districts and BOCES a pool of candidates, not otherwise available, from which to draw teachers. School districts and BOCES that which to draw from this pool will have to apply to the State Education Department for a modified temporary license for the uncertified teacher. This application requires the employing entity to include the employing entity's justification for the employment of an uncertified person, evidence that the candidate passed the New York State Teacher Certificate Examination liberal arts and sciences test, evidence that the candidate met minimum degree requirements, official transcripts of all collegiate study completed by the candidate, and a certification to a number of facts prescribed in the regulation.

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 is no compliance cost for school districts or BOCES that exercise the option of applying for a modified temporary license, on behalf of a candidate. However, the candidate must pay an application fee of \$50 for the modified temporary license.

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 a modified temporary license to address immediate shortages of teachers, and it only applies to school districts and BOCES that apply for a modified temporary license. It will not impose costs on local governments. The State Education Department has determined that uniform requirements for the modified temporary license are necessary to ensure the adequacy of candidates' qualifications.

7. Local government participation:

The proposed amendment is in response to a request received from the Chancellor of the City School District of the City of New York for modified temporary licenses. Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State. In addition, copies of the proposed rule were provided to each charter school to give them an opportunity to participate in this proposed rule making.

Rural Area Flexibility Analysis

1. Types and estimated of number of rural areas:

The proposed amendment will impact all school districts and boards of cooperative educational services (BOCES), and other employing entities that are required by law to hire certified teachers, that elect to apply for modified temporary licenses, including those 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 mile or less. It also affects individuals in such rural areas of the State that elect to teach under a modified temporary license.

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

The purpose of the proposed amendment is to eliminate the current provision for the issuance of temporary licenses and to add a new provision establishing the requirements for the issuance of modified temporary licenses, permitting uncertified teachers who meet prescribed requirements to teach in subject matter shortage areas in the schools of the State. The candidate for the modified temporary license would have to meet educational, assessment, and other prescribed requirements. The modified temporary license would permit the candidate to teach for a one-year period, upon documentation that no certified teacher is available for employment in that position. The amendment creates a time-limited mechanism to meet the critical need for classroom teachers in demonstrated shortage areas, by employing candidates who have not yet completed all of the requirements for a regular teaching certificate but who have demonstrated significant progress in meeting those requirements. The modified temporary licenses would only be available in the 2003-2004 and 2004-2005 school years.

The amendment will provide New York State school districts and BOCES, including those located in rural areas of the State, a pool of candidates, not otherwise available, from which to draw teachers. School districts and BOCES that wish to draw from this pool will have to apply to the State Education Department for a modified temporary license for the uncertified teacher. This application requires the employing entity to include its justification for the employment of an uncertified person, evidence that the candidate passed the New York State Teacher Certification Examination liberal arts and sciences test, met minimum degree requirements, official transcripts of all collegiate study completed by the candidate, and a certification to a number of facts prescribed in the regulation.

3. Costs:

The application fee for the modified temporary license of \$50 is established in section 3006 of the Education Law. In addition, the candidate will also have to pay a \$70 fee for the New York State Teacher Certification Examination liberal arts and sciences test.

4. Minimizing adverse impact:

The amendment establishes requirements for a modified temporary license to address immediate shortages of certified teachers. It only applies to schools that wish to hire an uncertified teacher in a certificate title in the classroom teaching service for which there is a demonstrated shortage of certified teachers. The State Education Department has determined that uniform requirements for the modified temporary license are necessary, no matter the geographic location of the school, to ensure the adequacy of candidates' qualifications. Because of the nature of the proposed amendment, establishing different standards for schools and candidates located in rural areas is not warranted.

5. Rural area participation:

Comments on the proposed rule were solicited from the Department's Rural Advisory Committee, whose membership includes schools located in rural areas. In addition, copies of the proposed rule will be provided to each charter school.

Job Impact Statement

The proposed amendment would permit uncertified teachers who meet prescribed requirements to teach in subject matter shortage areas in the schools of the State. The candidate for the modified temporary license would have to meet educational, assessment, and other prescribed requirements. The modified temporary license would permit the candidate to teach for a one-year period, upon documentation that no certified teacher is available for employment in that position. The amendment creates a time-limited mechanism to meet the critical need for classroom teachers in demonstrated shortage areas, by employing candidates who have not yet completed all of the requirements for a regular teaching certificate but who have demonstrated significant progress in meeting those requirements.

The amendment is needed to meet the critical need for classroom teachers in subject shortage areas. As the proposed amendment establishes requirements for employment under a modified temporary license, it will have no impact on the number jobs or number of employment opportunities in New York State in teaching. It will expand the pool of potential candidate who may be employed as classroom teachers in the schools of the State.

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.

NOTICE OF ADOPTION

Dental Hygiene Restricted Local Infiltration Anesthesia

I.D. No. EDU-07-03-00008-A

Filing No. 773

Filing date: July 22, 2003

Effective date: August 7, 2003

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

Action taken: Amendment of section 52.9 and addition of section 61.17 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6506(1), 6507(2)(a), 6605-b(1), (2) and (3); and 6606 (not subdivided)

Subject: Dental hygiene restricted local infiltration anesthesia/nitrous oxide analgesia certificate.

Purpose: To establish procedures and education and training requirements for licensed dental hygienists to be certified to administer and monitor local infiltration anesthesia and nitrous oxide analgesia in the practice of dental hygiene under the personal supervision of a licensed dentist and requirements that college programs must meet to be registered by the State Education Department as leading to certification in this field.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-07-03-00008-P, Issue of February 19, 2003.

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

Revised rule making(s) were previously published in the State Register on May 14, 2003.

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Requirements for Educational Leadership Programs

I.D. No. EDU-19-03-00013-A

Filing No. 775

Filing date: July 22, 2003

Effective date: Aug. 7, 2003

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 (not subdivided); 210 (not subdivided); 215 (not subdivided); 305(1), (2) and (7); 3004(1); and 3006(1)

Subject: Requirements for educational leadership programs.

Purpose: To improve the preparation of education leaders in New York State by establishing new requirements for college programs that prepare school building leaders, school district leaders, and school district business leaders.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-19-03-00013-P, Issue of May 14, 2003.

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

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

Assessment of Public Comment

The proposed rule was published in the *State Register* on May 14, 2003. Below is a summary of written comments received by the State Education Department concerning the proposed rule making and the State Education Department's assessment of the issues raised by the comments.

COMMENT: I believe that the proposed regulations provide colleges and universities with important guidelines related to administrative preparation programs so that they are more closely aligned with the issues school leaders face on a daily basis. I continue to believe that closer connections with higher education are essential so that candidates for certification will be exposed to a blend of theory and practice.

RESPONSE: The State Education Department agrees with the positions stated above. The proposed regulation is consistent with those positions.

COMMENT: A structured, focused internship experience is key, under the supervision of an effective experienced leader, so that the intern has the opportunity to be exposed to a wide range of experiences.

RESPONSE: The State Education Department agrees with the position stated above. The leadership experience requirements in the proposed regulation are consistent with that position.

COMMENT: While supporting raising the standards for our future leaders, I find it difficult to be assured that the written test would be a valid indicator of success for a potential candidate without knowing more about the content and construction of the written test. Many of the key attributes of effective leaders include areas that are difficult to measure.

RESPONSE: The State Education Department will require test developers to substantiate that the test is a valid indicator of the knowledge and skills acquired by candidates that are considered essential for effective educational leadership and amenable to such testing.

COMMENT: New York State is facing a shortage of superintendent candidates. Despite the shrinking applicant pool, however, there is no urging to have non-educators become superintendents. Boards of education continually seek out and hire superintendents who are trained educators, recognizing the value of an educational background and training. The proposed rule would make regulatory changes allowing easier entrance into the superintendency for those without a strong educational background, and would permit inconsistency in the admission requirements established by different alternative programs. Our organization discourages final enactment of this component of the proposed rule. We seek to maintain the waiver provision set forth in existing regulations, whereby the Commissioner may grant waivers allowing candidates with nontraditional backgrounds to serve as superintendents following a local board of education request for such a waiver.

RESPONSE: The waiver provision for certification of school superintendents in 8 NYCRR 80-2.4 will remain. The proposed rule provides an additional alternative route for certification of school district leaders who do not have three years of school service. This alternative route has safeguards built into it and a system of checks and balances involving the State Education Department, the institution of higher education, and the local school district.

Each candidate for admission to an alternative program would need to be adjudged as exceptionally qualified for this role. In addition, a local district would need to make an informed choice to provide a written commitment to mentor and employ this candidate before the Department would issue a Transitional D Certificate authorizing mentored service for up to three years in a school district leadership role while completing the program.

Before the Department would issue a Transitional D Certificate, the exceptionally qualified candidate would need to meet the following benchmarks:

1. Hold an earned graduate degree;
2. Pass the written component of the State assessment in school district leadership;
3. Receive a written commitment from a school district or BOCES for up to three years of district-mentored and college-supervised employment as a school district leader;
4. Receive the endorsement and recommendation of the institution of higher education that the Department issue a Transitional D Certificate; and
5. Demonstrate to the institution of higher education and the Department the potential to become an education leader possessing the nine essential characteristics of effective leaders through prior exemplary service in a leadership position in an organization that demonstrated strong performance and the following previous accomplishments:
 - a. Developed and promoted a vision for an organization,
 - b. Collaboratively identified goals and objectives for achieving that vision,
 - c. Communicated effectively to promote goals,
 - d. Led comprehensive, long-range planning, informed by multiple data sources, for achieving goals,
 - e. Effectuated any needed change through ethical decision making based upon factual analysis, even in the face of opposition,
 - f. Established accountability for achieving goals and objectives,
 - g. Developed staff capability for their roles in achieving goals,
 - h. Supervised establishment of a budget supporting achievement of goals,
 - i. Supervised the management of finances and facilities to support achievement of goals, and
 - j. Applied statutes and regulations in accordance with law, and developed and implemented policies in accordance with law.

Furthermore, the candidate will be eligible for a professional certificate for school district leadership only if the following conditions are met:

1. Candidate completed the institution's school district leadership program and at least 60 credits of graduate study;
2. Candidate successfully completed the written and the performance components of the State assessment in school district leadership; and
3. Candidate completed at least one year of successful mentored service as a school district leader with the Transitional D Certificate; or completed extensive, mentored, school district leadership experiences and has a written commitment for employment as a school district leader in New York State.

The above requirements and safeguards ensure that individuals certified for school district leadership positions through completion of alternative programs will meet high quality standards that are consistently applied for program admission, program completion, and recommendation for certification.

NOTICE OF ADOPTION

Students with Limited English Proficiency

I.D. No. EDU-19-03-00014-A

Filing No. 782

Filing date: July 22, 2003

Effective date: Aug. 7, 2003

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

Action taken: Amendment of Part 154 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 215 (not subdivided), 2117(1), 3204(2), (2-a), (3) and (6), 3602(10) and (22), 3713(1) and (2)

Subject: Students with limited English proficiency.

Purpose: To establish criteria for the identification and assessment of students with limited English proficiency through use of, respectively, the Language Assessment Battery-Revised (LAB-R) test and the New York State English as a Second Language Test (NYSESLAT); establish curriculum and reporting requirements for such students; and update provisions in the regulations concerning such students.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-19-03-00014-P, Issue of May 14, 2003.

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

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the *State Register* on May 14, 2003, the State Education Department (“the Department”) has received the following comments:

COMMENT:

Seventy-seven letters expressed support relating to the assessments for initial identification and annual English language proficiency. This measure will ensure proper placement of Limited English Proficiency (LEP) students in bilingual education and English as a second language (ESL) programs; reliably assess their annual progress toward attaining English proficiency through uniform statewide criteria; conform Part 154 with the federal No Child Left Behind Act (NCLB); and provide an equitable and consistent manner to monitor annual progress. The merging of the advanced and transitional levels will eliminate confusion between transitional level of proficiency and transitional instructional services.

DEPARTMENT RESPONSE:

The Department concurs.

COMMENT:

It was suggested that: 1) the designated level be indicated; 2) the address for ordering the LAB-R tests be included; 3) a paragraph on Title III parent notification requirements be included.

DEPARTMENT RESPONSE:

Regarding the suggestions: 1) the LEP designated level has not yet been established but will be made available as soon as it is established; 2) school districts outside NYC will receive directions on how to order the LAB-R; the NYC Department of Education will make copies available to schools in NYC; 3) a parent notification piece consistent with NCLB, Title III requirements is included in section 154.4(f)(1) and (2).

COMMENT:

The amendment will standardize the instruments (NYSESLAT and the LAB-R) used throughout the State. The alignment of the NYSESLAT to the State ESL and English Language Arts (ELA) standards will allow LEP students to demonstrate growth in English development.

DEPARTMENT RESPONSE:

The Department concurs.

COMMENT:

The new assessments and the change in proficiency levels will benefit students whose first language is not English. The designated cut-off on the NYSESLAT should be more rigorous than the current 40th percentile standard.

DEPARTMENT RESPONSE:

The Department concurs.

COMMENT:

The provisions relating to the LAB-R and the NYSESLAT, and the language proficiency levels will make the system of initial identification and continued eligibility of LEP students consistent throughout the State. Language proficiency levels will no longer be confused with the transitional services provided to exited LEP students.

DEPARTMENT RESPONSE:

The Department concurs.

COMMENT:

The adoption of the NYSESLAT and the LAB-R will result in continuity and stability of ESL instruction across NYS; promote the uniform documentation of progress annually and across districts; assist districts in meeting Part 154 requirements; result in better assessment of standards; and help educators refine services and report outcomes.

DEPARTMENT RESPONSE:

The Department concurs.

COMMENT:

The new assessments for initial identification and achievement will ensure consistency to services for LEP students across the State. Because both tests measure all four skills, it is an improvement over the previous regulations which based placement and exiting decisions on reading skills only. The NYSESLAT will ensure districts’ accountability for the yearly progress of LEP students, resulting in districts devoting needed resources to their ESL programs.

DEPARTMENT RESPONSE:

The Department concurs.

COMMENT:

The ESL standards, aligned with the ELA standards, will facilitate the LEP student transition into ELA classes and ensure students will be tested on what they were taught. The NYSESLAT tests all four modalities, which is important at the secondary level where students are preparing to take the English Regents Exam.

DEPARTMENT RESPONSE:

The Department concurs.

COMMENT:

The deletion of the percentile mode and the adoption of the NYSES-LAT will help educators plan standards-based instructional practices for teaching and learning linked to student performance.

DEPARTMENT RESPONSE:

The Department concurs.

COMMENT:

It was recommended that the proposed regulation: 1) provide consideration of Pre-K for years of service and allow use of funds for personnel and resources; 2) specify role of teachers in administering the LAB; and 3) specify reporting requirements under Part 154.

DEPARTMENT RESPONSE:

Regarding the three recommendations: 1) Part 154 specifically provides for a K-12 program and is therefore inapplicable to Pre-K programs; 2) and 3) - these are recommendations that are addressed in the Department’s guidelines for LEP students.

COMMENT:

It was suggested that we: 1) omit 154.2 [(d)] and [(e)]; 2) define bilingual education as consisting of three components: English, ESL and native language; and 3) indicate that ESL instruction must be provided by a NYS certified ESL teacher.

DEPARTMENT RESPONSE:

Regarding the three suggestions: 1) bracketed language indicates that language will be deleted; 2) there are only two components in a bilingual program. In the language arts component instruction is delivered through English, ESL and native language; and, 3) ESL certification requirements are addressed in Commissioner’s Regulations Part 80.10.

COMMENT:

The NYSESLAT and the LAB-R will result in a more accurate assessment of students’ instructional/linguistic needs leading to better educational services. Support was expressed for the reduction of ESL levels, from four to three.

DEPARTMENT RESPONSE:

The Department concurs.

COMMENT:

The NYSESLAT is a poor instrument to measure academic language proficiency and will exit students prematurely and cause them to struggle in mainstream classrooms. The standards for mainstream students seem disproportionate to those for LEPs and that with this new initiative we are moving back to the “sink or swim situation”.

DEPARTMENT RESPONSE:

The Department does not concur with these comments. Under the Department’s coordination and collaboration with ETS, a group of NYS field practitioners, with expertise and experience in the education of LEP students, worked together to develop the NYSESLAT. Once developed, the test has been field-tested and extensive psychometric analyses have been conducted. The results of such analyses attest to the reliability and validity of the test. Regarding the concern with the different set of standards, the Department has worked very closely with bilingual/ESL teachers and administrators and major State organizations to align the State standards with the ESL standards for LEP students. As a result, an ESL standards document has been developed and will soon be officially adopted by the Department.

COMMENT:

The NYSESLAT and the LAB-R are inadequate measures because the speaking and listening sections are based on social rather than academic language and the reading section does not differentiate among 2nd, 3rd, and 4th graders. The students will test out and “fall on their faces”. The amendments “fly in the face of research” and barely address the Basic Interpersonal Communication Skills (BICS) and ignore the Cognitive Academic Language Proficiency (CALP) or Cognitive Academic Language Learning Approach (CALLA), and finally, although not intended, there is a perception of discrimination in the amendments.

DEPARTMENT RESPONSE:

The Department does not concur with these comments. Under the Department’s coordination, in collaboration with ETS, the NYC Department of Education and NYS educators, with expertise and experience in the education of LEP students, the NYSESLAT and the LAB-R were developed. Both tests have been field-tested and extensive psychometric analyses conducted. The results of such analyses attest to the reliability and validity of the tests. According to these results the tests measure what they are supposed to measure—English language proficiency. Furthermore, the NYSESLAT was developed to assess the range of language skills available to the children including both the social and context rich language skills

and the academic and context poor skills. The item calibration model and the standard setting are sensitive to these developing skills. Exit criteria and criteria for progress from ESL level to ESL level were identified through standard setting studies conducted using the best judgments of ESL teachers, field test data and operational test data. Finally, the adoption of a uniform, standards-based assessment, is not only fair and unbiased but will allow LEP students to demonstrate their English language proficiency in terms of one set of standards and ensure proper identification and appropriate program placement. The Department will ensure that LEP students are provided opportunities to achieve the same educational goals and standards as the general student population.

COMMENT:

The NYSESLAT is a much better test than the LAB and the situations presented are more relevant to students' lives and experiences. The test is too long and scheduled too late in the semester. The test should be shortened and administered early in the semester or in two parts, in the fall and the spring.

DEPARTMENT RESPONSE:

The results of the first administration will guide the development and administration of the 2003-2004 version. Adjustments will be made as appropriate and necessary.

COMMENT:

The uniform assessment for initial identification and English proficiency and the merging of the advanced and transitional levels will strengthen the Part 154 program, support the NCLB, and eliminate confusion among educators.

DEPARTMENT RESPONSE:

The Department concurs.

COMMENT:

The regulations support bilingual education programs, the new assessment instruments and English language support services for LEP/English Language Learners (ELLs). It was suggested that: 1) safeguards to ensure proper identification and services are necessary; 2) correlation between LAB-R and NYSESLAT scores is needed; 3) transitional services, provided and evaluated, must be ensured; 4) recommendations for additional language for Parts 154.2(a)(2), (b)(c) and 154.2(e)(2); and 5) that the regulations should allow dual language programs.

DEPARTMENT RESPONSE:

Regarding the suggestions: 1) the uniform assessment will result in improved identification and placement; 2) the population has not taken both tests yet. When the standard setting was done on NYSESLAT, the standards on the LAB-R were considered. The Department will be studying this to a greater extent as more data is required; 3) LEA's must report the progress made by former LEP/ELL students in meeting the State academic content and student achievement standards for two years after exiting programs; 4) the Department will review the correspondents' recommended language; and 5) implementation of dual language programs is strongly recommended and supported by over two million dollars in Categorical funds.

COMMENT:

Concern was expressed regarding: 1) correlation between LAB-R and NYSESLAT scores; 2) accuracy of NYSESLAT in predicting success in subject area achievement tests for LEPs who exit ESL/bilingual services; 3) use of NYSESLAT as the sole criterion for exiting students rather than multiple measures of assessment; 4) ability of NYSESLAT to assess statewide ESL/Bilingual program needs; 5) whether students will receive transitional support ensuring academic success as measured by high school graduation rates; and 6) unavailability of an exit score on the NYSESLAT.

DEPARTMENT RESPONSE:

Regarding the correspondent's concerns: 1) the LEP population has not taken both tests yet. When the standard setting was done on the NYSESLAT, the standards on the LAB-R were considered. NYSED will be studying this to a greater extent as more data is required; 2) the task of the standard setting groups was to identify the point at which the child could succeed in any environment - bilingual or monolingual English. The cut scores reflect the point at which they feel success is not limited by lack of English proficiency; 3) the NYSESLAT provides uniform standardized results used for a particular purpose - to determine the level of English proficiency; the multiple measures recommended in the standards provide results that will guide appropriate programmatic instructional decisions for LEP students; 4) the test offers vertical scaling (across grades) in total battery, listening and speaking, and reading and writing. It gives a considerable amount of information on the skills of the students because it has cut points demarcating beginning, intermediate, advanced, and exit-ready skills in each of those scales; 5) LEAs are held accountable on the progress

made by LEP/ELL students in meeting the State standards after these children no longer receive services and must provide data to the Department; and 6) the Department has done the studies and will continue to study the mechanisms for providing scores.

NOTICE OF ADOPTION

No Child Left Behind Act of 2001

I.D. No. EDU-20-03-00005-A

Filing No. 778

Filing date: July 22, 2003

Effective date: Aug. 7, 2003

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(p) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 210 (not subdivided), 215 (not subdivided), 305(1), (2) and (20), 309 (not subdivided) and 3713(1) and (2)

Subject: No Child Left Behind Act of 2001 (Pub. L. 107-110)—school/district accountability.

Purpose: To establish criteria and procedures to ensure State and local educational agency compliance with the provisions of the Federal No Child Left Behind Act of 2001 relating to academic standards and school/district accountability.

Substance of final rule: The State Education Department proposes to amend subdivision (p) of section 100.2 of the Regulations of the Commissioner of Education, effective August 7, 2003. Since publication of a Notice of Proposed Rule Making in the State Register on May 21, 2003, the proposed rule has been revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith. The following is a summary of the provisions of the revised proposed rule.

In general, subdivision (p) of section 100.2 has been amended to establish criteria and procedures to ensure State and local educational agency compliance with the provisions of the federal No Child Left Behind Act of 2001 (NCLB), Pub.L. 107-110, relating to academic standards and school and school district accountability. The principal amendments are described as follows:

A new paragraph (1) has been added to provide definitions relating to school and school district accountability, consistent with the NCLB.

A new paragraph (5) has been added to establish criteria and procedures for determining whether a public school, charter school or school district shall be deemed to have made adequate yearly progress under the NCLB. Clause (b) of subparagraph (iv) of paragraph (5) was revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

A new paragraph (6) has been added to establish criteria and procedures to designate public schools that fail to make adequate yearly progress as "Schools Requiring Academic Progress"; to prescribe remedial measures to be taken by such schools while so designated, including school improvement plans, corrective action plans, restructuring plans, revised restructuring plans and other measures as required by the NCLB; to monitor their progress while in such status; and to remove from such status public schools that make adequate yearly progress for two consecutive years on all criteria and indicators for which they have been identified. A public school or charter school that received funds under Title I for two consecutive years during which the school did not make adequate yearly progress shall be identified for school improvement under section 1116(b) of the NCLB (20 USC section 6316[b]) and is subject to the requirements therein. A school so identified that fails to make adequate yearly progress in any subsequent year in which it receives Title I funds shall be required in the next school year in which it receives Title I funds to implement the provisions of section 1116(b)(5) of the NCLB, 20 USC section 6316(b)(5). If the school fails to make adequate yearly progress in any subsequent year in which it receives Title I funds, it shall be required in the next school year in which it receives Title I funds to implement the provisions of section 1116(b)(7) of the NCLB, 20 USC section 6316(b)(7). If the school fails to make adequate yearly progress in any subsequent year in which it receives funds under Title I, it shall be required to implement in the next school year in which it receives Title I funds the provisions of section 1116(b)(8) of the NCLB, 20 USC section 6316(b)(8). An LEA that makes adequate yearly progress for two consecutive years shall no longer be subject to the requirements of section 1116(b) of the NCLB.

A new paragraph (7) has been added to establish criteria and procedures to designate school districts that fail to make adequate yearly pro-

gress as “Districts Requiring Academic Progress”; to prescribe remedial measures to be taken by such districts while so designated, including district improvement plans and revised district improvement plans; to monitor their progress while in such status; and to remove from such status districts that make adequate yearly progress for two consecutive years on all criteria and indicators for which they have been identified. A local educational agency (LEA) that received funds under Title I for two consecutive years during which it did not make adequate yearly progress shall be identified for improvement under section 1116(c) of the NCLB (20 USC section 6316(c)) and shall be subject to the requirements therein. The Commissioner may further identify the LEA for corrective action under section 1116(c)(10) of the NCLB. An LEA that makes adequate yearly progress for two consecutive years shall no longer be subject to the requirements of section 1116(c) of the NCLB.

A new paragraph (8) has been added to provide for the identification, by the Commissioner, of “high performing” and “rapidly improving” public schools, school districts and charter schools.

Paragraph (5), relating to public school registration review, has been renumbered as paragraph (10), and amended to provide that each school year during which a school remains under registration review, the board shall provide direct notification to parents and other persons in parental relation that the school remains under registration review, and include in such notification the timeliness and process for parents exercising their rights to school choice.

A new paragraph (11) has been added to establish criteria and procedures for the removal of schools from registration review.

A new paragraph (14) and a new paragraph (15) have been added to establish, respectively, public school, school district and charter school accountability performance criteria and additional public school, school district, and charter school accountability indicators. Subparagraph (iii) of paragraph (15) was revised as set forth in the State Concerning the Regulatory Impact Statement filed herewith.

A new paragraph (16) has been added to prescribe criteria for the use of annual high school cohorts or high school alternative cohorts for purposes of determining adequate yearly progress. Subparagraph (ii) of paragraph (16) was revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

Final rule as compared with last published rule: Nonsubstantive changes were made in section: 100.2(p)(1)(iii), (v)(a)(2)(i), (5)(vii), (viii), (6)(i), (xvii), (7)(i), (iii), (iv) and (v), (8)(ii)(c), (14)(vii) and (15)(iii).

Revised rule making(s) were previously published in the State Register on June 11, 2003.

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

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

Since publication of a Notice of Revised Rule Making in the *State Register* on June 11, 2003, the following nonsubstantial revisions were made to the proposed rule:

Section 100.2(p)(1)(iii) was revised to change “New York city” to “New York City.”

Section 100.2(p)(1)(v)(a)(2)(i) was revised to change “Regents examination” to “Regents examinations.”

Section 100.2(p)(5)(vii) was revised to change “Commissioner” to “commissioner” and to correct an error in citation by changing the reference to “subparagraph (ix) of this paragraph” to “subparagraph (viii) of this paragraph.”

Section 100.2(p)(5)(viii) was revised to delete “of” in the sentence reading “In school district with such feeder schools and in school districts that accept grade 4 students from feeder schools by contract, the grade four State assessment results of for each feeder school student. . .”

Section 100.2(6)(i) was revised to change “two year” to “two-year.”

Section 100.2(p)(6)(xvii) and (7)(i) were revised to change “Commissioner” to “commissioner.”

Section 100.2(p)(7)(iii), (iv) and (v) were revised to add underlining (indicating new language), which was inadvertently omitted, to the entire respective subparagraphs.

Section 100.2(p)(8)(ii)(c) was revised to change “criterion” to “criteria.”

Section 100.2(p)(14)(vii) was revised to add the word “are” to the phrase as follows: “. . . and for identifying those schools that are subject to registration review pursuant to paragraph (9) of this subdivision.”

Section 100.2(p)(15)(iii) was revised to change “department approval five-year program” to “department-approved, five-year program.”

The above revisions to the proposed rule do not require any changes to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis and Rural Area Flexibility Analysis.

Job Impact Statement

Since publication of a Notice of Revised Rule Making in the *State Register* on June 11, 2003, nonsubstantial revisions were made to the proposed rule as set forth in the Regulatory Impact Statement filed herewith.

The proposed rule, as so revised, is necessary to conform the Commissioner’s Regulations to the requirements of the NCLB, relating to academic standards and school and school district accountability. The revised rule applies to school districts, boards of cooperative educational services (BOCES) and charter schools. Local educational agencies, including school districts, BOCES and charter schools, are required to comply with the requirements of the NCLB as a condition to their receipt of federal funding under Title I of the Elementary and Secondary Education Act of 1965, as amended.

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

No Child Left Behind Act of 2001 — Public Reporting Requirements

I.D. No. EDU-21-03-00013-A

Filing No. 777

Filing date: July 22, 2003

Effective date: Aug. 7, 2003

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(m) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2), 309 (not subdivided), 1608(6), 1716(6), 2554(24), 2590-e(23), 2590-g(21), 2601-a(7) and 3713(1) and (2)

Subject: No Child Left Behind Act of 2001 (Pub. L. 107-110) — public reporting requirements.

Purpose: To establish criteria and procedures to ensure State and local educational agency compliance with the provisions of the Federal No Child Left Behind Act of 2001 relating to public reporting requirements.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-21-03-00013-P, Issue of May 28, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

No Child Left Behind Act of 2001 — School District Data Reporting Requirements

I.D. No. EDU-21-03-00014-A

Filing No. 779

Filing date: July 22, 2003

Effective date: Aug. 7, 2003

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(bb) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2), 309 (not subdivi-

vided), 1608(6), 1716(6), 2554(24), 2590-e(23), 2590-g(21), 2601-a(7) and 3713(1) and (2)

Subject: No Child Left Behind Act of 2001 (Pub. L. 107-110) — school district data reporting requirements.

Purpose: To establish criteria and procedures relating to school district data reporting to ensure State and local educational agency compliance with the provisions of the Federal No Child Left Behind Act of 2001 relating to public reporting requirements.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-21-03-00014-P, Issue of May 28 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

No Child Left Behind Act of 2001 — Charter School Reporting Requirements

I.D. No. EDU-21-03-00015-A

Filing No. 780

Filing date: July 22, 2003

Effective date: Aug. 7, 2003

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

Action taken: Amendment of section 119.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 2857(2) and 3713(1) and (2)

Subject: No Child Left Behind Act of 2001 (Pub. L. 107-110) — charter school reporting requirements.

Purpose: To establish criteria and procedures to ensure State and charter school compliance with the provisions of the Federal No Child Left Behind Act of 2001 relating to public reporting requirements.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-21-03-00015-P, Issue of May 28, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

Text of proposed rule: 1. The introductory paragraph to subdivision (a) of 6 NYCRR Section 196.4 is amended to read as follows:

(a) *Except as provided in subdivision (b) of this section, the [The] operation of mechanically propelled vessels and aircraft is prohibited on all the following bodies of water in the forest preserve:*

2. A new subdivision (b) of 6 NYCRR Section 196.4 is added to read as follows:

(b) *Notwithstanding the prohibitions set forth in subdivision (a) of this section:*

(1) *the use of mechanically propelled vessels and aircraft is permitted on water bodies specified in subdivision (a) of this section by or under the supervision of appropriate officials, in cases of sudden, actual and ongoing emergencies involving the protection or preservation of human life or intrinsic resource values, such as search and rescue operations, forest fires, or oil spills or similar, large-scale contamination of water bodies;*

(2) *the use of aircraft by administrative personnel on the water bodies specified in subdivision (a) of this section is permitted upon the written approval of the Commissioner for a specific major administrative, maintenance, rehabilitation, or construction project if that project involves conforming structures or improvements, or the removal of non-conforming structures or improvements, provided that such use of aircraft must be confined to off-peak seasons for the area in question and must be undertaken at periodic intervals of not less than three years, unless extraordinary conditions, such as fire, major blow-down or flood, mandate more frequent work or work during peak periods;*

(3) *the use of aircraft on the water bodies specified in subdivision (a) of this section is permitted for a specific major research project conducted by or under the supervision of a state agency if such project is for purposes essential to the preservation of wilderness values and resources, no feasible alternative exists for conducting such research on other state or private lands, such use is minimized, and the project has been specifically approved in writing by the Commissioner after consultation with the Adirondack Park Agency;*

(4) *in the St. Regis Canoe Area mechanically propelled vessels and aircraft may be used by administrative personnel, in accordance with paragraphs 1, 2, and 3 of this subdivision, and for additional purposes designed to preserve or enhance the water or fishery resources of the area as specified in duly adopted unit management plans;*

(5) *on Little Green Pond and Little Clear Pond mechanically propelled vessels may be used by administrative personnel, in accordance with paragraphs 1, 2, and 3 of this subdivision, and for additional purposes designed to preserve, enhance, or otherwise manage the water or fishery resources of these areas associated with the Adirondack Hatchery;*

(6) *written logs will be kept by the Department recording the use of mechanically propelled vessels and aircraft as authorized by this subdivision and shall be filed with the Adirondack Park Agency as part of an annual report detailing motorized uses in wilderness areas and the reasons therefor.*

3. A new subdivision (c) of 6 NYCRR Section 196.4 is added to read as follows:

(c) *For restrictions with respect to the water bodies in the William C. Whitney Area see 6 NYCRR Section 190.33.*

Text of proposed rule and any required statements and analyses may be obtained from: Robert Messenger, Department of Environmental Conservation, Forest Preserve Management, 625 Broadway, Albany, NY 12233-4254, (518) 473-9518, e-mail: rwmessen@gw.dec.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.

Additional matter required by statute: A negative declaration has been prepared in compliance with art. 8 of the Environmental Conservation Law.

Regulatory Impact Statement

1. Statutory Authority

The Environmental Conservation Law (ECL) provides statutory authority for guaranteeing beneficial use of the environment without risk to health and safety (ECL Section 1-0101(3)(b)); preserving the unique characteristics of the Adirondack forest preserve (ECL Section 1-0101(3)(d)); providing for the care, custody, and control of the forest preserve (ECL Section 3-0301(1)(d)); providing for abatement of water pollution (ECL Section 3-0301(1)(i)); promoting natural propagation and maintaining desirable species in ecological balance, and restoring and improving natural habitat (ECL Section 11-0303); adopting rules and regulations (ECL Sec-

Department of Environmental Conservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Mechanically Propelled Vessels and Aircraft in the Forest Preserve

I.D. No. ENV-31-03-00005-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 196.4 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101(3)(b), (d), 3-0301(1)(d), (i), (2)(m), 9-0105(1) and 11-0303

Subject: Operation of mechanically propelled vessels and aircraft in the Forest Preserve.

Purpose: To establish language consistent with the Adirondack Park State Land Master Plan.

tion 3-0301(2)(m)); and exercising care, custody, control of the preserves (ECL Section 9-0105(1)).

2. Legislative Objectives

The proposed rulemaking for operation of mechanically propelled vessels and aircraft in the forest preserve will contribute to the fulfillment of the legislative objectives of the ECL to guarantee the "widest range of beneficial uses of the environment is attained without risk to health or safety" (ECL Section 1-0101(3)(b)); and promote natural propagation and maintenance of desirable species in ecological balance, and the restoration and improvement of natural habitat (ECL Section 11-0303).

3. Needs and Benefits

Since January 1, 1895, the New York State Constitution has directed that the Forest Preserve be "kept as wild forest lands." For more than 100 years, this constitutional protection has enabled the public to enjoy the quiet and solitude of a wild forest environment in the Forest Preserve.

Furthermore, the Adirondack Park Agency ("the Agency") developed the Adirondack Park State Land Master Plan ("the Master Plan") for the management of State lands within the Adirondack Park pursuant to Executive Law Section 817. The Master Plan classifies such lands into nine basic categories: Wilderness, Primitive, Canoe, Wild Forest, Intensive Use, Historic, State Administrative, Wild, Scenic and Recreational Rivers, and Travel Corridors. The classifications are based upon the characteristics of the lands and their capacity to withstand use. The Master Plan sets forth general guidelines for public use and administrative activities in each unit.

The Master Plan includes general guidelines for the administrative use of mechanically propelled vessels and aircraft in wilderness areas: it prohibits the use of mechanically propelled vessels and aircraft by administrative personnel for day-to-day administration, maintenance or research, but does allow the use of mechanically propelled vessels and aircraft under the following circumstances:

The use of mechanically propelled vessels and aircraft is permitted on those water bodies specified in 6 NYCRR Section 196.4 under the supervision of appropriate officials, in cases of sudden, actual and ongoing emergencies involving the protection or preservation of human life or intrinsic resource values, such as search and rescue operations, forest fires, or oil spills or similar, large-scale contamination of water bodies;

The use of aircraft by administrative personnel is permitted on the water bodies specified in 6 NYCRR Section 196.4 upon the written approval of the Commissioner for a specific major administrative, maintenance, rehabilitation, or construction project if that project involves conforming structures or improvements or the removal of non-conforming structures or improvements, provided that such use of aircraft must be confined to off-peak seasons for the area in question and must be undertaken at periodic intervals of not less than three years, unless extraordinary conditions, such as fire, major blow-down or flood, mandate more frequent work or work during peak periods;

The use of aircraft on the water bodies specified in 6 NYCRR Section 196.4 is permitted for a specific major research project conducted by or under the supervision of a state agency if such project is for purposes essential to the preservation of wilderness values and resources, no feasible alternative exists for conducting such research on other state or private lands, such use is minimized, and the project has been specifically approved in writing by the Commissioner after consultation with the Adirondack Park Agency; and

Written logs will be kept by the Department recording the use of mechanically propelled vessels and aircraft as authorized by this subdivision and shall be filed with the Adirondack Park Agency as part of an annual report detailing motorized uses in wilderness areas and the reasons therefor.

In addition, the Master Plan (June 2001, p. 32) guidelines for Canoe Areas permits the use of mechanically propelled vessels and aircraft to be used by administrative personnel, but only for purposes designed to preserve or enhance the water or fishery resources of the area as specified in duly adopted unit management plans. Furthermore, appended to the "Memorandum of Understanding between the Adirondack Park Agency and the Department of Environmental Conservation Concerning Implementation of the State Land Master Plan for the Adirondack Park" ("APA/DEC MOU", revised March, 2003) is "Guidelines for Fishery Management in Wilderness, Primitive and Canoe Areas" (Appendix C, adopted by the APA on April 26, 1990 and amended on July 10, 1992), which states that:

In those instances where a Unit Management plan has not yet been approved for a given wilderness, primitive, or canoe area, aquatic resource management actions to stock waters may be continued in waters so managed before December 31, 1989, consistent with these guidelines pending

approval of the Plan. Waters reclaimed prior to December 31, 1989 may be reclaimed subject to case-by-case review by the Adirondack Park Agency for consistency with these guidelines pending approval of the Plan. New Waters may be stocked, reclaimed or limed only to prevent significant resource degradation, subject to case-by-case review by the Adirondack Park Agency for consistency with these guidelines, pending approval of the Plan.

Although the Master Plan and the APA/DEC MOU authorize the administrative use of mechanically propelled vessels and aircraft on lakes in Wilderness, Primitive and Canoe areas under limited circumstances, the Department's current regulations, 6 NYCRR Section 196.4 prohibit the operation of mechanically propelled vessels and aircraft for any purpose, even public health and safety emergencies, on over 500 specified water bodies on Adirondack Forest Preserve lands.

This proposed rulemaking would make changes to Section 196.4 so that the Department's regulations are in conformance with the Master Plan and the APA/DEC MOU specifically with respect to the limited circumstances recited above. These limited circumstances are discussed further below.

Pursuant to Master Plan guidelines, the Department has closed roads that are situated in Wilderness areas, allowing them to revegetate. Consequently, responses to life-threatening or intrinsic resource emergencies in roadless back country Wilderness areas, almost always depend on landing aircraft. Since Article XIV, Section 1 of the New York State Constitution directs that Forest Preserve lands be "forever kept as wild forest lands" and that trees situated thereon may not be "removed or destroyed," there are few clear sites in Wilderness areas suitable for landing airplanes or helicopters, and in emergencies, water bodies may provide the only safe aircraft landing sites. Mechanically propelled vessels also may be needed to rapidly transport emergency personnel and equipment on water bodies. Such emergencies may occur at any moment, requiring an immediate response that cannot wait for the Department to promulgate emergency regulations, which take several days to promulgate.

As noted above, it may be nearly impossible to access roadless back country Wilderness areas by foot. In some instances, administrative personnel may need to use aircraft to undertake major maintenance, rehabilitation or construction project involving conforming structures or removal of nonconforming structures.

Likewise, the use of aircraft may be necessary for a specific major research project where such project is necessary for the preservation of the resource. An example of such a research project is acid rain research. The adverse effects of acid rainfall have been especially pronounced in the Adirondack Mountains, where certain forest stands are being destroyed and an increasing number of water bodies are now devoid of fish. The Department established the New York State Acid Deposition Network to determine levels of actual deposition in the state. Ongoing monitoring of acid deposition is essential to determine if the emission reductions projected over the next decade will yield corresponding reductions in acid deposition. The integrity of acid rain studies will be compromised if aircraft are not allowed to be used in the taking of water samples from water bodies which are included in 6 NYCRR Section 196.4.

This proposed rulemaking would also make conforming changes to the regulations to make clear that the Department is permitted to use mechanically propelled vessels and aircraft in the St. Regis Canoe Area and on Little Clear and Little Green Ponds for the purposes of fisheries management. This is consistent with Master Plan "Guidelines For Management And Use" relating to Canoe areas as found in the Adirondack Park (Master Plan, p. 32, June 2001). This conforming change will clearly benefit the management of Adirondack heritage strain brook trout, the New York State listed endangered round whitefish, and landlocked Atlantic salmon.

The Department will need to use aircraft in the St. Regis Canoe Area to accomplish a major rehabilitation/maintenance project on Nellie and Bessie Ponds in Fall 2003. This work is consistent with the Wilderness Fisheries Policy discussed above. The Master Plan (p. 32) provides that all uses of motor vehicles and aircraft permitted under the wilderness guidelines will also be permitted in canoe areas and that in canoe areas motor vehicles and aircraft may be used by administrative personnel, but only for purposes designed to preserve or enhance the water or fishery resources of the area as specified in duly adopted unit management plans. According to the Master Plan (p. 31), the primary canoe area management guideline will be to protect the quality of the water and fishery resources while preserving a wilderness character on the adjacent lands. Nellie and Bessie Ponds serve as crucial broodstock source waters for the Horn Lake brook trout strain, an important component of the Adirondack brook trout restoration program. The collection of Adirondack heritage strain brook trout eggs from

these ponds, via helicopter, is a project critical to all wilderness, primitive and canoe areas, to achieve and perpetuate a natural plant and animal community where man's influence is not apparent. Periodic rearing of these fish in a hatchery system from the eggs collected also secures their future (protects the fishery resources) in the St. Regis Canoe Area.

Propagation of this heritage brook trout strain via helicopter access to Bessie and Nellie Ponds is not an instance of day-to-day maintenance or administration. The last time aircraft were used in this location for this project was three-and-a-half years ago, in 1999, and this proposed use would be confined to late October and early November. The periodic (once every few years) nature of this use, and the scheduling of the event when brook trout spawn in fall, minimize any adverse impacts to visitors. The continued, self-sustaining, brook trout population in these waters speaks strongly to the lack of impact of this activity on fish populations, the most directly affected resource. This activity is essential for assuring the preservation of fishery resources of the area, and is beneficial for the Adirondack heritage strain brook trout resource in general.

Little Clear and Little Green Ponds are incorrectly listed under the St. Regis Canoe Area heading in 6NYCRR Section 196.4 and will be correctly listed in a subsequent rulemaking that will address these and other incorrect listings, which are beyond the narrow scope of this rulemaking. Instead, Little Green Pond is part of the Saranac Lakes Wild Forest unit and Little Clear Pond belongs in the Adirondack Hatchery Administrative Use area. During summer 2003, a reclamation of Little Green Pond is planned to remove all competing fish species so that the New York State listed, endangered round whitefish may be stocked there. Round whitefish gametes will be collected from one of few remaining wild populations in Fall 2003, and the newly hatched fry will be stocked in Little Green Pond in early Spring 2004. To assure the best possibility of success, the pond must be devoid of other fish species. It is expected that this water, located in close proximity to the Adirondack Hatchery Administrative Use area, will be used as a future broodstock water for re-establishment of this species throughout the Adirondacks.

Little Clear Pond is part of the Adirondack Hatchery Administrative Use area. It is a significant source of landlocked Atlantic salmon for the statewide landlocked salmon program, and the only convenient source of this species from a wild setting. To collect broodstock for the annual egg-take operation, hatchery personnel set trap nets and tend them using mechanically propelled vessels. This activity occurs in late October through mid-November on a yearly basis. Mechanically propelled vessels also have been operated to undertake habitat enhancement and undesirable fish species removal efforts at other times of the year.

The use of motor boats for the reclamation of Little Green Pond is in compliance with the Master Plan because this water is part of the Saranac Lakes Wild Forest where such uses are approved. Similarly, use of motor boats on Little Clear Pond, a water that lies within the Adirondack Hatchery Administrative Use area, does not constitute a departure from compliance with the Master Plan.

A wetlands permit has been issued by the Adirondack Park Agency for the reclamation of Little Green Pond. The reclamation is designed to kill existing fish species. Although minor mortality of non-target organisms may occur, populations will recover quickly. Use of motor boats is essential to make the reclamation more effective by allowing the rotenone used in the process to be deep-pumped into the pond's hypolimnion and to be more thoroughly mixed in all water layers. This mixing will reduce the potential for "hot spots" of more concentrated rotenone that would have greater impact on nontarget organisms. Therefore, use of motor boats in the reclamation process is expected to reduce the possibility and extent of nontarget mortality.

Little Green Pond is a popular camping area with easy access. Automobiles can be driven nearly to its edge along much of its southerly shoreline and a portion of its easterly shoreline. Vehicular access is used regularly by tent campers who stay in designated campsites along the water. Departmental incursions with mechanically propelled vessels are expected to be carried out in a workmanlike manner, to be short-term (only a few days) in duration, and conducted at infrequent intervals. By contrast public use of this water with steady, frequent vehicular ingress and egress is much more significant, but still causes few if any adverse effects to the area's fish and wildlife resources.

Mechanically propelled vessels have been used regularly on Little Clear Pond for decades by the Department. The thriving salmon population in Little Clear Pond, and the abundant wildlife observed along the pond's perimeter are testimony to the fact that this use has had no adverse impact on the pond's fish and wildlife resources. Loons can be observed during most of the open water season, and bald eagles are frequent visitors.

Departmental use of motor boats for collection of spawning salmon occurs in late October through mid-November. This timing precludes most interaction with public users of the resource, and minimizes any perceived impacts to their quiet use of the water.

The beneficial impacts of establishment and future use of a round whitefish brood source in Little Green Pond are significant. Use of mechanically propelled vessels on Little Clear Pond is essential to allow for the continued primary role of Adirondack Hatchery Administrative Use area in the statewide landlocked Atlantic salmon program. Most importantly, this use has had no adverse impact on the fish and wildlife resources of the area. Further, the use of aircraft and mechanically propelled vessels for these projects conforms with the Master Plan and the APA/DEC MOU.

4. Costs

This change does not institute any regulatory mandates on regulatory parties, but rather permits administrative access by aircraft and mechanically propelled vessels to and on specified water bodies under limited circumstances. Consequently, there are no financial impacts attributable to the rule change.

(a) Costs to State Government

There are no costs projected for state government.

(b) Costs to Local Governments

There are no costs projected for local government.

(c) Costs to Private Regulated Parties

There are no costs projected for private regulated parties.

(d) Costs to the Regulating Agency

There are no costs projected for the Regulating Agency.

5. Paperwork

The Department of Environmental Conservation must maintain written logs recording the use of mechanically propelled vessels and aircraft as authorized by this rule making, and such logs must be filed with the Adirondack Park Agency as part of the Department's annual report detailing motorized uses in wilderness areas and the reasons therefor, as is now required by the Adirondack Park State Land Master Plan. There will be no other new reporting or monitoring requirements, including forms and other paperwork, as a result of the proposed changes.

6. Local Government Mandates

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

7. Duplication

The only relevant state rule is 6 NYCRR Part 196 which is proposed to be modified in order to conform to the Adirondack Park State Land Master Plan which has the force and effect of law; there is no relevant federal rule which applies to the means of access to Wilderness areas of the Adirondack Preserve; consequently, there is no duplication, overlap, nor conflict with State or Federal rules. The rulemaking will enable certain management activities to occur as authorized by the Master Plan.

8. Alternative Approaches

The alternative to the proposed action is the "no action" option, which is not a feasible alternative. The no action alternative is not acceptable because these regulatory changes are essential to public safety and natural resource protection.

9. Federal Standard

There is no relevant federal standard governing means of access to Wilderness areas of the Adirondack Preserve.

10. Compliance Schedule

This proposed rulemaking does not impose any compliance requirements or mandates so there is no compliance schedule. The rulemaking will become effective on the date the notice of adoption is published in the *State Register*.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with these regulations because the proposal will impose no reporting, record keeping or other compliance requirements on small businesses or local governments.

Since there are no identified cost impacts for compliance with the proposed regulations on the part of small businesses and local governments, they will bear no economic impact as a result of this proposal.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this proposal because the proposal will not impose any reporting, record keeping or other compliance requirements on Rural Areas within the Adirondack Park.

Job Impact Statement

A Job Impact Statement is not submitted with this proposal because the proposal will have no adverse impact on existing or future jobs and employment opportunities.

This conclusion was reached based on the Regulatory Impact Statement determination that there will be no adverse cost impact from this action.

Department of Health

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Seventh Grade Hepatitis B Vaccination

I.D. No. HLT-06-03-00009-C

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

The notice of proposed rule making, I.D. No. HLT-06-03-00009-P was published in the *State Register* on February 12, 2003.

Subject: Seventh grade hepatitis B vaccination for school entry.

Purpose: To clarify hepatitis B vaccination requirements for those students entering the seventh grade.

Substance of rule: The proposed regulation will protect children from hepatitis B disease by requiring them to be immunized with hepatitis B vaccine prior to entering the 7th grade.

Because there is already a school entry law requiring immunization against hepatitis B for those born on or after January 1, 1993, the proposed amendment to Subpart 66-1 requiring immunization against hepatitis B for children entering the seventh grade will affect only five cohorts of seventh graders. Children entering seventh grade after the school year beginning in 2005 will have already been immunized against hepatitis B. The doses of hepatitis B vaccine will be administered in compliance with standards set forth in the Center for Disease Control publications which are incorporated by reference in this proposal. A child who is immune either by previous immunization or by previous or current infection will be exempt from the proposed amendment after their immunity is confirmed by serologic evidence.

Changes to rule: No substantive changes.

Expiration date: February 12, 2004.

Text of proposed rule and changes, if any, may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us

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

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Varicella Vaccine School Entry Requirement

I.D. No. HLT-06-03-00010-C

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

The notice of proposed rule making, I.D. No. HLT-06-03-00010-P was published in the *State Register* on February 12, 2003.

Subject: Varicella vaccine school entry requirement.

Purpose: To implement L. 1999, ch. 416.

Substance of rule: The proposed changes to the regulations meet the legislative objective of protecting the public health against varicella. The proposed regulations will implement Chapter 416 of the Laws of 1999 which went into effect on January 1, 2001, and added varicella to the list of vaccine that children must receive in order to enter daycare, nursery schools, kindergarten, elementary, intermediate, or secondary schools in New York State. The legislation applies to children born on or after January 1, 1998, beginning with their enrollment in any public, private or

parochial kindergarten, elementary, intermediate or secondary school, and to children born on or after January 1, 2000, beginning with their enrollment in any of the above schools plus any public, private or parochial child caring center, day nursery, day care agency, or nursery school.

Changes to rule: No substantive changes.

Expiration date: February 12, 2004.

Text of proposed rule and changes, if any, may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us

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

Department of Labor

NOTICE OF ADOPTION

Rules for Inspection of Material and Steam Boilers

I.D. No. LAB-19-03-00002-A

Filing No. 748

Filing date: July 17, 2003

Effective date: Aug. 6, 2003

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

Action taken: Repeal of Appendix A-2 of Title 12 NYCRR.

Statutory authority: Labor Law, sections 27 and 204

Subject: Rules for inspection of material and steam boilers.

Purpose: To repeal Appendix A-2, which should have been repealed as part of our 1991 rule making regarding section 14-2.1.

Text or summary was published in the notice of proposed rule making, I.D. No. LAB-19-03-00002-P, Issue of May 14, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Diane Wallace Wehner, Department of Labor, Counsel's Office, Bldg. 12, Rm. 509, State Campus, Albany, NY 12240, (518) 457-4380, e-mail: usbdww@labor.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Public Employee Occupational Safety and Health Standards

I.D. No. LAB-19-03-00007-A

Filing No. 747

Filing date: July 17, 2003

Effective date: Aug. 6, 2003

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

Action taken: Addition of section 800.3(dg) to Title 12 NYCRR.

Statutory authority: Labor Law, section 27-a.4(a)

Subject: Public Employee Occupational Safety and Health Standards.

Purpose: To incorporate by reference those safety and health standards adopted by the U.S. Department of Labor, Occupational Safety and Health Administration, as of Nov. 7, 2002.

Text or summary was published in the notice of proposed rule making, I.D. No. LAB-19-03-00007-P, Issue of May 14, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Diane Wallace Wehner, Department of Labor, Counsel's Office, Bldg. 12, Rm. 509, State Campus, Albany, NY 12240, (518) 457-4380, e-mail: usbdww@labor.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Law

NOTICE OF ADOPTION

Investment Advisers

I.D. No. LAW-19-03-00006-A

Filing No. 749

Filing date: July 21, 2003

Effective date: Aug. 6, 2003

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

Action taken: Amendment of Part 11 and form NY-IAQ of Title 13 NYCRR.

Statutory authority: General Business Law, section 359-eee, et seq.

Subject: Investment advisers.

Purpose: To provide corrections and language clarification.

Text or summary was published in the notice of proposed rule making, I.D. No. LAW-19-03-00006-P, Issue of May 14, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Diane Ridley Gatewood, Office of the Attorney General, Investment Protection Bureau, 120 Broadway, 23rd Fl., New York, NY 10271, (212) 416-8564, e-mail: diane.gatewood@oag.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Motor Vehicles

NOTICE OF ADOPTION

Steuben County Motor Vehicle Use Tax

I.D. No. MTV-21-03-00010-A

Filing No. 751

Filing date: July 22, 2003

Effective date: Aug. 6, 2003

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

Action taken: Addition of section 29.12(r) to Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); and Tax Law, section 1202(c)

Subject: Steuben County motor vehicle use tax.

Purpose: To impose the tax.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-21-03-00010-P, Issue of May 28, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sale of Standby Service to Customers with On-Site Generation by Niagara Mohawk Power Corporation

I.D. No. PSC-31-03-00008-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Niagara Mohawk Power Corporation to make various changes to its rates, charges, rules, and regulations contained in its electric tariff schedule, P.S.C. No. 207 to become effective Nov. 1, 2003.

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

Subject: Service Classification No. 7—sale of standby service to customers with on-site generation.

Purpose: To revise the method used to bill electric commodity to all Service Classification No. 7 customers who are required to install interval meters.

Substance of proposed rule: On July 14, 2003, Niagara Mohawk Power Corporation (the company) filed proposed tariff modifications to P.S.C. No. 207 – Electricity to become effective November 1, 2003. The company proposes to revise the method it uses to bill electric commodity to all customers served under S.C. No. 7 – Sale of Standby Service to Customers with On-Site Generation who are required to install interval meters.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-E-1011SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sale of Standby Service to Customers with On-Site Generation by Niagara Mohawk Power Corporation

I.D. No. PSC-31-03-00009-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify a proposal filed by Niagara Mohawk Power Corporation to make various changes in the rates, charges, rules, and regulations contained in its electric tariff schedule, P.S.C. No. 107—Electricity, to become effective Oct. 1, 2003.

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

Subject: Sale of standby service to customers with on-site generation facilities.

Purpose: To provide unbundled transmission and distribution rates for New York Independent System Operator (NYISO) station service customers.

Substance of proposed rule: On July 10, 2003, Niagara Mohawk Power Corporation (the company) filed proposed tariff modifications to P.S.C. No. 207 – Electricity to become effective October 1, 2003. The company proposes to revise Service Classification No. 7 – Sale of Standby Service to Customers with On-Site Generation Facilities. The Company proposes to provide unbundled transmission and distribution rates for the New York Independent System Operator (NYISO) Station Service Customers.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(03-E-1016SA1)

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

Distributed Generation Service – Nonresidential by Niagara Mohawk Power Corporation

I.D. No. PSC-31-03-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Niagara Mohawk Power Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service — P.S.C. No. 218.

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

Subject: Service Classification No. 12 – distributed generation service – nonresidential.

Purpose: To comply with the commission’s April 24, 2003 order to file tariff leaves to institute firm delivery service for commercial and industrial distributed generation customers.

Substance of proposed rule: Niagara Mohawk Power Corporation proposes to establish Service Classification No. 12 – Distributed Generation Service – Non Residential which will institute firm delivery service for its commercial and industrial customers in compliance with the Commission’s April 24, 2003 Order Providing for Distributed Generation Gas Service Classification in Case 02-M-0515.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(02-M-0515SA3)

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

Uniform System of Accounts by United Water New Rochelle Inc.

I.D. No. PSC-31-03-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition of United Water New Rochelle Inc. for a real estate tax reconciliation for the 12 months ended June 30, 2002, filed in Case 99-W-0948.

Statutory authority: Public Service Law, section 89-c(10)

Subject: Uniform system of accounts—request for accounting authorization.

Purpose: To reconcile the amount of real estate taxes.

Substance of proposed rule: The Commission is considering a report by United Water New Rochelle Inc. on its overcollection of property taxes of \$735,058 for the 12 months ended June 30, 2002. During this same time period, the company also reported it did not earn in excess of the allowed return on rate base before sharing.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(03-W-0999SA1)

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

Reconciliation of Revenues by United Water New Rochelle Inc.

I.D. No. PSC-31-03-00012-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a revenue reconciliation filing made by United Water New Rochelle Inc. for revenue reconciliation for the year ended July 11, 2002, filed in Case 99-W-0948.

Statutory authority: Public Service Law, section 89-c(10)

Subject: Water rates and charges.

Purpose: To approve revenue reconciliation for the year ended July 11, 2002.

Substance of proposed rule: On June 11, 2003, United Water New Rochelle Inc. filed a petition for reconciliation of revenues for the second rate year ended July 11, 2002, in Case 99-W-0948, reporting an over-recovery of \$108,468 in revenues. In addition, for the same rate year, the company by letter dated August 29, 2002, filed a petition for reconciliation of property taxes reporting an over-recovery of \$816,731 in taxes. The Commission may approve or reject, in whole or in part, or modify, the company’s petition.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(03-W-1000SA1)

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

Water Rates and Charges by Somerdel Water-Works Corp.

I.D. No. PSC-31-03-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a request filed by Somerdel Water-Works Corp., to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 1—Water, to become effective July 26, 2003.

Statutory authority: Public Service Law, section 89-c(10)

Subject: Water rates and charges.

Purpose: To increase annual revenues by about \$103,405 or about 93 percent.

Substance of proposed rule: On June 26, 2003, Somerdel Water-Works Corp. (the company) filed to become effective July 26, 2003, Third Revised Leaf No. 8 to its tariff schedule P.S.C. No. 1 – Water. Subsequently, the company postponed the filing to August 23, 2003. The company currently provides water service to 185 residential customers in a subdivision known as The Green Briar, in the Town of Somers, Westchester County, New York. The proposed filing would increase the rates by about 93% and annual revenues by \$103,405. The Commission may approve or reject, in whole or in part, or modify, the company’s request.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(03-W-1002SA1)

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

Deferred Accounting by Aquarion Water Company of New York

I.D. No. PSC-31-03-00014-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition of Aquarion Water Company of New York for permission to defer an increase in the cost of purchased water from the Westchester Joint Water Works.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Petition for deferred accounting.

Purpose: To defer the expenses associated with an increase in the cost of water purchased from the Westchester Joint Water Works.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, the petition of Aquarion Water Company of New York for permission to defer an increase in the cost of purchased water from the Westchester Joint Water Works.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(03-W-1007SA1)

Department of State

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

Approval of Real Estate Courses

I.D. No. DOS-31-03-00001-P

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

Proposed action: Amendment of Part 176 of Title 19 NYCRR.

Statutory authority: Real Property Law, section 442-k(2) and (3)

Subject: Approval of real estate courses leading to qualification for a license as a real estate broker and salesperson.

Purpose: To update the existing rules relating to the approval of real estate courses and schools offering qualifying education to prospective real estate brokers and salespersons, and eliminate obsolete portions of the existing rules.

Text of proposed rule: Section 176.1 of 19 NYCRR is amended to read as follows:

§ 176.1 Approved entities.

Real estate courses and offerings may be given by any college or university accredited by the Commissioner of Education of the State of New York or by a regional accrediting agency accepted by said Commissioner of Education; public and private vocational schools; real estate boards; and real estate-related professional societies and organizations. No real estate course of study seeking approval may be affiliated with or controlled by any real estate broker, *licensed* salesperson, *licensed or certified real estate appraiser*, firm, or company or franchise, or controlled by a subsidiary of any real estate broker, *real estate appraiser* or franchise.

Sections 176.3 and 176.4 of 19 NYCRR are amended to read as follows:

§ 176.3 Subjects for study real estate salespersons.

(a) The following are the required subjects to be included in the course of study in real estate for licensure as a real estate salesperson, and the required number of hours to be devoted to each subject:

Subject Matter	Salesperson’s Course	Hours
License law and regulations		3
Law of agency		8
Real estate instruments and estates		10
and interests		
● Estates and interests	2.0	
● Liens and easements	1.5	
● Deeds	1.5	
● Leases	2.0	
● Contracts	2.0	
● Title closing and costs	1.0	
Real estate finance (mortgages)		5
Land use regulations		2
Introduction to construction		3
Valuation process		3
Human rights and fair housing		4
Environmental issues		3
Real estate mathematics		3
Real estate salesperson (independent contractor/employee)		1
Instruction		45 Hours
Final examination		3 Hours
		48 Hours

(b) All approved courses must use this course syllabus in conducting their programs.

§ 176.4 Subjects for study real estate broker.

The education qualifications for real estate broker’s license requires the completion of:

(a) an approved real estate salesperson’s course *except that a salesperson who was licensed prior to November 1, 1979, may substitute 45 hours of approved continuing education in lieu of a salesperson’s course;* and

(b) an approved real estate broker’s course.

Before enrolling a student into an approved broker's course, the education coordinator must be provided with evidence of a signed statement from the student indicating that he/she has successfully completed the salesperson's course. Proof of the student's completion of the prerequisite course must be kept on file by the education coordinator. The following are the required subjects to be included in the course of study in real estate for licensure as a real estate broker and the required number of hours to be devoted to each subject:

Subject Matter	Broker's Course	Hours
Broker's office operation, management and supervision		10
Real estate agency disclosure (review)		4
General Business Law		5
Real estate finance II		5
Real estate [investments] <i>investment</i>		5
Real property management		5
Conveyance of real property and title closing and costs (review)		3
Construction and development		4
Taxes and assessments		2
Local concerns*		2
• Cease and desist regulations		
• Nonsolicitation orders		
• Illegal entities/conversions		
• Rent regulations (rent control, rent stabilization)		
• Farm land		
• Forestry		
• Sign ordinances		
• Zoning		
• Waterfront property		
• Wetlands/restrictions		
• Environment problems in an area		
Instruction		45 Hours
Final examination		3 Hours
		48 Hours

* Program coordinators are not limited to these topics. They must, however, submit an outline and learning objectives for the two hours that will be presented to students. All approved [courses] *instructors* must use this course syllabus in conducting their program.

Section 176.6 of 19 NYCRR is amended to read as follows:

§ 176.6 Attendance and examinations.

(a) [To satisfactorily complete any course offered for study, a person must physically attend 36 hours of class instruction, exclusive of sessions devoted to review and/or examination.] *No licensed person shall receive credit for any course or course module presented in a class-room setting if he or she is absent from the class room, during any instructional period, for a period or periods totaling more than 10 percent of the time prescribed for the course or course module pursuant to sections 176.3 and 176.4 of this Title, and no licensed person shall be absent from the class room except for a reasonable and unavoidable cause.*

(b) Students [that] *who* fail to attend the required scheduled class hours may, at the discretion of the approved entity, make up the missed subject matter during subsequent classes presented by the approved entity.

(c) Final examinations may not be taken by any student [that] *who* has not satisfied the attendance requirement.

(d) A make up examination may be presented to students at the discretion of the approved entity. Make up examinations must be submitted for approval to the department in accordance with guidelines noted in § 176.2 (g) and (h) of this Part.

[(e) Final examinations shall be written and presented within a reasonable time frame after the completion of the course work.]

Section 176.7 of 19 NYCRR is repealed.

Section 176.9 of 19 NYCRR is amended to read as follows:

§ 176.9 [Retention of examination papers.] *Examination requirement and record retention.*

[All persons and organizations conducting approved courses of study shall retain examination papers for persons attending for a period of five years after the completion thereof, and such papers shall at all times during such period be available for inspection by duly authorized representatives of the department.]

(a) *All organizations conducting approved courses of study shall retain the attendance records, the final examinations and a list of students who successfully complete each course for a period of three years after completion of each course. All documents shall at all times during such period be*

available for inspection by duly authorized representatives of the Department of State.

(b) *All examinations required for course work shall be written and given within a reasonable time after the course work has been conducted. The failure of the final exam shall constitute failure of the course.*

Section 176.11 of 19 NYCRR is amended to read as follows:

§ 176.11 Faculty.

(a) Each instructor, as certified by the Department of State, for an approved real estate course of study, shall submit a resume to the department and meet the following criteria, and shall achieve at least 100 points based on the following scale which includes real estate brokerage/specialty experience, instructional experience and academic achievement.

(b) In order to receive approval as an instructor, an individual must achieve 100 points in the system employed below:

1. Section One

A maximum of 50 points can be claimed in this section.

(a) Licensed as a real estate broker or salesperson

Each year of experience = 10 points or

(b) Work experience in a specialized field directly related to real estate

Each year of experience = 10 points or

(c) Attorney, admitted to New York State Bar

Each year of experience = 10 points

2. Section Two

A maximum of 50 points can be claimed in this section.

Experience as an instructor = 10 points for each year

3. Section Three

A maximum of 30 points can be claimed in this section.

Formal academic achievement in a specialized subject matter directly related to real estate (five points for each 30 hour course successfully completed)

4. Section Four

50 points can be claimed in this section.

Formal training in the techniques of organizing and presenting instructional material

5. Section Five

Only one selection may be made in this section.

The holder of one of the following:

AAS Degree 20 points

B.A. or B.S. Degree 30 points

M.A. or L.L.D. Degree 40 points

B.A., B.S. or M.A. with a Major in Real Estate 50 points

Total

(c) *An approved entity, which engages presenters to conduct classes identified as technical subjects, are exempt from the provisions of this section 176.11 except that an approved entity must make application to the Department of State accompanied by a resume indicating at least three years of experience in the specified technical area.*

(d) All points claimed are subject to verification within two years of application.

[(d)](e) Any applicant who fails to provide evidence of claimed points may be subjected to disciplinary action.

Sections 176.12 and 176.13 of 19 NYCRR are repealed.

Sections 176.18 and 176.19 of 19 NYCRR are repealed.

Section 176.20 of 19 NYCRR is amended to read as follows:

§ 176.20 Certificate of completion.

(a) Evidence of successful completion of the course must be furnished to students in certificate form. The certificate must indicate the following: name of the entity; Real Estate Salesperson's Course, 45 hours, or Real Estate Broker's Course, 45 hours; code number of the entity; a statement that the student, who shall be named, has satisfactorily completed a course of study in real estate subjects approved by the Secretary of State in accordance with the provisions of chapter 868 of the Laws of 1977, and that his or her attendance record was satisfactory and in conformity with the law, and that such course was completed on a stated date. The certificate must be signed by the owner or course coordinator and dated, and must have affixed thereto the official seal of the school or entity.

(b) *A list of all the names of students who successfully complete each course of study must be submitted to the Department of State within 15 days of completion.*

Text of proposed rule and any required statements and analyses may be obtained from: Nolte Baxter, Department of State, Division of Licensing Services, 84 Holland Ave., Albany, NY 12238, (518) 473-2728

Data, views or arguments may be submitted to: Bruce Stuart, Department of State, Division of Licensing Services, 84 Holland Ave., Albany, NY 12238, (518) 473-2728

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

Regulatory Impact Statement

1. Statutory authority:

The Real Property Law, § 441 requires that an applicant for a real estate salesperson's license complete 45 hours of real estate education and further requires that an applicant for a real estate broker's license complete an additional 45 hours of real estate education. Section 442-k(2) & (3) of the Real Property Law provide that the Real Estate Board of the State of New York is empowered to prescribe the content for courses of study for real estate brokers and salespersons and to adopt rules governing the approval of schools that offer courses of study for real estate brokers and salespersons. This proposal updates existing rules and eliminates unnecessary rules relating to the content of qualifying courses and the approval of schools offering real estate courses.

2. Legislative objectives:

By enacting the Real Property Law, § 442-k(2) & (3), the Legislature sought to ensure state-wide standards for real estate courses and schools. These rules conform to that legislative goal.

3. Needs and benefits:

The amendment to 19 NYCRR § 176.1 adds licensed or certified real estate appraisers to the list of organizations that are prohibited from offering approved real estate courses. Like the prohibition for real estate brokers, the prohibition for real estate appraisers is necessary to prevent a conflict of interest for real estate appraisal firms, which are often closely affiliated with real estate brokers. The conflict of interest because it is likely that a real estate appraisal firm may show preference for licensees associated with the appraisal firm or with licensees associated with business associates and may show a bias against licensees associated with other firms.

The amendment to 19 NYCRR § 176.4(a) allows a real estate salesperson who was licensed prior to 1979 to substitute 45 hours of approved continuing education in lieu of the 45 hours of the real estate salesperson's course. This amendment is necessary to recognize that, prior to 1979, an applicant for a salesperson's license did not have to complete the 45-hour salesperson's course. To qualify for a real estate broker's license, an applicant must normally have completed the 45-hour salesperson's course and the 45-hour broker's course. Since the real estate salesperson's course was not available prior to 1979, this rule will allow applicants for a real estate broker's license to substitute 45 hours of continuing education if they were licensed as a salesperson prior to November 1, 1979.

The text of 19 NYCRR § 176.6(a) has been amended to repeal the existing rule providing that a person must physically attend 36 hours of class instruction. New text has been added to provide that a student shall not receive credit for any course if he or she is absent from the class room for periods totaling more than 10% of the time prescribed for the course and that no person shall be absent from the class room except for reasonable and unavoidable cause. Schools are required to provide instruction for the 100 % of the hours approved pursuant to 19 NYCRR § 176.5, and students are expected to attend the entire course; provided, however, that a student may be absent from the classroom for personal needs as long as the absence does not exceed 10% of the instructional hours. It is not intended, however, that a student may be present for first 90% of the instruction, leave, and still receive credit. Although students should be allowed to attend to personal needs, if necessary, "personal needs is not intended to include a need or desire to arrive late or to leave the class early. This proposal will make the attendance requirements clear to schools and students, and this proposal will be consistent the requirements of § 441 of the Real Property Law.

The text of 19 NYCRR § 176.6(e), relating to final examinations, has been moved to 19 NYCRR § 176.9(b).

The text of 19 NYCRR § 176.7, relating to certificates of successful completion, has been repealed since it duplicates 19 NYCRR § 176.20(a).

The text of 19 NYCRR § 176.9 is amended by repealing the existing record keeping requirements and by setting forth new record keeping requirements in subdivision (a). The new subdivision (b) is a restatement of the examination requirements that were previously set forth in 19 NYCRR § 176.6(e) and 19 NYCRR § 176.12. The new subdivision (a) requires that a school retain attendance records for each student, final examination results for each student and a list of students who successfully complete each course. These records are necessary for audit purposes to verify, if necessary, that an applicant actually attended and passes the

required course work. The retention period is three years, which is two years less than required by the old rule.

The text of 19 NYCRR § 176.11 is amended by adding a new subdivision (c), which will allow schools to engage an instructor who is an expert in a technical field but may not otherwise qualify as approved instructor under the provisions of § 176.11. Although the instructor must be approved by the Department of State, this new procedure will expand the pool of expert instructors for schools and students.

The text of 19 NYCRR § 176.12 was moved to 19 NYCRR § 176.9(b).

The text of 19 NYCRR § 176.13, which required Department of State approval of advertising by schools, was repealed as an obsolete and unnecessary rule.

The text of 19 NYCRR § 176.18, which relates to credit for courses taken under the rules in existence prior to December 1978, was repealed as an obsolete and unnecessary rule.

The text of 19 NYCRR § 176.19, which relates to the filing of a schedule of sessions, was repealed as an obsolete and unnecessary rule.

The text of 19 NYCRR § 176.20, which relates to certificates of completion, was amended to add a new subdivision (b) requiring that a school submit to the Department of State a list of the names of the students who successfully complete each course of study within 15 days of the completion. The submission of the list is required for audit purposes so that the Department of State can verify that applicants have, in fact, completed the courses required for licensing.

4. Costs:

Cost to regulated parties:

The Department of State asked the real estate schools and County Board of Realtors whether the proposed amendment would impose any significant costs on the schools or students. The Department received 11 responses in support of the proposed amendments. One letter indicated that the requirement that schools provide the Department of State with a list of the student who successfully complete their real estate courses will impose costs on the schools. The letter did not, however, quantify those costs. Since the other schools did not mention those costs, the Department does not believe that those costs will be significant for the schools. In addition, savings resulting from the repeal of 19 NYCRR § 176.19, which required that schools file a schedule of course dates, and 19 NYCRR § 176.13, which required that schools submit advertising to the Department of State for approval, should to a large extent offset the costs associated with submitting the names of the students who successfully complete their real estate courses.

Costs to the Department of State:

The proposed changes will not impose any costs on the Department of State. However, the Department of State may realize some small saving from the repeal of 19 NYCRR § 176.19 and 19 NYCRR § 176.13. The saving will result from not having to receive, review and store course schedules and proposed advertising.

Costs to state and local governments:

The proposed changes will not impose any costs on state or local governments.

5. Local government mandates:

The proposed changes do not impose any mandates on local governments.

6. Paperwork:

The proposal eliminates two existing paperwork requirements. The repeal of 19 NYCRR § 176.13 eliminates the requirement that schools submit proposed advertisements to the Department of State for approval, and the repeal of 19 NYCRR § 176.19 eliminates the requirement that schools submit a schedule of sessions to the Department of State prior to the first session of each approved course.

The amendment to 19 NYCRR § 176.9 will require that schools retain attendance records, final examination, and a list of students who successfully completed each course for three years. The existing rule requires the retention of examinations for a period of five years.

The amendment to 19 NYCRR § 176.20 requires that schools submit a list of the names of students who have successfully completed an approved course within 15 days of the completion.

7. Duplication:

This proposal does not duplicate, overlap or conflict with any other state or federal statute or regulation.

8. Alternatives:

Except for the amendment to 19 NYCRR § 176.20, the State Board did not identify or consider any other significant alternatives. With regard to 19 NYCRR § 176.20, one school suggested that the State Board consider having the schools submit the names of students who successfully com-

plete a course on a quarterly basis rather than as proposed; *i.e.*, within 15 days after the completion of the course. Since the list will be used to verify that a student has, in fact, completed the required courses, the State Board noted that students generally apply for a license soon after they have completed their course work; and therefore, the State Board was of the opinion that quarterly submission would not be in the best interests of the students since quarterly submission was likely to delay the licensing process. It was also suggested that submissions be accepted by e-mail and fax. Although the Department sees merit in those suggestions, the Department was not able to adopt either. At present, the Department does not have administrative procedures in place to accept e-mail submissions. However, the Department plans to pursue the e-mail alternative in the near future. With regard to fax submissions, the Department does not, at present, have a dedicated telephone line and fax machine to implement this suggestion. The Department believes that e-mail submissions will be the most cost effective for the schools and for the Department of State. Accordingly, the Department plans to focus on the e-mail suggestion for implementation in the future.

The Greater Utica-Rome Board of Realtors suggested that the fees for course approval may impose a burden on small schools. However, the Department did not receive any other similar comments, and, therefore, the Department did not propose to change the fees at this time.

The Real Estate Board of New York suggested that 19 NYCRR § 176.5 be revised to provide that an instructor and students may skip a break or two to dismiss early. The Department did not adopt that suggestion. The Department believes that prescribed 50 minutes of instruction and 10 minute break provides a uniform standard for all schools and that early dismissal should not be critical factor for schools or students.

The Real Estate Board of New York also suggested that 19 NYCRR § 176.11 be revised to provide that the maximum points for real estate experience be raised from 50 to 60. However, the current point system has been in place for more than eight years, and the Department is not aware of any need for the change.

9. Federal standards:

There are no federal standards for the licensing of real estate brokers or salespersons.

10. Compliance schedule:

The State Board anticipates that the schools will be able to comply with the proposed changes within 60 days of their adoption.

Regulatory Flexibility Analysis

1. Effect of the rule:

There are approximately 200 real estate schools, including industry organizations, that offer real estate courses. The Department of State believes that all of the schools are small businesses.

The proposed rule does not affect local governments.

2. Compliance requirements:

The compliance requirements are set forth section 3 (Needs and Benefits) and section 6 (Paperwork) of the Regulatory Impact Statement.

The proposed rule does not affect local governments.

3. Professional services:

The schools will not need professional services to comply with this rule.

The proposed rule does not affect local governments.

4. Compliance costs:

The compliance costs for the schools is discussed in section 4 (Costs) of the Regulatory Impact Statement.

The proposed rule does not affect local governments.

5. Economic and technological feasibility:

The proposed rules do not impose any economic or technological burdens on real estate schools.

The proposed rule does not affect local governments.

6. Minimizing adverse impact:

The responses for schools to the Department's request for comments do not indicate that the proposed rules will have any adverse impact on the real estate schools.

The proposed rule does not affect local governments.

7. Small business and local government participation:

The Department of State requested comment on the proposed rules from the 203 real estate schools registered with the Department of State. There were eleven responses, all supporting the proposed changes. In addition, thirteen members of the 15-member Real Estate Board, which is proposing this rule, are employed by or owners of small businesses in the real estate industry.

Since the proposed rule does not affect local governments, the Department of State did not solicit comments from local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed rules apply state-wide.

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

The reporting, recordkeeping, and other compliance requirements are described in section 3 (Needs and Benefits) and section 4 (Paperwork) of the Regulatory Impact Statement. The Need for professional services is described in section 3 (Professional Services) of the Regulatory Flexibility Analysis.

3. Costs:

The costs associated with the proposed rules are described in section 4 (Costs) of the Regulatory Impact Statement.

4. Minimizing adverse impact:

The proposed rules apply state-wide. Accordingly, it was not possible to provide alternative rules for rural areas.

5. Rural Area participation:

The Department of State requested comment on the proposed rules from the 203 real estate schools registered with the Department of State. Many of those schools were in rural areas.

Job Impact Statement

The proposed changes simply update the existing curriculum. The total number of hours remains unchanged at 45 hours for salespersons and an additional 45 hours for real estate brokers. The Department of State does not anticipate any added costs for students or schools. Accordingly, the proposed changes will not have any adverse impact on jobs or employment opportunities for students or the schools.

State University of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Code and Standards and Procedures for the Administration and Operation of Community Colleges

I.D. No. SUN-31-03-00007-P

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

Proposed action: Amendment of Parts 600-606 of Title 8 NYCRR.

Statutory authority: Education Law, sections 355(1)(c), 6304, 6305, and 6306

Subject: Code and standards and procedures for the administration and operation of community colleges under the program of the State University of New York.

Purpose: To eliminate obsolete material, clarify ambiguous provisions of the code, bring the code into conformity with existing practices, procedures, legislation, and judicial authority, and clarify the authority of the sponsor, the boards of trustees, and the president as delegated by the Education Law.

Substance of proposed rule: Section

600.1(a), (b) and (c)

Adds a regional option to each section, for establishment, local board and local sponsor.

600.2(a)

Add to "accepting title to college property" the new phrase "to be held in trust for the college's use and purposes." Also adds "real" between "college" and "property". Clarifies budget approval language to mean that sponsor approval applies to the budget total (bottom line) rather than the total (line item) budget. Delete "and for the payment of bills and accounts" as a responsibility of the sponsor in terms of establishing procedures.

601.1

Deletes heading reference to Ed. Law section as inapplicable.

601.1(a)

Inserts "area" after "sponsorship."

601.1(b)

Inserts "least" after "valuation of at". Also updates sponsor valuation requirements for college establishment.

601.1(c)(2)(ii)

Revises wording on library holdings for establishment to delete reference to “books” and substitute “instructional resources.”

601.2

Wording pertaining to programs is updated to reflect the comprehensive mission of community colleges. For example, the requirement for programs to be based on surveys of high school graduates is changed to being based on surveys of the population of the sponsorship area. Wording is also updated to show a special emphasis on community service and economic and workforce development programs and services.

601.4

Re-writes the entire section on multiple campus locations to align it with State Education regulations and SUNY policy. Deletes original section and inserts new section.

601.5

Clarifies the wording pertaining to college service areas.

601.5(a)(3) (new)

Adds new language that discourages the duplication of programs within the same service area by competing community colleges.

601.5(b)(1) and (3)

Deletes the word “full” (operating chargeback rate) from both sections.

601.5(b)(2)

Clarifies that the chargeback rate applies to all approve, credit courses.

601.5(c)

Adds the phrase “or extension center” to align with the language and definitions used in section 601.4.

601.5(d)

Capitalizes the word “Chancellor” and deletes the word “his”, making the provision gender neutral.

601.6(a)

Changes “previous June high school graduate” to “high school graduate within the prior year,” to be consistent with the law.

601.6(b) and (i)

Makes the language gender neutral.

601.7

Deletes the phrase “subject to the approval of the local sponsor.” Pursuant to law, the college may participate in cooperative educational programs without sponsor approval.

601.7(a)

Makes the language gender neutral.

601.7(c)

Deletes “and” at the end of sentence.

601.7(d)

Deletes requirement for annual report on inter-institutional arrangements, associations and corporations to reflect actual practice (no such reports are required or submitted).

602.1(a)

Makes the language gender neutral.

602.1(b)

Clarifies that records and accounts shall be maintained in accordance with national accounting standards, as prescribed by the SUNY Board of Trustees (rather than the Uniform System of Accounts of the State Comptroller), reflecting actual practice.

602.1(c)

Deletes sponsor option to provide the audit agency (as an alternative to the college retaining a CPA). Moves “independent” to precede “certified public accounting firm.”

602.1(d)

Deletes “cash” and substitutes “fiscal” (management procedures).

602.1(e)

New language allows the Chancellor or designee to classify interest income as either offset or revenue in lieu or local sponsor share.

602.1(f)

Deletes requirement for sponsor approval of college contracts for auxiliary services, retaining authority with the college board of trustees. Also deletes “association” and substitutes “corporation”.

602.2

Refines wording for the process of filing the operating budget estimate, to be consistent with practice. Changes requirement for submitting an operating budget for the next “calendar” year to the next “college fiscal” year. Also makes the language gender neutral.

602.3(a) and (d)

Makes the language gender neutral.

602.3(b)

Inserts “operating budget” before “request” and inserts “the request” before “shall contain” to clarify budget submittal language to mean that

sponsor approval applies to the budget total (bottom line) rather than the total (line item) budget.

602.4(a)

List of revenue sources is illustrative only. Language is changed from “shall include” to “may include.” Also splits item (23) into two parts, thus creating a new item (24).

602.4(b)

Inserts “unrestricted” before “operating budget.”

602.4(c)

List of appropriation categories is illustrative only. The list is updated in accordance with NACUBO guidelines. Also inserts “restricted and unrestricted” before “operating expense purposes” to clarify the category and placement of all funds.

602.4(d)(2)

Under listing of allowable expenditures, clarifies wording pertaining to rental of campus facilities and to provide for the Chancellor’s approval as required by policy.

602.4(d)(3)

Deletes “or” and substitutes “for” after “compensation” to correct typo.

602.4(d)(9)

Deletes “library books” and substitutes “instructional resources.”

602.4(d)(16)

Deletes last sentence, on keeping lists of attendees at campus events because it is inconsistent with practice.

602.4(d)(17)

Deletes, under moving expenses, the descriptor that the move be from a temporary to a permanent location, as inapplicable.

602.4(d)(23)

Under listing of expense categories, clarifies wording pertaining to alumni program expenses.

602.4(d)(25) (new)

Adds expenses for coaches, moved from 605.5(a).

602.4(d)(26) (new)

Adds scholarships as an allowable expense.

602.4(e)(6)

Deletes “and” to correct grammar.

602.4(e)(14)

Deletes “including but not limited to NDSL, CWS and SEOG”; no longer required to be specifically listed here.

602.4(e)(15) (new)

Adds depreciation as an unallowable operating expense.

602.4(e)(16) (new)

Adds intercollegiate athletics expenses as unallowable; moved from section 605.5(b).

602.5(d)

Changes “annual review” to “periodic review” to be consistent with practice.

602.5(d), (g) and (h)

Capitalizes “Chancellor.”

602.6(b)

Clarifies that donated funds may be deposited with the college or Foundation.

602.6(b)(2)

Deletes “subject to the approval of the sponsor” in reference to uses of unrestricted gifts to be consistent with law.

602.7(a)

Regarding “sponsor services”, deletes “the definition of” (sponsor services) and “for determining State operating aid” as irrelevant and clarifies definition as “direct services rendered on behalf of a community college, by the sponsor, which have been determined by the college board of trustees to be necessary for the maintenance and operation of the college, and which would otherwise be provided by the college staff or a vendor.”

602.7(b)

In reference to approval of sponsor services by the local board, adds “or disapprove” to reflect the local board’s authority. Also adds, “Only services approved by the college trustees will be deemed eligible for state aid.”

602.7(c)

Inserts “approved” before “sponsor services” to clarify that only approved sponsor services may be added to the operating budget request.

602.7(e)

Deletes section requiring DOB approval of sponsor services, to be consistent with actual practice.

602.7(f) (re-lettered as new e)

Clarifies direct sponsor services definition, including that the cost of these services be competitive as demonstrated by bidding process.

602.7(f) (new)

Adds prohibition against sponsor unilaterally billing the college for indirect costs.

602.8

Deletes “operating costs for purposes of” from heading, as inapplicable.

602.8(a)(1) and (2)

Clarifies wording of definitions for “net operating costs” and “net operating budget” respectively.

602.8(a) sub-sections (5), (10) and (11)

Deletes sections that define disadvantaged, technical programs and business programs, respectively, for the express purpose of the Ingler formula which no longer applies. Also renumbers remaining sections.

602.8(b)

Deletes phrase “or in items therein” to clarify that SUNY Trustees approve and adjust college budgets only in the aggregate.

602.8(c)(1) and (2)

Adds percentage numerals in parentheses for numbers cited in words, to clarify. Also updates the year and amount pertaining to state FTE aid.

602.8(d) Intro., (1) and (2)

Deletes citation of actual year and substitutes generic language, i.e. “current” (year), “previous” (year), “two years prior” and “three years prior.”

602.8(e)

Deletes the specific year and substitutes “current” (year).

602.9(a)

Deletes “subject to the approval of the sponsor”, affirming the sole authority for internal budget transfers to rest with the local board of trustees.

602.9(b)

Deletes “or the state financial assistance” in reference to approving increases to the total operating budget because state aid is covered in separate section.

602.9(c)

Clarifies the requirement for college trustee approval to amend the state assistance portion of the college budget. Also deletes the balance of section as duplicative of subsequent section.

602.9(d) and (e)

Capitalizes “Chancellor.”

602.10(a) and (b)

Makes language gender neutral.

602.10(c)(1)

Inserts introductory sentence noting a 1/3 (33.3%) limitation on tuition and revenue fees, in accordance with the law. Also deletes the prohibition on student revenue fees and inserts a sentence stating that policies governing revenue fees shall be determined by the SUNY Board of Trustees, making their consideration and approval allowable.

602.10(c)(2)

Removes the dollar cap on tuition and specifies that tuition shall be fixed in accordance with levels established by the SUNY Board of Trustees.

602.10(c)(5)

Clarifies the circumstances for which lower part-time tuition may be charged.

602.10(c)(7)

Clarifies wording to be consistent with actual practice for the definitions of full-time and part-time tuition rates.

602.10(c)(9)

Inserts “direct” before “costs.”

602.10(h)

Deletes last sentence requiring trustee and sponsor approval of a plan to reduce student revenue surpluses. It is already part of the regular budget approval process.

602.10(i)(1)

Clarifies wording of provision for increasing tuition above the cap under certain conditions, and contingent on sponsor maintenance of effort. Also deletes specific years and substitutes generic years.

602.10(i)(2)

Deletes “in no event” (shall tuition rates exceed the maximum limitations) and clarifies wording of section.

602.11(a)

Clarifies wording for student withdrawal.

602.11(a)(1)

Deletes “chief executive officer” and substitutes “college president or designee.”

602.11(a)(2)

Provides that student tuition liability for nontraditional academic terms shall be proportionate to the schedule for regular terms.

602.11(b)(1)

Makes language gender neutral.

602.11(b)(5)

Deletes this section on federal financial aid refunds as obsolete.

602.11(b)(6) renumbered to 602.11(b)(5).

602.12(a)

Clarifies the definition of non-resident student to include out-of-state students for tuition purposes.

602.12(b)

Clarifies that programs supported by state aid at off campus locations are also entitled to operating chargeback payments.

602.12(c)

Clarifies that certificates of residency are valid for one year from the date of issuance, and for terms commencing and completing within that twelve month period, aligning the code with the statute.

602.12(d)

Clarifies for the purposes of billing for chargebacks that the billing shall be for the FTE student load as of the census date. Cites the Student Data File Manual as the reference for definition of census date. Adds president’s designee as the authority to submit chargeback billings to counties.

602.12(e)

Deletes this section, pertaining to operating chargeback rates prior to 1983, as no longer relevant.

602.12(f)

Deletes this section as obsolete.

602.12(e) (new)

Provides current procedure for calculating operating chargeback rate.

602.13(b)

Deletes reference to “Uniform System of Accounts for Community Colleges” as no longer applicable for requirements pertaining to annual financial report.

602.13(e) (new)

Adds new section to clarify that underpayments in state financial assistance will be processed according to procedures for amending the college operating budget request.

602.13(old e) (new f)

Substitutes “Office of the State Comptroller” for “Department of Audit and Control.”

602.14(a)

Clarifies that policies and procedures relating to internal business practices (listed) are to be determined by the local board of trustees. Adds item (14) salaries and employee benefits.

602.15(a) (new)

New section is added to specify the disbursement schedule for quarterly state operating aid payments.

603.4(a) (new)

Adds language prohibiting the sponsor from charging for duplicate services on construction projects.

603.7(b)

Clarifies the definition of allowable capital chargeback equipment expenditures and lowers the dollar threshold limits for allowable equipment purchases to more realistic levels. Provides that capital chargeback equipment expenditures will not qualify for state operating aid.

603.7(f)

Aligns code with actual practice by requiring that a request for approval of a capital chargeback rate be submitted with each college’s annual budget.

604.1(b)

Adds a sentence that provides that the local sponsor will transfer community college appropriated funds to the college board of trustees for expenditure within the college’s fiscal year. Also adds numerals for percents stated.

604.1(c)

Clarifies that title to all real property is held by the local sponsor in trust for the exclusive uses and purposes of the college. Title to all personal property shall be held and used by the local board of trustees for college purposes.

604.2

Clarifies that local boards of trustees have the authority to prepare and implement budgets in addition to approving them as provided by statute. Also clarifies the board authority to “determine and implement salary and employee benefits schedules.”

604.2(a)

Clarifies that the local board shall establish employment policies and terms and conditions of employment for the president as well as the professional administrative staff, as provided by statute.

604.2(b) and (b)(1)

Clarifies that the local board of trustees may delegate to the president or designee responsibility for implementation of various employment policies, to include tenure, and to include policies concerning college staff, as well as faculty.

604.3(a)

Substitutes “implement” for “carry out.”

604.3(b)

Clarifies that duties of the president include making recommendations to the trustees on salary and employee benefits schedules for all employees, and tenure (unless personnel decisions have been delegated to the president).

604.3(c)

Deletes “negotiations” and substitutes “bargaining” in the phrase “collective negotiations agreements.”

604.4(a)(1)

Adds phrase clarifying that there shall be rules and regulations governing the election of the student member of the college board of trustees.

604.4(a)(2)

Clarifies the term of membership of the elected student member of the college board of trustees as annual and running from July 1 through June 30, as provided by statute. Also adds a sentence indicating that campus procedures will be used to fill vacancies in the student trustee seat on the local board of trustees, as provided by statute.

605.2

Clarifies that admission to college programs “shall be granted in a non-discriminatory manner.”

605.3(b)(3)

Clarifies that student records will be held in accordance with State and Federal regulations.

605.4

Under regulations governing students, clarifies that student organizations shall “offer open membership on a nondiscriminatory basis”. Also substitutes “chief administrative officer” with “president” and makes language of section gender neutral.

605.5(a)

Deleted and moved to section on to section 602.4(d), allowable operating expenses.

605.5(b)

Deleted and moved to section 602.4(e), unallowable operating expenses.

605.6 (renumbered to 605.5)

Clarifies that the college may permit the use of facilities by inside or outside organizations (not limited by type or purpose), in a non-discriminatory manner, subject to approval by the college trustees, and in accordance with college policies for facilities use.

606.1

Capitalizes the term “faculty council of community colleges” and makes a grammatical correction.

606.2(a)

Clarifies wording under Faculty Council of Community Colleges (FCCC) purpose to include “make recommendations regarding academic concerns and issues”.

606.2(a)(1)

Grammatical correction

606.2(a)(2)

Grammatical correction

606.2(a)(3)

Grammatical correction

606.2(a)(4)

Grammatical correction

606.2(b)

Corrects capitalization

606.2(c)

Corrects capitalization

606.3

Expands membership of the voting members of the Faculty Council to include the Vice Chancellor for Community Colleges and the Associate Provost for Community Colleges and corrects punctuation.

606.4

Indicates that names of council delegates and alternates shall be forwarded to the President of the Faculty Council.

606.5

Corrects capitalization

606.7(a)

Revises the definition of the office of Faculty Council President to provide the option of two half-time co-Presidents, and to require that candidates for the office of President obtain advance permission of the home campus President for release time during their tenure in office. This section also calls for elections at the annual spring Council meeting.

606.7(a)(1)

Corrects capitalization

606.7(a)(4)

Corrects capitalization

606.7(b)

Corrects capitalization

606.8(a)

Deletes “appropriate” from “spring meeting of the Faculty Council” and correct punctuation.

606.8(b)

Corrects capitalization

606.8(c)

Corrects capitalization

606.9(a)

Deletes “appropriate” for substitutes “annual” and corrects capitalization.

606.9(a)(1)

Provides that the Secretary keep the minutes of the Faculty Council and the Executive Committee.

606.9(a)(2)

Grammatical correction

606.9(a)(3)

Grammatical correction

606.9(a)(4)

Grammatical and capitalization corrections

606.9(b)

Capitalization corrections

606.10

Adds the Associate Provost for Community Colleges as a member of the Executive Committee.

606.13

Revises heading to read “Adoption of By-Laws.”

606.14

Revises heading to read “Procedure to Amend Faculty Council Regulations.”

606.14(b)

Deletes section as no longer relevant.

607.1

Adds a clause requiring that this code be reviewed every five years.

Text of proposed rule and any required statements and analyses may be obtained from: Dona S. Bulluck, State University of New York, State University Plaza, Albany, NY 12246, (518) 443-5400, e-mail: bul-lucdo@sysadm.suny.edu

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: Education Law, section 355(1)(c), which authorizes the state university trustees to provide a code of standards and regulations for the community colleges, that cover the organization and operation of their programs, curricula, course, financing arrangements, tuition and fees, state financial assistance, and any other matter relating to their operation. Education Law, section 6301 provides definitions for terms commonly used throughout Article 126. Education Law, section 6303, sets forth the programs and curricula to be offered by community colleges.

Education Law, section 6304, provides for the manner in which community colleges are to be financed. Section 6304(1)(a) outlines the manner in which the State’s share is calculated, while the calculation for the sponsor’s share and the student’s share are found at sections 6304(1)(c) and (d) respectively. Section 6304(6) directs the sponsor, after adoption of

the college's budget, to pay over to the college trustees, all appropriations for the maintenance of the college for disbursement by the trustees. In addition, Section 6304(6) authorizes the college trustees to elect a treasurer who shall pay all of the college's bills and accounts, including salaries and wages. The college trustees shall provide for periodic audits of all accounts maintained by the college and report these findings to the sponsor.

Education Law, section 6305(1), permits community colleges to admit nonresident and out-of-state students. Education Law, section 6305(2) authorizes community colleges to charge nonresident students higher tuition and sets forth the chargeback system. Education Law, section 6305(4) directs the president of each community college to submit to the chief fiscal officer of each county, within 45 days, a list of nonresident students, based upon certificates of residence and a voucher for payment.

Education Law, section 6306 is titled "Administration of community colleges—boards of trustees." Section 6306(2) authorizes the local trustees to appoint a president, subject to the approval of the state university trustees. This subdivision also authorizes the local trustees to appoint or delegate to the president the authority to appoint other members of staff. Staff is defined as professional service and nonprofessional service employees. Further, this section directs the local trustees to adopt curricula, prepare a budget, and subject to the general supervision of the state university trustees, discharge any duties necessary for the effective operation of the college. Education Law, section 6303(4), enables the local trustees to acquire property, both real and personal, for the college. Title to personal property vests in the local board of trustees and is to be used for college purposes. Title to real property vests in and is held in trust by the local sponsor for use and purposes of the college.

Education Law, section 6303(6), states that the trustees shall have other powers and perform other duties as provided for by law or by the state university trustees.

2. LEGISLATIVE OBJECTIVES: The enabling legislation creating community colleges was passed in 1948. Community colleges were created to offer two-year terminal degrees and general and technical education. From the outset, it appears that the legislative sponsors intended that the State University would exercise control over community college programming, staff and admissions policies. Yet, the community colleges would not be totally funded by the State. This concept of joint but divided state and local responsibility was the result of a compromise between those who favored state-operated and funded community colleges and those who favored local responsibility for and control of community colleges.

Those desiring to sponsor a community college understood up front the fiscal commitment that was required by the sponsor. With the passage of the Full Opportunity Law in 1970, community colleges began to offer remedial courses and specialized instruction as part of their curricula. During the mid-1970s, SUNY took steps to provide closer oversight for the community colleges. Significant revisions were made to the "Code of Standards and Procedures for the Administration and Operation of Community Colleges under the Program of State University of New York" ("Code"), and a new formula for state-aid was devised. Any changes to the Code since that time were sporadic and narrowly focused.

The proposed amendments will provide the community colleges under the operation of the State University of New York with clearer operating guidelines and they will eliminate material that is obsolete. The proposed amendments help to clarify existing law and will help to facilitate uniformity of operation where required by law. For example, section 6304(6) of the Education Law is a 1988 amendment that provides the method for the fiscal operation of a community college. Prior to this amendment, a community college could operate fiscally by one of three methods. Despite this amendment, some sponsors are not adhering to the letter and/or spirit of the law. Some of the proposed amendments reinforce the legislative intent.

3. NEEDS AND BENEFITS: Pursuant to the Education Law, the sponsor of a community college is obligated to provide financial support, one-third or as much as may be necessary, for the college. The sponsor must review and approve a budget for the college, which is submitted by the local board of trustees. The sponsor also appoints five members to the college's board of trustees. The greatest responsibility imposed upon the sponsor, however, is the sponsor's fiscal responsibility to the institution. Yet, this responsibility does not give the sponsor control over the administration of the college. The law delegates the administration of the college to the board of trustees. The proposed regulations seek to provide further clarification of the responsibilities of these parties.

This project was initiated in March of 2001. The SAPA provides that agencies are to review their regulation every five years. Although a comprehensive review of the Code was conducted in 1991, the proposed revisions were never acted upon. The six-member Code Review Commit-

tee, which was appointed in March 2001 by the Vice Chancellor for Community Colleges, reviewed the work of the previous committee in addition to soliciting new input. Many of the suggestions received were rejected because implementation would require amendments to existing legislation. Other suggestions were impractical or missed the point. Yet, some suggestions were insightful and presented perspectives that the committee had not explored. The committee utilized many suggestions.

Suggestions were received from the Community College Business Officers, the Community College Trustees, the Faculty Council, representatives from CUNY, the Community College Presidents, Senior Staff at System Administration, and the SUNY Trustees. The proposed amendments went through at least three rounds of complete editing and drafting, as well as minor revisions thereafter. Thus, the individuals who work most closely with the Code were given every opportunity to be a part of the review and revision process.

These amendments will eliminate obsolete material, clarify various provisions of the Code that are ambiguous, bring the Code into conformity with existing SUNY practices, procedures, legislation and judicial authority. They will provide additional clarification with respect to the authority of the sponsor, boards of trustees, and the president as delegated by the Education Law. Students, staff, administrators, local trustees, SUNY Trustees, community college presidents, and local sponsors will all benefit from the proposed regulations. These regulations are designed to provide for the efficient operation of community colleges as a system. No party will be burdened by these regulations since they merely clarify existing law, practice and policy.

4. COSTS: The proposed regulations seek to clarify existing law and do not impose any new costs on community colleges or local sponsors. One revision, the deletion of § 601.7(d), will save money. Money that was spent producing the annual report will no longer be expended. It is estimated that savings of \$2,500 per institution could be realized. It should be noted that some local sponsors, who currently do not comply with existing law and regulations, might experience some fiscal impact by coming into compliance. For example, some sponsors have been charging their colleges for indirect costs for services provided by the sponsor. This is, and has been, in violation of the Education Law. If a sponsor now decides to comply with the law, and ceases to charge the college for indirect costs, the sponsor will have to assume them. Nevertheless, these costs are not newly imposed costs since they are costs that the sponsor should have been paying all along.

5. LOCAL GOVERNMENT MANDATES: The proposed regulations do not impose any new requirements on local governments. These regulations merely clarify existing law.

6. PAPERWORK: The proposed regulations do not impose any new paperwork requirements on any of the parties. To the contrary, some paperwork is being eliminated. For example in § 602.12(c) provides that a certificate of residence is valid for one year and "is applicable for all terms or programs commenced and completed within the twelve month period." Although the statute states that a certificate of residence is valid for one year, students are required to present a certificate of resident at the beginning of each term, which would be three times during the academic year if attending a summer session. This regulation will eliminate the frequency with which students may be required to submit a certificate of residence, thereby reducing paperwork. In addition, § 601.7(d), which requires the filing of an annual report, concerning interinstitutional agreements is being eliminated to align the Code with practice. Very few of these agreements are in use. The elimination of this report will reduce paperwork.

7. DUPLICATION: The proposed amendments carry out specific requirements of the Education Law. The amendments are not redundant with other State requirements nor do they have any relationship with existing Federal requirements.

8. ALTERNATIVES: One alternative to the proposed amendments would be to leave the Code as is. However, to do so would be in violation of SAPA. In addition, portions of the Code would remain ambiguous and obsolete. In reviewing the suggestions that were submitted for consideration, some were accepted and some were rejected because they were not feasible.

For example, it was suggested that § 606.4 be amended to allow the campus president to recommend or approve the individual that the faculty elected as their representative to the Faculty Council. The suggestion was rejected because it interfered with the faculty's right to freely elect the person that the faculty wanted as their representative.

Another suggestion centered on § 602.12, which provides that a campus president has 45 days, from the start of the term, to submit to the chief fiscal officer of each county, a list of residents, based upon certificates of

residence, in attendance. It was stated that this 45-day period was unreasonably short. The suggestion was rejected because the 45-day period is in statute [Education Law § 6305(4)] and can not be changed without legislative amendment.

The committee incorporated a suggestion relating to § 604(d)(23), which clarified that only expenses associated with a college-operated alumni association may be supported by State aid and student tuition revenues. Another suggestion that was adopted by the committee concerned § 604(a)(2). This suggestion changed the language defining the term of office for student trustees to reflect the actual statutory language. Thus, the language was changed from "one calendar year" to "from July 1 through June 30."

9. FEDERAL STANDARDS: The proposed amendments do not exceed any maximum standards of the federal government for the same or similar subject areas.

10. COMPLIANCE SCHEDULE: There is no mandatory compliance schedule, however the SUNY Trustees would like to adopt the regulations in their final form at their June 2002 meeting. The regulations will become effective after they are finally adopted by the SUNY Trustees and published in the *State Register*.

Regulatory Flexibility Analysis

The State University finds that the proposed regulations will have no adverse impact on small businesses. These regulations concern the operation and administration of community colleges under the program of the State University of New York. The topics addressed by these regulations include curricula, financial arrangements, tuition and fees, personnel policies, and a myriad of other administrative issues relating to community colleges. The proposed regulations are not new regulations. These regulations seek to eliminate obsolete material, clarify various provisions of the Code that are ambiguous, and align the Code with existing practices, procedures, legislation and judicial authority.

These regulations will only affect those local governments that currently sponsor community colleges. In preparing the proposed regulations, input was received from the Community College Business Officers, the Community College Trustees, the Faculty Council, representatives from CUNY, the Community College Presidents, Senior Staff at System Administration, and the SUNY Trustees. The proposed amendments went through at least three rounds of complete editing and drafting, as well as minor revisions thereafter. Thus, the individuals who work most closely with the Code were given every opportunity to be a part of the review and revision process.

Accordingly, the proposed regulations will have no impact on small businesses. They do not impose any new reporting or recordkeeping requirements on small businesses nor do they impose any new recordkeeping or fiscal obligations on local sponsors of community colleges.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: There are thirty (30) community colleges operating under the program of the State University of New York. These community colleges are located throughout the state, and some of them are located in and/or service rural areas. However, the rural areas that may be impacted by these regulations are those areas that already sponsor a community college.

2. Reporting, recordkeeping and other compliance requirements and professional services: These regulations do not impose any new recordkeeping or reporting obligations on rural areas. The proposed regulations will affect those rural areas where community colleges already exist or are serviced by a community college. The proposed regulations seek to eliminate obsolete material, clarify various provisions of the Code that are ambiguous, and align the Code with existing practices, procedures, legislation and judicial authority.

3. Costs: The proposed regulations do not have any impact on nor impose any fiscal obligations on rural areas. Only entities that currently sponsor a community college operating under the program of the State University are subject to this rule making. The proposed regulations will eliminate obsolete material from the Code, clarify various provisions, and align the Code with existing practices, procedures, legislation and judicial authority.

4. Minimizing adverse impact: The proposed regulations have no adverse impact on rural areas. This rule making only applies to community colleges operating under the program of the State University. In preparing the proposed regulations, input was received from the Community College Business Officers, the Community College Trustees, the Faculty Council, representatives from CUNY, the Community College Presidents, Senior Staff at System Administration, and the SUNY Trustees. These individuals are located throughout the state. The proposed amendments went through

at least three rounds of complete editing and drafting, as well as minor revisions thereafter. Thus, the individuals who work most closely with the Code were given every opportunity to be a part of the review and revision process. To the extent that some of the definitions concerning branch campuses and off site campuses were clarified, it will be easier to serve under populated areas, which should be beneficial to rural areas in the state.

5. Rural area participation: As noted, input was received from various groups and representatives from community colleges and the State University. The groups and individuals from whom comments were solicited, are those who work most closely with the community college Code. These individuals are located through the State, including rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rules do not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This rule making governs the administration and operation of community colleges under the program of the State University of New York.

Office of Temporary and Disability Assistance

EMERGENCY RULE MAKING

Temporary Shelter Supplements

I.D. No. TDA-24-03-00001-E

Filing No. 750

Filing date: July 21, 2003

Effective date: July 21, 2003

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

Action taken: Addition of section 370.10 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 158, 350(2) and art. 5, title 10; and L. 2001, 2002 and 2003, ch. 53

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

Specific reasons underlying the finding of necessity: To ensure that persons who are no longer eligible for family assistance because of the 60-month time limit on receipt of such assistance but who are receiving safety net assistance and meet other eligibility requirements can pay their rent and avoid eviction.

Subject: Temporary shelter supplements.

Purpose: To provide temporary shelter supplements to certain persons who are no longer eligible for family assistance because of the time limit on receipt of such assistance.

Text of emergency rule: Section 370.10 is added to read as follows:

370.10(a) Scope.

This section governs the provision of supplements known as Temporary Shelter Supplements (TSS). Such supplements may be provided to recipients of Safety Net Assistance (SNA) who would otherwise be eligible for Family Assistance (FA) but for the time limits on receipt of such assistance and who meet the conditions set forth below. Such supplements are provided pursuant to an authorization and appropriation in the State budget. This section shall be effective only for so long as a specific appropriation in the State budget is made therefore.

370.10(b) Application of other regulations.

TSS is provided only to recipients of non-federally participating SNA program. TSS recipients are subject to all the regulations of this Title governing SNA unless otherwise specified in this section.

370.10(c) District responsibilities.

All social services districts authorized to provide a TSS benefit must:

(1) Upon this office's eligibility determination for a TSS benefit or the local districts determination of eligibility for such a benefit, if directed by this office to make such determination, provide such benefits to eligible individuals.

(2) Ensure that all SNA recipients in receipt of a TSS benefit comply with all training requirements and case management services.

(3) Periodically report to this office on the recipients of TSS at such times and in such manner as this office may direct.

370.10(d) Eligibility requirements for applicants who are not receiving a supplemental shelter allowance when they apply for TSS.

(1) Applicants for TSS who were not receiving a supplemental shelter allowance must apply for TSS on a form prescribed by this office.

(2) To be eligible for TSS, there must be a court proceeding concerning the nonpayment of rent, maintenance or mortgage where the applicant resides. The application shall include documentation demonstrating that the case is on file with a court including the caption, index number and an official court stamp or signature.

(3) The applicant must reside in a social services district in which a lawsuit challenging the adequacy of the shelter allowance maxima in the FA program was commenced prior to December 1, 2001 and preliminary relief has been ordered.

(4) Receipt of TSS must enable the applicant to remain in his or her housing. The district may pay up to \$3,000 or six times the monthly rental obligation in full satisfaction of tenant liability for rent arrears, whichever is higher, in accordance with paragraph (4) of subdivision (f) of this section. This office may require the applicant to move to a similar priced apartment in lieu of paying arrears.

370.10(e) Eligibility requirements for all applicants for TSS, including persons receiving a supplemental shelter allowance when they apply for TSS.

(1) All individuals requesting a TSS benefit must be eligible for SNA, have exhausted their FA eligibility as a result of the 60 month time limitation and be eligible for FA except for the application of the time limits.

(2) The TSS benefit must not exceed the amounts established in subdivision (f) of this section.

(3) The public assistance recipient must be the tenant of record and have a lease for the housing or obtain an agreement in writing to stay for at least one year if the tenancy is not covered by rent regulation.

(4) In addition, the following case circumstances must be met in order to receive a TSS benefit:

(i) No one in the public assistance case can be sanctioned.

(ii) The public assistance household must contain a child under the age of 18 or under the age of 19 and a full-time student.

(iii) The household cannot have willfully lost section 8 assistance provided by the federal Department of Housing and Urban Development, without good cause, within the past two years.

(iv) The household must apply for section 8 assistance, if permitted to do so, and take the benefit, if offered.

(v) The household must verify household composition and rent must be paid by non public assistance (NPA) household members as described below.

(vi) Any changes that affect eligibility must be reported to this office, if acting on behalf of the local district, and the district within 10 days of the change. Failure to report any change may result in permanent discontinuance of TSS benefits.

(5) NPA household members, including persons not eligible for public assistance due to their immigration status and recipients of supplemental security income (SSI) or foster care, must agree to contribute either their pro rata share of the rent or 30 percent of their gross income to the rent, whichever is less. In addition:

(i) The NPA's income must be verified.

(ii) If the NPA claims to have no income, the person must apply for public assistance before the additional allowance can be authorized.

(iii) Persons reported as not eligible for public assistance due to their immigration status, who are without income will not be expected to contribute toward their rent or be included in the shelter number.

370.10(f) Needs and allowances.

(1) TSS allowance. The amount of the TSS benefit will be established by this office. The maximum benefit an SNA household may receive is equal to the amount which was or would have been previously authorized for that household size by a court ordered supplement under FA. SNA households that were not in receipt of a court ordered supplement prior to their receiving SNA assistance, may receive an allowance equal to the difference between the shelter allowance determined in accordance with section 352.3 of this Title and the actual rental obligation; provided however, that the TSS allowance must not exceed an amount equal to the shelter allowance maximum or an amount, when combined with the allow-

able shelter allowance, is equal to the following rent table, whichever is greater:

By family size

1	2	3	4	5	6	7	8+
\$450	\$550	\$650	\$700	\$725	\$750	\$775	\$800

(2) TSS benefit increase limitations. Once TSS benefits have been authorized for a household, the TSS benefit amount may increase for that household up to the maximum established in paragraph (1) of this subdivision, provided that the increase is documented in the recipient's lease or rental agreement.

(3) TSS rental amounts. The temporary assistance household's rental obligation may exceed the amount authorized under paragraphs (1) and (2) of this subdivision by up to one hundred dollars. The household is responsible for this excess amount and must agree to have this amount restricted from their regular public assistance benefit authorized under section 352.2 of this Title.

(4) Arrears payments. Rent arrears may be authorized as part of the TSS request. Arrears payments for rent cannot exceed the higher of \$3,000 or six times the monthly rental obligation. Under extenuating circumstances (e.g. need to keep current housing for medical reasons), and subject to approval by this office, an arrears amount can be authorized for a higher amount not to exceed 10 times the monthly rental obligation. Once arrears payments are made for the household under this section, no future rental arrears payments will be made for any month in which a TSS benefit was authorized for household or for any month in which the case was sanctioned.

370.10(g) Budgeting.

The following general provisions apply:

(1) A recipient is no longer eligible for a TSS benefit once he or she has lost eligibility for public assistance.

(2) The undue hardship reduction procedures found in section 352.31(d)(2) of this Title do not apply in relationship to TSS benefits.

(3) As a condition for receiving a TSS benefit, recipients must agree to have their entire rent paid directly to the landlord.

(4) TSS is not part of the standard of need for determining eligibility for public assistance. Eligibility shall be determined without regard to TSS.

370.10(h) Notice and procedural rights.

To the extent not inconsistent with this section, desk reviews of case discrepancies will forgo the procedures in Part 358 of this Title.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. TDA-24-03-00001-EP, Issue of June 18, 2003. The emergency rule will expire September 18, 2003.

Text of emergency rule and any required statements and analyses may be obtained from: Ronald Speier, Office of Temporary and Disability Assistance, 40 N. Pearl St., Albany, NY 12243, (518) 474-6573

Regulatory Impact Statement

1. Statutory Authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Department of Social Services to promulgate regulations to carry out its powers and duties. Section 122 of Part B of Chapter 436 of the laws of 1997 reorganized the Department of Social Services into the Department of Family Assistance with two distinct offices, the Office of Children and Family Services and the Office of Temporary and Disability Assistance (OTDA). Chapter 436 transferred the functions of the former Department of Social Services concerning financial support services to OTDA.

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

Section 158 of the SL contains the eligibility requirements for the Safety Net Assistance (SNA) program.

Title 10 of Article 5 of the SSL authorizes the Family Assistance program (FA) which provides allowances for the benefit of children who are financially needy for their support, maintenance and needs.

Section 350(2) of the SSL provides that FA shall not be granted to any family which includes an adult who has received FA or any other form of assistance funded under the Federal Temporary Assistance to Needy Families Block Grant program for a cumulative period of longer than 60 months.

Chapter 53 of the Laws of 2001, Chapter 53 of the Laws of 2002 and Chapter 53 of the Laws of 2003 (the State Operations and Aid to Localities Budget) appropriated funds to be used to reimburse one-half of the non-federal share of the cost of the rent supplement authorized by this regulatory amendment.

2. Legislative Objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that people who are unable to provide for themselves can, whenever possible, be restored to a condition of self-support.

3. Needs and Benefits:

The proposed amendments authorize the payment of a rent supplement to cases that include a child in receipt of SNA when such supplement is necessary to prevent eviction and when such cases were in receipt of such supplement as FA recipients pursuant to a decision of the Commissioner of OTDA as determined necessary to address litigation or pursuant to a court order pending final adjudication of litigation and transferred to SNA or when such case would have met the eligibility criteria for such supplement except for FA ineligibility.

In *Jiggetts v. Grinker*, a case commenced in 1987, plaintiffs were recipients of Aid to Dependent Children (ADC) residing in New York City whose actual rent exceeded the agency shelter allowance maxima and who were facing eviction for non-payment of their rent. The plaintiffs alleged that the shelter allowance provided to ADC recipients was inadequate to maintain their housing and therefore violated section 350 of the Social Services Law. Similar cases were brought and are still pending in three other counties. In each of the cases, either by court order or by an informal intervention process, families receiving ADC who have alleged similar claims to the plaintiff have received rent supplements to prevent eviction while the court cases pending.

In 1997, the ADC program was abolished in New York and a successor program, the FA program, was established. The FA program contains a 60 month limitation on receipt of assistance (See section 350 of the Social Services Law). Beginning on December 1, 2001, the first cohort of families reached the 60 month limit. Such families can transition to the SNA program if they apply. However, section 350 of the Social Services Law, which is the linchpin of the *Jiggetts* case, does not apply to families receiving SNA. See *Deleo v. Kaladjian* 215 A.D.2d 520 (1995) and *Gautam v. Perales* 179 A. D. 2d 509 (1992). Therefore, such families would no longer be eligible for the preliminary relief being provided in the various cases.

To ease the transition from FA to SNA, the Legislature, in Chapter 53 of the Laws of 2001, appropriated funds to reimburse one-half of the cost of a rent supplement to be provided to families formerly receiving preliminary relief in the various shelter allowance cases or who might be eligible for such relief but for the time limits. In order to receive the shelter supplement, a person must be in receipt of SNA, have exhausted their FA eligibility as a result of the 60-month time limit or receipt of such assistance and be eligible for FA except for the application of the time limit. Because the allowance is a creature of the appropriation language and is not a special needs allowance in the SNA program, it does not increase the standard of need or standard of payment for that program. Funds also were appropriated in the recently passed 2003-04 State Operations and Aid to Localities Budget to continue the rent supplement program.

4. Costs:

Assuming that 6,855 cases reach the 60-month limit in December 2001, with additional cases reaching the limit in each month thereafter, and factoring in a 10 percent caseload decrease due to restrictions on the payments and attrition, it is estimated that the cumulative costs to be as follows, based on a benefit level of \$280 per month in New York City and \$377 per month in the rest of the State:

Cumulative Cost (millions)	Gross	Federal	State	Local
State Fiscal Year 2001-02	\$8.337	\$0	\$4.168	\$4.168
State Fiscal Year 2002-03	\$32.270	\$0	\$16.135	\$16.135

It is important to note that any additional State and local expenditures would count toward meeting the State's federal maintenance of effort requirement.

5. Local Government Mandates:

When requested by this Office, social services districts would be required to determine whether persons are eligible for a temporary shelter supplement.

6. Paperwork:

A new form would be developed by this Office that would be used when a person applies for a temporary shelter supplement.

7. Duplication:

The proposed regulatory amendments do not duplicate any existing State or federal requirements.

8. Alternatives:

This Office is required to establish a rent supplement program as described in Chapter 53 of the Laws of 2001, Chapter 53 of the Laws of 2002 and Chapter 53 of the Laws of 2003. These regulations comply with the requirements of those chapter laws and reflect this Office's experience and the experience of social services districts in operating informal intervention programs.

9. Federal Standards:

There are no Federal standards concerning temporary shelter supplements.

10. Compliance Schedule:

Social services districts would be required to begin complying with the requirements of these regulatory amendments when they become effective.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed regulations will not affect small business but will have an impact on the 58 social services districts in the State.

2. Compliance requirements:

Social services districts would be required to determine eligibility for temporary shelter supplement benefits when directed to do so by the Office of Temporary and Disability Assistance.

3. Professional services:

No new professional services will be required for social services districts to comply with the proposed regulations.

4. Compliance costs:

The proposed regulations will not require the social services districts to incur any initial capital costs. It is estimated that local costs of the regulations for State Fiscal Year 2001-02 will be \$4,168,000; for State Fiscal year 2002-03, the local costs will be \$16,135,000.

5. Economic and technological feasibility:

The social services districts have the economic and technological feasibility to comply with the proposed regulations.

6. Minimizing adverse impact:

The proposed regulations will not have an adverse economic impact on social services districts.

7. Small business and local government participation:

Staff of the Office of Temporary and Disability Assistance have informed social services districts in New York City, Nassau County, Suffolk County and Westchester County about the proposed amendments since those are the only districts that will be affected by the amendments. Those districts were invited to submit comments on the amendments.

Rural Area Flexibility Analysis

A rural area flexibility analysis statement has not been prepared for the regulations establishing a temporary shelter supplement since only those social services districts in New York City, Nassau County, Suffolk County and Westchester County will be affected by the regulations.

Job Impact Statement

A job impact statement has not been prepared for the proposed regulatory amendments. It is evident from the subject matter of the amendments that the job of the worker making the decisions required by the proposed amendments will not be affected in any real way. Thus, the changes will not have any impact on jobs and employment opportunities in the State.

NOTICE OF ADOPTION

Shelter Allowance

I.D. No. TDA-32-02-00004-A

Filing No. 752

Filing date: July 22, 2003

Effective date: Nov. 1, 2003

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

Action taken: Amendment of Part 352 and section 381.3(c) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 131(1), 131-a(2) and 355(3)

Subject: Shelter allowance.

Purpose: To establish new provisions concerning the shelter allowance.

Text or summary was published in the notice of proposed rule making, I.D. No. TDA-32-02-00004-P, Issue of August 7, 2002.

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

Revised rule making(s) were previously published in the State Register on February 26, 2003.

Text of rule and any required statements and analyses may be obtained from: Ronald Speier, Office of Temporary and Disability Assistance, 40 N. Pearl St., Albany, NY 12243, (518) 474-6573

Revised Regulatory Impact Statement

1. Statutory Authority

This regulatory amendment is promulgated under the authority of Sections 20(3)(d), 34(3)(f), 131(1), 131-a (2) and 355(3) of the Social Services Law (SSL).

Section 20(3)(d) of the SSL authorizes the Office of Temporary and Disability Assistance (OTDA) to promulgate regulations to carry out its powers and duties.

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

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

Section 131-a(2) of the SSL provides that social services officials shall, in accordance with the provisions of the regulations of OTDA, include within the standard of need an amount for shelter.

Section 355(3) of the SSL requires OTDA to promulgate regulations to carry out the provisions of the SSL concerning the provisions of Family Assistance.

2. Legislative Objectives

It is the intent of the Legislature in enacting the above statutes that the Office establish rules, regulations and policy so that those persons unable to provide for themselves can be restored whenever possible to a condition of self-support and self-care consistent with the Welfare Reform Act of 1997.

3. Needs and Benefits

Shelter Allowance & Supplement (Sections 352.2(c), 352.3(a)(1), (2) & (3)) The proposed amendments authorize a new shelter allowance and the payment of a rent supplement (at district option but with State approval) to Public Assistance recipients. In developing this package of regulations, OTDA was mindful of the need to: 1) meet the policy mandates of welfare reform as reflected by the Legislature in the Welfare Reform Act of 1997 (WRA) and related Federal and State welfare reform legislation; 2) provide a shelter allowance that reflects the cost of adequate housing for each district of the State; and 3) reduce the incidence of serious housing problems, including homelessness.

The schedule of shelter allowance maxima has been revised since the original Notice of Proposed Rule Making (NPRM) was published August 7, 2002. The methodology for determining the schedule for New York City was revised slightly to make a technical correction. The methodology used to derive the schedules for the other 57 social services districts was revised slightly to reflect the availability of information on housing from two different sources and to take advantage of the strengths and minimize the weaknesses of each source. The schedule for the 57 districts in the original NPRM had used only one source of data.

The regulatory changes and their objectives are described briefly below. A more detailed description of the expected benefits is provided in the "Background" section.

Overview of Changes

The proposed regulatory changes are designed to meet the following main objectives:

1) For each district within the State, provide a shelter allowance that reflects the cost of acceptable quality housing. The new shelter allowances are based on current estimates by two leading experts of the amount necessary to rent units that meet the housing standards used in the federal Housing and Urban Development's (HUD's) Section 8 program. The shelter allowances are designed to allow families to rent modest but adequate units, meeting specified standards, and are sufficient to allow families to live together in a home-type setting. The rates are set at a modest level to advance the successful state welfare policy that publicly provided cash benefits should be adequate to meet basic needs, and that welfare recipients should be encouraged through work incentives to purchase higher quality housing if desired.

2) Provide for a Supplement to Ensure That Family Units Facing Special Circumstances May be Kept Together in a Home-type Setting. Even with shelter increases reflecting the standards noted above, recipients may, for a variety of reasons, experience housing problems. These reasons include personal problems (including domestic violence, drug abuse or mental illness), inability to manage a limited budget, or specific housing

characteristics in particular districts or parts of districts. To further insure that resources are sufficient to avert housing crises, the proposed amendments provide for provision of a rent supplement at local discretion. As detailed further below, the rent supplement provides a flexible and efficient means for local districts to respond to the housing problems of particular families or of particular groups of recipients. It also provides the means to respond to special housing issues within a district that may affect housing access.

3) Maintain strong incentives to work. This objective reflects the recent major shift within NYS and the nation in welfare policy goals from that of income maintenance, to encouraging work, and through work effort and related governmental supports, improved family well being and self sufficiency. This goal is reflected in a wide range of provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), and New York's WRA of 1997, which implemented and extended provisions of PRWORA. These provisions include generous earnings disregards for those on assistance, establishing a time limit on receipt of Family Assistance, disregarding the entire state and federal Earned Income Tax Credit (EITC) and providing a combination of employment opportunities and support services to assist recipients who work to achieve economic independence. All these changes are focused on encouraging employment.

It is a well established fact that increases in grant levels (a result of increasing the shelter allowance) reduce the incentive to work. Increased government benefits reduce work incentives for those on assistance, as well as low income persons not currently on assistance. Moreover, for technical reasons explained more fully below, increases in the standard of need automatically reduce the earnings disregards, further eroding work incentives for those on assistance.

It is therefore essential that changes in the grant structure be designed in a way that minimizes reductions in work incentives. The proposed amendments accomplish this by first providing increases in the shelter allowance that meet the statutory and commonly accepted notion that shelter and other components of publicly provided welfare should be adequate to meet basic needs (such as the need for adequate housing), but not exceed amounts required to meet such basic needs; and second, providing a discretionary supplement (as described above) that is not part of the shelter increase and therefore does not increase the standard of need. This method insures that increases in the grant itself are not so high that it takes away the incentive to obtain employment and the related employment benefits available. In turn, this insures that the improvements in family well-being achieved under welfare reform will continue, including the significant reductions achieved in child poverty.

4) Insure fairness and equity in the provision of public benefits. Working low income populations (often former recipients), must make a variety of choices concerning how to best provide for their families without publicly provided cash assistance (e.g., the choice to share housing costs with other family members or friends so as to extend resources for other purposes). It is imperative that resources provided to those on assistance not be so generous as to create advantages in housing access that would be viewed as unfair or placing working families at a disadvantage compared to families on welfare. This proposal recognizes this need by first increasing the shelter allowance to a level that is adequate; and then providing a rent supplement for those who still experience severe housing problems. This targeting of much of the housing relief on those actually experiencing serious problems (or groups likely to experience such problems), or on specific localities with special housing circumstance, avoids the increased inequity of providing larger shelter increases than those proposed here to all recipients.

5) Simplify grant administration. This proposal eliminates the current distinction between shelter with heat included or not in order to simplify grant administration.

The choices made regarding how to structure housing relief for recipients was also informed by several important additional considerations.

- First, far more recipients now work while on assistance than worked in the past. Because of generous earning disregards and the State and federal EITC, such recipients have greater amounts of disposable income available today than have been provided in the past through welfare grant levels.

- Second, data from the State's Welfare Management System (WMS), the New York City Housing and Vacancy Survey (NYCHVS), and national data sources show that, like other low income populations, welfare recipients often share housing with others. Such individuals may be working, may have other sources of income, or could themselves apply for assistance if lacking the means to contribute to the cost of the housing they

consume. As a result, the household frequently purchases housing for more persons than are “on the public assistance grant”. For a number of reasons, current welfare eligibility rules make virtually no provision for insuring that individuals who share the housing of welfare recipients provide a fair share of housing they consume. This is because it is often impossible or it is too costly to clearly determine such living arrangements.

- Third, various parts of the grant, as well as closely related governmental benefits, can help recipients defray shelter costs. For example, the other components of the public assistance grant (e.g. home energy allowance and supplemental home energy allowance) can often be used to help pay for shelter costs. The same is true of some HEAP benefits as well as disregarded child support. Finally, generous child care and Medicaid benefits provide public assistance recipients with the opportunity to focus remaining (albeit limited) cash and related benefits on housing needs — an option frequently not available to working families not on assistance.

These considerations reinforced the policy decision regarding the way the State should structure housing relief. First, the shelter allowance is set at an amount that allows recipients to rent units that meet federal housing standards. In addition, for all recipients, some extra resources are available through other parts of the grant and related benefits. For the large proportion of current recipients who have other resources (e.g., earnings and/or shared living arrangements), increasing the shelter allowance to a level sufficient to meet minimum housing needs should be enough to insure that such recipients may rent higher quality housing if they desire. For those unique situations in which additional help is needed, access to effectively targeted rent supplementation can help individuals access or retain adequate housing. The supplements serve as an additional safeguard to ensure that family units may be kept together in a home-type setting, to prevent families from becoming homeless, and to help homeless families obtain housing.

Background

Pursuant to section 131-a of the Social Services Law, recipients of Public Assistance are provided with an allowance for housing. The allowance varies by household size and county.

In *Jiggetts v. Dowling*, recipients of Family Assistance challenged the adequacy of the allowances provided in New York City. They alleged that the level of the allowances violated section 350 of the Social Services Law. Ultimately, the New York State Court of Appeals interpreted section 350 to require that the shelter allowance bear a reasonable relation to the cost of housing. During the pendency of the *Jiggetts* litigation, families receiving Family Assistance in New York City who were facing eviction for non-payment of rent could apply for a rent supplement. The amount of the supplement was the difference between the maxima established under section 352.3 and the actual rent, as long as it did not exceed specified levels. These supplements were available only as part of the lawsuit and were not a regular allowance in the Family Assistance program.

OTDA has determined to amend the shelter allowance and permit social services districts to offer a shelter supplement. It is doing this after considering several factors. The new shelter allowance has been set at a minimal amount that allows family units to be kept together in home type settings. A supplement is available to provide an additional safeguard that will enable family units to be kept together this way. In addition to protecting the welfare of families, this approach continues to advance the Legislature’s priorities as reflected in 1997 welfare reform. By providing an appropriate increase in the shelter allowance and providing a supplement which is outside the standard of need, the standard of need will not increase to a much higher amount, which would directly impact the incentives to work. It is now generally accepted that the work incentives in Federal and State welfare reform have led to increased opportunities and improved outcomes for low-income families.

United States Census Bureau statistics show that the work rate for never married single mothers has increased in New York from 40.6% to 60.8%, an increase of 50% in just five years. Similarly, the child poverty rate has declined dramatically in the post welfare reform years from 26.4% in 1994 to 19.0% in 2000, its lowest rate in 21 years. Finally, even the most intransient social trends seem to have been positively impacted by the policies of welfare reform: teen pregnancy and teen births have declined, and the rise in single parent families has stopped.¹

Both federal and State welfare reform were aimed at transforming welfare from an income maintenance program to a transition program leading to work and self-sufficiency. In New York, the Legislature has created a number of tools and incentives to accomplish this goal. As an example, both the EITC and the public assistance earned income disregard reward welfare recipients who work. They provide recipients with discretionary income that can be applied to housing or to other needs. If the

shelter allowance were raised too high, it would act as a disincentive for recipients to work their way off welfare and recipients might be induced to undertake rental obligations they could not sustain if they left public assistance. The danger is that, contrary to welfare reform, a perverse incentive not to work would be created and welfare would again become a program that perpetuates long-term dependency on government provided cash assistance.

Raising the shelter allowance too high in lieu of combining a reasonable increase with a shelter supplement would also have a more technical effect on the incentive to work. The public assistance earned income disregard permits recipients to keep a percentage of any income they earn without having their public assistance grant reduced. It is an inducement to have recipients enter or reenter the workforce. The percentage of earnings disregarded is determined by a formula that compares the standard of need for a household of three in New York City to the poverty level for a household of three. Raising the standard of need substantially would decrease substantially the earned income disregard, thereby eroding the incentives to work.

The amounts for the shelter allowance and supplements were derived by a careful and thorough analysis of recent and reliable data on housing and rents as well as the make-up and nature of the State’s current assistance population.

The shelter supplement, which is outside the standard of need, would be available to local districts on an optional basis to be provided to certain families with children. Local districts would need to submit plans for approval in order to provide the shelter supplement. Districts would need to explain the purpose(s) for which the supplement is to be used. Such purposes might include in appropriate circumstances, assisting a population in finding or retaining housing, ameliorating homelessness or dealing with domestic violence. Districts would also need to explain why supplementation of the new shelter amount is needed to address such concerns in their district. They would also need to specify the targeted population, such as cases where disabilities prevent earnings or specified case-by-case situations. Finally, districts would need to evaluate the impact of such supplementation on work effort and welfare reform.

Cases currently in receipt of court ordered *Jiggetts* payments would be allowed a 2-year “grandfathering” period before receiving a shelter allowance pursuant to these regulations. After two years or a break in their receipt of the payment (such as when the family has lost public assistance eligibility or the family is sanctioned) the new shelter allowance and supplement, if applicable, will be applied to the case.

Additional changes to policy and regulation that provide integrity and program reform in light of the increased shelter allowances, as well as a measure of cost savings to help fund the revised shelter allowances are detailed in the sections below.

Public Housing Schedule (Section 352.3(d))

Public housing authorities are allowed to charge up to the shelter allowance maximum for public assistance recipients. With the changes in the shelter allowances there is a risk that the public housing authorities could raise their rates immediately to take advantage of the additional money available through the shelter allowance increase. This amendment will mandate the increase that the housing authority may charge by allowing them to increase their rental charge by 10% a year, until they reach the new shelter allowance amount. This has been a formula that is currently in existence for many years through an informal agreement with the housing authorities. By promulgating this policy there will be a clear understanding between this Office and the housing authorities of the rent increase policy. Additionally, applicants/recipients in public housing will receive the actual rent that is approved by this Office.

Shelter Arrears Limitations (Sections 352.7(g)(3), 352.7(g)(4))

Under welfare reform, it is incumbent on public assistance applicants/recipients that they learn to manage their expenses in a responsible manner. These changes will encourage applicants/recipients to make sure that shelter expenses are paid and arrears problems reported and addressed timely. In addition, these changes will provide for a limit of six months’ shelter arrears once every five-years but also provide districts with discretion, when warranted, based upon particular circumstances.

Eliminate Dependent Relative Only (Section 352.30(a))

An additional change to 352.30(a) would require that adults applying for public assistance include their children in the application and have their needs and income used in determining the family’s public assistance eligibility. The paragraph already provides for some exceptions and the exceptions would continue. This change recognizes that children are part of the family financial unit and if the family is in need of public assistance, it is reasonable that the assistance determination be based on the real

family financial needs, not just on the needs of one or some family members but not others.

Restriction Policy (Section 381.3(c))

Current policy allows for direct payments to vendors (restricted payments) in FA cases, only when the client has shown mismanagement (generally not paying rent for two consecutive months) or when the client requests the restricted payment. Under the Safety Net Assistance (SNA) program, local districts may also restrict payments for administrative ease (note: non-cash SNA must be restricted). This amendment will allow districts to restrict payments to vendors for administrative ease under the Family Assistance program. Local districts have long sought this option as a way of reducing arrears payments for nonpayment of rent and preventing homelessness by assuring that the clients benefits are going toward shelter, utilities and heat.

4. Costs

The proposed regulations would implement new shelter schedules for families receiving temporary assistance. The schedules would apply to families receiving Family Assistance, Safety Net Assistance Federally Participating, and families that have exceeded the 5-year federal limit and now receive Safety Net Assistance benefits. In addition, the regulations contain a provision that allows local districts to provide a shelter supplement to such families at their option with OTDA approval required, as well as other policy revisions.

The cost of implementing the new schedule for existing cases is expected to be approximately \$67 million on a gross full annual basis.

Court ordered supplements to Jiggetts and Jiggetts-like cases in Rest of State districts currently total approximately \$55 million annually. Under this proposal, after a period of time where those court ordered supplements would continue, it is possible that local districts will choose to provide supplements to continue to support higher than average benefit levels for the portion of the caseload that previously received the court ordered supplement. An approximate 25% increase in the utilization of the supplement is projected resulting in costs of the supplement, when fully annualized, at approximately \$69.2 million (continuation of court ordered supplements at \$55 million and growth of \$14.2 million).

The cost of the shelter proposal including the supplement is therefore expected to be approximately \$81.2 million gross, over and above the current level of spending (\$67 million for the shelter increase and \$14.2 million additional cost for the supplement). The increased cost will eventually be offset by savings associated with a decrease in the rate of the earned income disregard. For State Fiscal Year 2003-04, the cost of the increase, ignoring the effects of the income disregard, is expected to be approximately \$47 million because, due to the implementation date of November 1, 2003, the full annual effect of the increase will not be experienced during the fiscal year.

5. Local Government Mandates

The proposed regulations impose minor additional requirements on local social services districts. Local districts will need to process eligible cases for the new supplement and make adjustments to the appropriate cases.

6. Paperwork

If a social services district elects to provide a rent supplement, it will have to submit a plan to OTDA in accordance with proposed section 352.3(a)(3). There will be no new forms or new reporting requirements due to these changes for social services districts which do not propose to offer a supplement.

7. Duplication

The proposed amendments do not duplicate, overlap or conflict with any existing State or federal regulations.

8. Alternatives

The Office was required by court order to raise the shelter allowance schedule for Family Assistance cases in New York City. The Office had the alternative to not adjust the shelter allowance schedule for the rest of the State. Because of litigation in other social services districts and to preserve equity in the schedules, it was decided to amend the Statewide schedule for families with children.

9. Federal Standards

This amendment does not conflict with federal standards for public assistance.

10. Compliance Schedule

Impacted districts must modify their policy to apply this new provision effective November 1, 2003.

Reform in New York State: Effects on Work, Family Composition, and Child Poverty", February 2002, OTDA; Citizen's Housing Planning Council, 2001 Welfare Reform and Community Development in New York City; Rockefeller Institute of Government, April 2002. Leaving Welfare: Post-TANF Experiences of New York State Families. Daniels, Glynis and Schill, Michael, 2001. State of New York City's Housing and Neighborhoods, 2001. Center for Real Estate and Urban Policy, New York University School of Law. For overviews of welfare reform effects nationally see: Haskins, Ron, Sawhill, Isable, and Weaver, Kent. January 2001. "Welfare Reform: An Overview of Effects to Date." In Welfare Reform and Beyond. The Brookings Institution, Policy Brief #1; Haskins, Ron, Primus, Wendell. July 2001. "Welfare Reform and Poverty" in Welfare Reform and Beyond. The Brookings Institution, Policy Brief #4; Ellwood, David. "The Impact of the Earned Income Tax Credit and Social Policy Reforms on Work, Marriage and Living Arrangements." National Tax Journal, Vol. LIII, No. 4, Part 2.; Blank, Rebecca and Schmidt, Lucie. 2001. "Work, Wages and Welfare." In The New World of Welfare. Rebecca Blank and Ron Haskins, Eds. Brookings Institution Press; Tout, Kathryn et. al. March 2002, "Children of Current and Former Welfare Recipients: Similarly at Risk" Child Trends Research Brief.

Assessment of Public Comment

During the public comment period, this Office received comments from one social services district and four public interest associations.

Following are the comments from these organizations and our responses to them.

Comment:

The social services district and one public interest association supported the proposed changes to section 352.3(a)(1) which increases the shelter allowance and establishes two shelter allowance schedules; one based on households with children and one for households without children.

Response:

This Office agrees with this comment.

Comment:

Three public interest associations opposed the proposed changes to section 352.3(a)(1) which increases the shelter allowance. These comments were:

- The increase to the shelter allowance is too small.
- The shelter allowance should meet fair market value of rents.

Response:

This Office does not agree with these comments for the following reasons:

• Paying the "fair market value" of rents would severely affect the low income housing availability and cost for working families who do not receive public assistance. In addition, the fair market rental standard as used in the Department of Housing and Urban Development Section 8 program does not purport to be a low income standard.

• Public assistance families should be living in housing they can afford. This Office does not believe it should maintain housing for families that they will not be able to afford on their own when they leave assistance and become self-sufficient.

Comment:

The social services district and one public interest association opposed the proposed changes to section 352.3(a)(1) which establishes two shelter allowance schedules; one based on households with children and one for households without children. These organizations stated that they thought that there should be one shelter allowance which covers both household types.

Response:

This Office disagrees with these comments and no change is being made to the proposed regulation.

Comment:

Three public interest associations opposed the proposed changes to section 352.3(a)(2) which allows public assistance recipients who are currently in receipt of court-ordered shelter supplements or Temporary Shelter Supplements to continue receiving this supplement for two years after the promulgation of the regulations. After this time period, these cases would lose this supplement and have to apply for a local district shelter supplement provided in 352.3(a)(3), if applicable. These organizations were opposed for the following reasons:

- Suggestion that such a rule would lead to eviction and homelessness.
- One commenter stated that discontinuing such court ordered payments would be illegal.

Response:

¹ For a fuller description of the positive changes in New York that have come about since the implementation of welfare reform see: "Welfare

This Office disagrees with these comments. This regulation provides the local districts with the flexibility to pursue a shelter supplement by section 352.3(a)(3).

Comment:

The social services district opposed the proposed changes to section 352.3(a)(2) which allows public assistance recipients who are currently in receipt of court-ordered shelter supplements or Temporary Shelter Supplements to continue receiving this supplement for two years after the promulgation of the regulations, for the following reasons:

- They propose keeping the court ordered supplements as a mandated program under regulation.
- They propose continuing new applications for court ordered payments for at least 6 months if a district intends to ultimately provide an optional shelter supplement.
- If the regulation is promulgated as currently written then they suggest changing the rule about when an individual loses eligibility for the grandfathered supplement from a one month break in assistance to a four month break in assistance.

Response:

This Office disagrees with these comments for the following reasons:

- It would not be fair to districts involved in court ordered rent supplementation to mandate the continuation of these payments through regulation. The proposed regulation change to section 352.3(a)(3) would allow districts to provide a rent supplement similar or equal to the current court ordered supplement. This rent supplement option will give local districts the flexibility to provide a rent supplement under conditions outside of court orders.

- Expanding the grandfathering provision to new applicants for a six month period is contrary to the intent of the regulation. The purpose of the regulation is to extend the court ordered supplements to those families currently in receipt of such supplement so that they can retain their current living situation. Through the proposed regulation change to section 352.3(a)(3), districts may provide a rent supplement similar or equal to the current court ordered supplement.

- Losing eligibility for the grandfathered supplement because of a one month break in assistance is consistent with other State policies regarding breaks in assistance.

Comment:

The social services district supported the proposed changes to section 352.3(a)(3) which allows districts to apply for and be approved to provide a supplemental shelter payment to targeted public assistance households. The district asked for the regulation to be more detailed on the rent supplement criteria including information about landlord bonuses, technical support and administrative cap issues.

Response:

This Office agrees with the supportive aspect of the comments and will provide details of the supplement criteria through an administrative directive.

Comment:

The four public interest associations opposed the proposed changes to section 352.3(a)(3) which allows districts to apply for and be approved to provide a supplemental shelter payment to targeted public assistance households. These comments were:

- Belief that this Office was abrogating its responsibility to provide a shelter allowance and shifting the responsibility to the local districts.
- The supplement should not be optional to the local districts.
- The supplement will be different in each district.
- The supplement should exist without regard to available funding.
- The regulation language is broad and should have more specific criteria.

Response:

This Office disagrees with these comments for the following reasons:

- The shelter allowance and its proposed increase meets the Office's responsibility to provide an adequate shelter allowance. Prior to 1976, local districts established the shelter allowance schedules for their districts.

- This Office is cognizant of the benefit of local districts having the authority to provide an additional payment/supplement in order to obtain and/or maintain housing when necessary.

- Many local districts do not need such a supplement in order to house their public assistance recipients and requiring such a mandate would be costly to these local districts.

- Local districts have different needs based upon the current housing situation in their area. By implementing a flexible shelter supplement, these districts may choose to provide a supplement for their neediest and adapt this supplement as housing situations change.

- The State must remain flexible with this provision given fiscal constraints that may arise in future years.

- The local districts will be provided with specific details of the shelter supplement criteria through an administrative directive.

Comment:

The social services district and two public interest associations requested that the State seek United States Department of Agriculture (USDA) waivers for excluding the additional rent allowance, and the supplement from the budgeting methodology for food stamps. Current USDA rules would require the entire rent allowance and the shelter supplement to be counted as income for the purposes of calculating the food stamp benefit. Additionally, the social services district commented that the local districts should be held harmless for food stamp quality control errors resulting from these changes until the next face-to-face recertification is held with the client.

Response:

This Office does not believe that these comments are pertinent to the proposed regulations. The pursuit of USDA waivers to exclude shelter supplements for food stamps purposes as well as holding districts harmless for quality control errors may be pursued at some future point but will not be addressed in this regulatory filing.

Comment:

The social services district and three public interest associations opposed the proposed changes to sections 352.7(g)(3) and (4) which would place limits on the payment of shelter arrears for public assistance recipients. This change would allow a payment of six months of arrears paid once in a five year period. This change would allow local districts to override this policy at their discretion. These comments were:

- The proposed change will foster evictions and homelessness.
- It will encourage limited local discretion on when they apply the exception policy.
- The exception policy may vary from district to district.
- The proposed change will limit the local district's flexibility in dealing with housing issues.

Response:

This Office disagrees with these comments. There is ample discretion within these regulations for a local district to pay shelter arrears for more than six months in a five year period. The stated period of arrears (six months in a five year period) is a fair standard which gives clients the opportunity to take responsibility for paying their rent before arrears accumulate, resulting in eviction proceedings.

Comment:

Two public interest associations opposed the proposed changes to section 352.30(a). These comments suggested that this change may affect a household's ability to pay rent by counting other household income.

Response:

This Office strongly disagrees with this comment and finds no justification for such a claim.

Comment:

The social services district supports the proposed changes to section 352.32(e) that eliminates the proration shelter budgeting methodology used in cooperative cases.

Response:

This Office agrees with this comment.

Comment:

The social services district strongly supported the proposed changes to section 381.3(c) that will allow local districts to restrict the public assistance recipients benefits and pay the vendor directly on behalf of the recipient.

Response:

This Office agrees with these comments.