

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

EMERGENCY RULE MAKING

Importation of Deer

I.D. No. AAM-28-04-00004-E
Filing No. 764
Filing date: June 25, 2004
Effective date: June 29, 2004

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

Action taken: Addition of section 62.8 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18(6), 72 and 74

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

Specific reasons underlying the finding of necessity: The proposed adoption of section 62.8 of 1 NYCRR will help to prevent the introduction of chronic wasting disease (CWD) into New York State. CWD is an infectious and communicable disease of deer belonging to the Genus Cervus (including elk, red deer and sika deer) and the Genus Odocoileus (including white tailed deer and mule deer). It has been detected in Colorado, Wyoming, Nebraska, Montana, Oklahoma, South Dakota, Wisconsin and, most recently, New Mexico. Initially, it was found to be present in

captive herds of elk and white-tailed and mule deer. It has now been confirmed in free-ranging white tailed deer, elk and mule deer in Colorado, Nebraska, Wisconsin, Saskatchewan and New Mexico.

The origin of CWD is unknown. The mode of transmission is suspected to be from animal to animal. The disease is progressive and always fatal. There is no live animal test for CWD, so it is impossible to determine whether a live animal is positive, nor is there a vaccine to prevent the disease. The incubation period is lengthy and 3 to 5 years of continued surveillance is needed with no new infection found before a herd can be declared free of CWD through quarantine. The United States Secretary of Agriculture has declared CWD to be an emergency that threatens the livestock industry of the United States and authorized the United States Department of Agriculture to establish a CWD eradication program.

New York State has over 400 entities engaged in raising approximately 9,424 deer and elk in captivity with a value of several million dollars, and many of these entities import captive bred deer and elk from other states, including Wisconsin, a state with confirmed CWD. The rule prohibits, with certain exceptions and until further notice, the importation or movement of deer belonging to the Genus Cervus (including elk, red deer and sika deer) or the Genus Odocoileus (including white tailed deer and mule deer), into the State due to the presence of CWD in wild and domestic animals outside the State and the threat this disease poses to the State's domestic animals, specifically captive deer. Deer belonging to the Genus Cervus and Odocoileus are the deer known to be susceptible to CWD.

The promulgation of this regulation on an emergency basis is necessary because the introduction of CWD into New York State would be devastating from both an animal health and economic standpoint given the threat the disease poses to the approximately 9,424 captive deer in the State and the 400 entities which raise them.

Subject: Importation of deer.

Purpose: To prevent the introduction of chronic wasting disease into the State.

Text of emergency rule: Section 62.8 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York (1 NYCRR) is adopted to read as follows:

62.8 *Prohibition on the importation of deer.* (a) *Notwithstanding any other provision of this Title to the contrary and except as provided in subdivision (b) of this section, until further notice, no deer belonging to the Genus Cervus or the Genus Odocoileus shall be imported or moved into this State, due to the presence of chronic wasting disease in wild and domestic animals outside the State and the threat said disease poses to domestic animals within the State. Members of the Genus Cervus include, but are not limited to, red deer, elk, and sika deer. Members of the Genus Odocoileus include, but are not limited to, white tailed deer and mule deer (black tailed deer).*

(b) *Deer belonging to the Genus Cervus or the Genus Odocoileus may be imported and moved into the State for the following purposes after the issuance of a permit by the Department, in consultation with the New York State Department of Environmental Conservation:*

(1) *Such deer may be imported and moved from a zoological park accredited by the American Zoo and Aquarium Association to a zoological park in New York State accredited by said Association.*

(2) *Such deer may be imported and moved into the State for exhibition, provided that they are kept biologically separate from resident captive and wild deer and are in the State for no longer than 30 days.*

(c) *Deer belonging to the Genus Cervus or the Genus Odocoileus imported pursuant to subdivision (b) of this section must comply with all applicable requirements of the Agriculture and Markets Law and this Title*

and the health certificate accompanying such deer must be endorsed with the number of the permit issued by the Department authorizing their importation and movement into the State.

(d) As provided in 1 NYCRR Part 62.1 (b)(4)(c), for the purposes of this Part, "deer" means any member of the family *cervidae*.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 22, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Bruce Akey, MS, DVM, State Veterinarian, Acting Director, Division of Animal Industry, Department of Agriculture and Markets, One Winners Circle, Albany, NY 12235, (518) 457-3502

Regulatory Impact Statement

1. Statutory Authority:

Section 18(6) 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.

Section 72 of the Law authorizes the Commissioner to adopt and enforce rules and regulations for the control, suppression or eradication of communicable diseases among domestic animals and to prevent the spread of infection and contagion.

Section 72 of the Law also provides that whenever any infectious or communicable disease affecting domestic animals shall exist or have recently existed outside this State, the Commissioner shall take measures to prevent such disease from being brought into the State.

Section 74 of the Law authorizes the Commissioner to adopt rules and regulations relating to the importation of domestic or feral animals into the State. Subdivision (10) of said Section provides that "feral animal" means an undomesticated or wild animal.

2. Legislative Objectives:

The statutory provisions pursuant to which these regulations are proposed are aimed at preventing infectious or communicable diseases affecting domestic animals from being brought into the State. The Department's proposed adoption of 1 NYCRR section 62.8 will further this goal by preventing the importation of deer which may be infected with chronic wasting disease (CWD).

3. Needs and Benefits:

CWD is an infectious and communicable disease of deer belonging to the Genus *Cervus* (including elk, red deer and sika deer) and the Genus *Odocoileus* (including white tailed deer and mule deer). It has been detected in Colorado, Wyoming, Nebraska, Montana, Oklahoma, South Dakota, Wisconsin and, most recently, New Mexico. Initially, it was found to be present in captive herds of elk and white-tailed and mule deer. It has now been confirmed in free-ranging white-tailed deer, elk and mule deer in Colorado, Nebraska, Wisconsin, Saskatchewan and New Mexico.

The origin of CWD is unknown. The mode of transmission is suspected to be from animal to animal. The disease is progressive and always fatal. There is no live animal test for CWD, so it is impossible to determine whether a live animal is positive, nor is there a vaccine to prevent the disease. The incubation period is lengthy and 3 to 5 years of continued surveillance is needed with no new infection found before a herd can be declared free of CWD through quarantine. The United States Secretary of Agriculture has declared CWD to be an emergency that threatens the livestock industry of the United States and authorized the United States Department of Agriculture to establish a CWD eradication program.

New York State has over 400 entities engaged in raising approximately 9,424 deer and elk in captivity with a value of several million dollars, and many of these entities import captive bred deer and elk from other states, including Wisconsin, a state with confirmed CWD. The rule prohibits, with certain exceptions and until further notice, the importation or movement of deer belonging to the Genus *Cervus* or the Genus *Odocoileus* into the State due to the presence of CWD in wild and domestic animals outside the State and the threat this disease poses to the State's domestic animals, specifically captive deer and elk. This is an essential disease control measure that will help to prevent the introduction of CWD into New York State.

An exception to the general prohibition against the importation of deer belonging to the Genus *Cervus* (including elk, red deer and sika deer) and the Genus *Odocoileus* (including white-tailed deer and mule deer) has been made for deer being imported and moved from a zoological park accredited by the American Zoo and Aquarium Association to a zoological park in New York State accredited by said Association. The reason for this exception is to permit zoological parks to maintain breeding programs that

require the introduction of new animals and are necessary to preserve and perpetuate populations of rare and endangered species. The accreditation of the zoological parks that are the source and destination of such animals will help to ensure that they are free of disease and are cared for in a manner that keeps them healthy.

Another exception to the general prohibition has been made for deer that are imported and moved into the State for exhibition, provided that they are kept biologically separate from wild and captive deer and are in the State for no longer than 30 days. This exception will permit these deer to be exhibited for educational and entertainment purposes. The limited period of time the animals will be in the State and the fact that they are kept biologically separate from resident captive and wild deer will help to ensure that they do not pose a disease risk.

As an added precaution, both deer moved to zoological parks and deer moved into the State for exhibition purposes could only move after a permit for such movement has been issued and the deer have met the health and test requirements of the Agriculture and Markets Law and 1 NYCRR and an animal health certificate attesting to that fact has been issued.

4. Costs:

(a) Costs to regulated parties:

There are approximately 400 entities raising a total of approximately 9,424 captive deer in New York State. These farms produce venison with a value of approximately \$1,300,000 per year. Since February 1, 2000, a total of 104 elk from 8 states and 181 deer from 12 states were imported into New York, together with 287 elk and 146 deer from Canada. During the past year, 195 elk and 165 deer were imported into New York. The value of elk range from \$500 to \$2,000 per animal. The value of deer range from \$50 to \$1,500 per animal. Using the most recent annual import data, average values of \$1,250 per animal for elk and \$775 per animal for deer, the rule would prohibit the importation of 195 elk with a value of \$243,750 and 165 deer with a value of \$127,875 on an annual basis.

(b) Costs to the agency, state and local governments:

None.

(c) Source:

Costs are based upon data from the records of the Department's Division of Animal Industry.

5. Local Government Mandates:

The proposed amendments would not impose any program, service, duty or other responsibility upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork:

The rule would require the endorsement of the health certificate which currently must accompany deer being imported into New York State with the number of the permit required for the importation of deer of the Genus *Cervus* and *Odocoileus* being imported to zoological parks and for exhibition. Such permits will be issued by the Department in consultation with the New York State Department of Environmental Conservation after a determination that the deer in question qualify for the exceptions in the rule to the general prohibition against the importation of deer.

7. Duplication:

None.

8. Alternatives:

Various alternatives, from the imposition of a total prohibition against the importation of all cervids, to no additional restriction on their importation were considered.

Due to the spread of CWD in other states and the threat that this disease poses to the State's captive deer population, a prohibition with limited exceptions was determined to be the best method of preventing the introduction of this disease into New York State. It was concluded that no restriction on the importation of deer and broader exceptions were alternatives that posed an unacceptable risk of introducing CWD to the State's herds of captive deer.

9. Federal Standards:

The federal government currently has no standards restricting the interstate movement of cervids due to CWD, but has implemented an indemnity program for elk and is considering a CWD monitoring program for elk.

10. Compliance Schedule:

It is anticipated that regulated parties can immediately comply with the rule.

Regulatory Flexibility Analysis

1. Effect of Rule:

There are approximately 400 small businesses raising a total of approximately 9,424 captive cervidae (the family that includes deer and elk) in New York State. The rule would have no impact on local governments.

2. Compliance Requirements:

Regulated parties will be prohibited, with certain exceptions, from importing deer belonging to the Genus *Cervus* or the Genus *Odocoileus* into New York State. Those importing such deer, as permitted, for zoological parks and exhibition will be required to have the health certificate accompanying the deer endorsed with the number of the permit issued by the Department, in consultation with the New York State Department of Environmental Conservation.

The rule would have no impact on local governments.

3. Professional Services:

It is not anticipated that regulated parties will have to secure any professional services in order to comply with this rule.

4. Compliance Costs:

(a) Costs to regulated parties:

There are approximately 400 entities raising a total of approximately 9,424 captive cervidae in New York State. These farms produce venison with a value of approximately \$1,300,000 per year. Since February 1, 2000, a total of 104 elk from 8 states and 181 deer from 12 states were imported into New York, together with 287 elk and 146 deer from Canada. During the past year, 195 elk and 165 deer were imported into New York. The value of elk range from \$500 to \$2,000 per animal. The value of deer range from \$50 to \$1,500 per animal. Using the most recent annual import data, average values of \$1,250 per animal for elk and \$775 per animal for deer, the rule would prohibit the importation of 195 elk with a value of \$243,750 and 165 deer with a value of \$127,875 on an annual basis.

(b) Costs to the agency, state and local governments:

None.

(c) Source:

Costs are based upon data from the records of the Department's Division of Animal Industry.

5. Economic and Technological Feasibility:

The economic and technological feasibility of complying with the proposed amendments has been assessed.

The rule is economically feasible. Although the prohibition, with certain exceptions, on the importation of captive deer into New York State will have an economic impact on the approximately 400 entities that imported a total of 360 captive deer into New York State last year, the economic consequences of the infection or exposure to CWD of the approximately 9,424 captive cervids already in the State would be far greater.

The rule is technologically feasible. Captive deer imported into the State are already required to be accompanied by a health certificate. Endorsement of that certificate with the number of the permit issued by the Department pursuant to the limited exceptions to the general prohibition against the importation of deer presents no technological problem.

6. Minimizing Adverse Impact:

In conformance with State Administrative Procedure Act section 202-b(1), the rule was drafted to minimize economic impact and reporting requirements for all regulated parties, including small businesses by limiting the types of deer subject to these requirements to those known to be susceptible to Chronic Wasting Disease, members of the Genus *Cervus* (red deer, elk and sika deer) and Genus *Odocoileus* (white-tailed deer and mule deer). Originally consideration was given to subjecting all members of the family cervidae to these requirements. By narrowing the scope of the rule, owners of deer such as fallow deer, which are members of the Genus *Dama*, and are not known to be susceptible to Chronic Wasting Disease will not be subject to the requirements imposed by this rule.

In addition, the exceptions for the importation and movement into the State of deer belonging to the Genus *Cervus* and the Genus *Odocoileus* for zoological parks and exhibition were designed to minimize economic impact by permitting these activities while protecting the health of the State's wild and captive deer.

The provision for issuance of a permit for importation by the endorsement of the permit number issued for such movement on the interstate health certificate already required by State and federal law is designed to minimize reporting requirements and expedite the issuance of such permits. The issuance of a permit number for deer meeting the import requirements can be done by telephone and the number can then be endorsed on the interstate health certificates already required to accompany deer entering the State. This will provide prior notice and approval of the entry of such animals into the State and facilitate the monitoring of such animals after they arrive, without unduly burdening regulated parties.

The rule would have no impact on local governments.

7. Small Business and Local Government Participation:

The Department has advised the owners of captive deer in New York State of the proposed rule by mailings utilizing the list of approximately 400 deer owners known to the Department. In addition, the Department has

notified public officials and private parties of the adoption of the proposed rule on an emergency basis, as required by the State Administrative Procedure Act.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas:

The approximately 400 entities raising captive deer in New York State are located throughout the rural areas of New York. The zoos are located in non-rural areas and the exhibitions take place in both rural and non-rural areas.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

Regulated parties in rural areas will be prohibited, with certain exceptions, from importing deer belonging to the Genus *Cervus* or the Genus *Odocoileus* into New York State. Those importing such deer, as permitted, for zoological parks and exhibition will be required to have the health certificate accompanying the deer endorsed with the number of the permit issued by the Department in consultation with the New York State Department of Environmental Conservation. It is not anticipated that regulated parties in rural areas will have to secure any professional services in order to comply with the rule.

3. Costs:

(a) Costs to regulated parties:

There are approximately 400 entities raising a total of approximately 9,424 captive cervidae (the family that includes deer and elk) in New York State. These farms produce venison with a value of approximately \$1,300,000 per year. Since February 1, 2000, a total of 104 elk from 8 states and 181 deer from 12 states were imported into New York, together with 287 elk and 146 deer from Canada. During the past year, 195 elk and 165 deer were imported into New York. The value of elk range from \$500 to \$2,000 per animal. The value of deer range from \$50 to \$1,500 per animal. Using the most recent annual import data, average values of \$1,250 per animal for elk and \$775 per animal for deer, the rule would prohibit the importation of 195 elk with a value of \$243,750 and 165 deer with a value of \$127,875 on an annual basis.

(b) Costs to the agency, state and local governments:

None.

(c) Source:

Costs are based upon data from the records of the Department's Division of Animal Industry.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the rule was drafted to minimize economic impact and reporting requirements for all regulated parties, including small businesses by limiting the types of deer subject to these requirements to those known to be susceptible to Chronic Wasting Disease, members of the Genus *Cervus* (red deer, elk and sika deer) and Genus *Odocoileus* (white-tailed deer and mule deer). Originally consideration was given to subjecting all members of the family cervidae to these requirements. By narrowing the scope of the rule, owners of deer such as fallow deer, which are members of the Genus *Dama*, and are not known to be susceptible to Chronic Wasting Disease will not be subject to the requirements imposed by this rule.

In addition, the exceptions for the importation and movement into the State of deer belonging to the Genus *Cervus* and the Genus *Odocoileus* for zoological parks and exhibition were designed to minimize economic impact by permitting these activities while protecting the health of the State's wild and captive deer.

The provision for issuance of a permit for importation by the endorsement of the permit number issued for such movement on the interstate health certificate already required by State and federal law is designed to minimize reporting requirements and expedite the issuance of such permits. The issuance of a permit number for deer meeting the import requirements can be done by telephone and the number can then be endorsed on the interstate health certificates already required to accompany deer entering the State. This will provide prior notice and approval of the entry of such animals into the State and facilitate the monitoring of such animals after they arrive, without unduly burdening regulated parties.

5. Rural Area Participation:

The Department has advised the owners of captive deer in New York State of the proposed rule by mailings utilizing the list of approximately 400 deer owners known to the Department. In addition, the Department has notified public officials and private parties of the adoption of the proposed rule on an emergency basis, as required by the State Administrative Procedure Act.

Job Impact Statement

1. Nature of Impact:

It is not anticipated that there will be an impact on jobs and employment opportunities.

2. Categories and Numbers Affected:

The number of persons employed by the 400 entities engaged in raising captive deer in New York State is not known.

3. Regions of Adverse Impact:

The 400 entities in New York State engaged in raising captive deer are located throughout the rural areas of the State. The zoos are located in non-rural areas and the exhibitions take place in both rural and non-rural areas.

4. Minimizing Adverse Impact:

By helping to protect the approximately 9,424 captive deer currently raised by approximately 400 New York entities from the introduction of CWD, this rule will help to preserve the jobs of those employed in this agricultural industry.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-10-04-00028-A

Filing No. 756

Filing date: June 23, 2004

Effective date: July 14, 2004

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the New York State Thruway Authority.

Text was published in the notice of proposed rule making, I.D. No. CVS-10-04-00028-P, Issue of March 10, 2004.

Final rule compared with proposed rule: No changes.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-10-04-00029-A

Filing No. 757

Filing date: June 23, 2004

Effective date: July 14, 2004

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department of Family Assistance.

Text was published in the notice of proposed rule making, I.D. No. CVS-10-04-00029-P, Issue of March 10, 2004.

Final rule compared with proposed rule: No changes.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

Department of Civil Service

NOTICE OF EXPIRATION

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

Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-52-03-00011-P	December 31, 2003	June 28, 2004

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-10-04-00026-A

Filing No. 754

Filing date: June 23, 2004

Effective date: July 14, 2004

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

Action taken: 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 Department of Health and the Department of Mental Hygiene.

Text was published in the notice of proposed rule making, I.D. No. CVS-10-04-00026-P, Issue of March 10, 2004.

Final rule compared with proposed rule: No changes.

Text of rule 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-10-04-00027-A

Filing No. 755

Filing date: June 23, 2004

Effective date: July 14, 2004

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-10-04-00027-P, Issue of March 10, 2004.

Final rule compared with proposed rule: No changes.

Education Department

EMERGENCY RULE MAKING

Nonpublic School Bus Drivers

I.D. No. EDU-24-04-00003-E

Filing No. 761

Filing date: June 25, 2004

Effective date: July 1, 2004

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

Action taken: Amendment of section 156.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(34) and 3624 (not subdivided); and L. 2003, ch. 270

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

Specific reasons underlying the finding of necessity: The proposed amendment is needed to conform the Commissioner's Regulations to the provisions of Education Law section 305(34), as added by Chapter 270 of the Laws of 2003. Education Law section 305(34) requires the Commissioner of Education to promulgate regulations which apply school bus driver safety training instruction and testing requirements, prescribed by Education Law section 3624, to drivers who operate pupil transportation which is owned, leased or contracted for by private and parochial schools to the same degree as such requirements apply to drivers who operate pupil transportation which is owned, leased or contracted for by public school districts. Consistent with the statute, section 156.3 has been revised to apply the training and testing requirements currently in place for school bus drivers employed by or for public schools to those school bus drivers employed by private and parochial schools. Chapter 270 of the Laws of 2003 becomes effective on July 1, 2004.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to conform section 156.3 of the Commissioner's Regulations to the provisions of Education Law section 305(34), as added by Chapter 270 of the Laws of 2003, so that individuals hired by private and parochial schools as school bus drivers may obtain the required instruction, training and certification in a timely manner consistent with statutory requirements.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at the September 2004 meeting of the Board of Regents, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: Nonpublic school bus drivers.

Purpose: To apply the school bus safety practices instruction and retraining requirements for public school bus drivers to nonpublic school bus drivers.

Text of emergency rule: Section 156.3 of the Regulations of the Commissioner of Education is amended, effective July 1, 2004, as follows:

§ 156.3 Safety regulations for school bus drivers, monitors, attendants and pupils.

(a) Definitions. For purposes of this section:

(1) A school bus driver shall mean any person who drives a school bus which is owned, leased or contracted for by a public school district [or a], board of cooperative educational services or nonpublic school for the purpose of transporting pupils. However, for the purposes of this section, the following shall not be considered to be school bus drivers:

(i) . . .

(ii) a driver of a suburban intercity coach or transit type bus, transporting pupils on trips other than between home and school, such as field trips, athletic trips, and other special transportation services; [and]

(iii) a parent who transports exclusively his or her own children; and

(iv) a volunteer driver for a nonpublic school who transports pupils on other than a regularly established route on an occasional basis.

(2) A school bus shall mean every vehicle owned, leased or contracted for by a public school, [or] board of cooperative educational services or nonpublic school and operated for the transportation of pupils, children of pupils, teachers and other persons acting in a supervisory capacity to or from school or school activities.

(3) . . .

(4) . . .

(5) A nonpublic school shall mean a private or parochial school offering instruction in any or all grades, pre-kindergarten through twelve.

(b) School bus driver and instructor qualifications. (1) . . .

(2) . . .

(3) Physical fitness. (i) . . .

(ii) Each regular or substitute driver of a school bus owned, leased or contracted for by a school district, [or a] board of cooperative educational services or a nonpublic school shall be examined by a physician or nurse practitioner to the extent authorized by law and consistent with the written practice agreement pursuant to Education Law, section 6902(3), in accordance with the provisions of this subdivision. The physical examination shall be reported immediately on forms prescribed by the commissioner to the chief school officer of the district. The physical examination shall include, as a minimum, those requirements specified on the prescribed physical examination report. The examining physician or nurse

practitioner shall require the school bus driver to undergo any diagnostic tests that are necessary to determine whether the driver has the physical and mental ability to operate safely a school transportation conveyance. Each school bus driver shall receive an annual physical examination, and each driver who is to be initially employed shall be examined within four weeks prior to the beginning of service. In no case shall the interval between physical examinations exceed a 13-month period.

(iii) Each regular or substitute driver of a school bus owned, leased or contracted for by a school district, board of cooperative educational services or nonpublic school shall pass a physical performance test approved by the commissioner, upon recommendation of an advisory group of certified school bus driver instructors, at least once every two years. Additionally, the test shall be administered to any driver following an absence from service of 60 or more consecutive days from his or her scheduled work duties. In no case shall the interval between physical performance tests exceed 24 months.

(a) . . .

(b) . . .

(c)(1) A school bus driver who is employed by a school district, board of cooperative [education] educational services, or contractor as of September 1, 1997 shall have until July 1, 2000 to take and pass the driver physical performance test. All drivers hired by school districts, boards of cooperative [education] educational services, or contractors after September 1, 1997 shall be required to pass the driver physical performance test before they may transport pupils.

(2) A school bus driver who is employed by a nonpublic school as of January 1, 2005 shall have until January 1, 2008 to take and pass the driver physical performance test. All drivers hired by nonpublic schools after January 1, 2005 shall be required to pass the driver physical performance test before they may transport pupils.

(d) School districts, boards of cooperative educational services, nonpublic schools or transportation contractors may apply to the commissioner for a temporary waiver to permit Department of Motor Vehicles (DMV) certified 19A examiners, employed by that carrier, to administer the physical performance test to school bus drivers employed by that carrier. Such waiver may be granted where it is established that there are insufficient certified school bus driver instructors on staff to administer the test in a timely manner. Upon the issuance of such waiver, a certified school bus driver instructor's physical presence shall not be required during the administration of the test, provided that such testing is conducted under the general supervision of a certified school bus driver instructor who is employed by such board of education, board of cooperative educational services, nonpublic school or transportation contractor. Such certified school bus driver instructor shall instruct the DMV certified 19A examiner in the proper administration of the physical performance test and shall review and approve the test results of all physical performance tests administered by the examiner.

(4) . . .

(5) Pre-service, safety training, and refresher training for school bus drivers.

(i) Pre-service. Each school bus driver initially employed by a board of education or transportation contractor subsequent to July 1, 1973, or initially employed by a nonpublic school on or after July 1, 2004, shall have received at least two hours of instruction on school bus safety practices. Each driver of a vehicle transporting pupils with disabilities exclusively who is initially employed subsequent to January 1, 1976, or initially employed on or after July 1, 2004 for nonpublic school bus drivers, shall have received an additional hour of instruction concerning the special needs of a pupil with a disability.

(ii)(a) During the first year of employment, each driver initially employed by a board of education, board of cooperative educational services or transportation contractor subsequent to July 1, 1973 shall complete a basic course of instruction in school bus safety practices approved by the commissioner, which shall include two hours of instruction concerning the special needs of a pupil with a disability.

(b) During the first year of employment, each school bus driver initially employed by a nonpublic school on or after July 1, 2005 shall complete a basic course of instruction in school bus safety practices approved by the commissioner, which shall include two hours of instruction concerning the special needs of a pupil with a disability. Each school bus driver initially employed by a nonpublic school on or after July 1, 2004 and on or before June 30, 2005, shall complete such course within the first two years of such employment.

(iii) . . .

(iv) . . .

(v) Except as otherwise provided in clauses (a) and (b) of this subparagraph, all training required in this subdivision shall be provided by, or under the direct supervision of a school bus driver instructor certified by the commissioner. To qualify for certification as a school bus driver instructor (SBDI), individuals shall successfully complete a school bus driver instructor training and evaluation course taught by a certified master instructor. The course shall be approved by the commissioner upon the recommendation of the commissioner's school bus driver instructor advisory committee, an advisory group consisting of at least seven certified school bus driver instructors appointed annually for such purpose by the commissioner. Each person who applies for admission to this course shall be currently employed by a public school district, board of cooperative educational services, *nonpublic school* or private contractor who is currently providing pupil transportation services for a public school district, *nonpublic school* or board of cooperative educational services. The SBDI course shall include but shall not be limited to the following content areas: planning and making presentations including lesson plans and objectives, school bus accident statistics and interpretation, effective communications, and evaluation. Each such person shall possess a high school diploma or equivalent diploma and shall have completed the basic course of instruction in school bus safety practices. In addition, each such person shall have completed the Advanced New York State School Bus Driver Training Course or a Department of Motor Vehicles approved Point/Insurance Reduction Program. To maintain certification, school bus driver instructors shall be required to attend the annual professional development seminar (PDS) approved by the commissioner upon the recommendation of the SBDI advisory committee, and taught by a certified master instructor. The PDS shall provide refresher training for all SBDIs in presentation skills, lesson planning, school bus safety techniques, requirements and statistics. The PDS shall provide SBDIs with training materials for the upcoming school year safety training campaign, including information which shall be conveyed to all school bus drivers in the next two driver refreshers.

(a) . . .

[(b) Upon application by a board of education, a variance may be granted from the requirements of this paragraph for the 1990-91 school year only, upon a finding by the commissioner that the services of an approved school bus driver instructor are not available to provide the required training.]

(vi) . . .

(6) Character requirement. The driver of a vehicle for the transportation of school children shall be of good moral character and thoroughly reliable. At the time of initial application and at such other times as the superintendent of schools, [or] district superintendent of schools, or *nonpublic school chief administrator* may determine, each applicant for approval for employment as a school bus driver shall furnish to the superintendent or *administrator* at least three statements from three different persons who are not related either by blood or marriage to the applicant pertaining to the moral character and to the reliability of the applicant.

(c) School bus monitor and attendant qualifications. (1) . . .

(2) . . .

(3) Physical fitness. (i) . . .

(ii) . . .

(iii) Each school bus monitor or attendant of a school bus owned, leased or contracted for by a school district or board of cooperative educational services shall pass a physical performance test approved by the commissioner *at least once every two years. Additionally, the test shall be administered to any monitor or attendant following an absence from service of 60 or more consecutive days from his or her scheduled work duties. In no case shall the interval between physical performance tests exceed 24 months.* Individuals employed by a school district, board of cooperative educational services or contractor as a monitor or attendant on July 1, 2003 shall have until July 1, 2004 to take and pass a physical performance test. Individuals hired as a monitor or attendant after July 1, 2003, must take and pass a physical performance test before they may assume their duties.

(a) . . .

(b) . . .

(c) . . .

(4) . . .

(5) . . .

(d) . . .

(e) . . .

(f) . . .

(g) . . .

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-24-04-00003-P, Issue of June 16, 2004. The emergency rule will expire September 22, 2004.

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 State Education Department by law.

Education Law section 305(34), as added by Chapter 270 of the Laws of 2003, authorizes and directs the Commissioner of Education to promulgate regulations which apply school bus safety practices instruction and retraining requirements prescribed pursuant to section 3624 of Education Law, to drivers who operate pupil transportation which is owned, leased or contracted for by private and parochial schools to the same degree as such requirements apply to drivers who operate pupil transportation which is owned, leased or contracted for by public school districts.

Education Law section 3624 empowers the Commissioner to determine and define the qualifications of school bus drivers and to develop the training and testing such drivers shall receive.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to conform the Commissioner's Regulations to the provisions of Education Law section 305(34), as added by Chapter 270 of the Laws of 2003.

NEEDS AND BENEFITS:

The proposed amendment is needed to implement the statutory requirements of Chapter 270 of the Laws of 2003. The proposed amendment will help to insure the safety of the 2.3 million students transported on school buses each day in New York State by applying, as required by Chapter 270 of the Laws of 2003, school bus safety practices instruction and retraining requirements prescribed pursuant to Education Law section 3624 to drivers who operate transportation which is owned, leased or contracted for by private and parochial schools to the same extent as such requirements apply to drivers who operate transportation which is owned, leased or contracted for by public school districts.

COSTS:

(a) Costs to State government: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: The proposed amendment is necessary to implement Education Law section 305(34), as added by Chapter 270 of the Laws of 2003, and does not impose any additional costs beyond those inherent in the statute. There will be an incremental additional cost to private and parochial schools that employ their own school bus drivers. Costs will vary for each nonpublic school based upon their individual past practices in training school bus drivers, and the availability of school bus driver instructors (SBDI) on staff or nearby.

The proposed amendment phases in the testing and training requirements for nonpublic school bus drivers to the same degree that the requirements were phased in for public school bus drivers. It is difficult to accurately estimate the anticipated cost of the proposed amendment because we have no data on the number of school bus drivers employed by private and parochial schools. For the purpose of estimating the cost of implementing the proposed amendment the following rates can be used: Physical Performance Test (every 2 years) - \$35, Basic Course of Instruction (once) - \$65, Pre-Service Training Course (once) - \$30, two 2-hour refresher training sessions (annually) - \$40, Medical Exam (annually) - \$30.

An individual employed as a school bus driver for the first time and by a nonpublic school would cost the school approximately \$95 in one-time only training the first year, an additional \$40 annually for refresher training, and \$65 in medical and physical performance testing every 2 years. Assuming an estimated 2,500 school bus drivers employed by nonpublic schools with 5% being new drivers each year, the total statewide cost would be \$195,125 (\$11,875 + 100,000 + 81,250 = \$195,125) or \$77.25 per year per school bus driver.

(d) Costs to the regulating agency for implementation and continued administration of the rule: None.

LOCAL GOVERNMENT MANDATES:

None. The proposed amendment is not applicable to local governments.

PAPERWORK:

The proposed amendment conforms the Commissioner's Regulations to Education Law section 305, subdivision 34 as added by Chapter 270 of the Laws of 2003, and does not impose any new reporting or record keeping requirements beyond those imposed by the statutes.

The same reporting and data collection system that is in place for public school bus drivers will be utilized for nonpublic school bus drivers, including forms for the Physical Performance Test, medical exam, and training course completion certificates.

DUPLICATION:

The proposed amendment is necessary to implement Education Law section 305, subdivision 34 as amended by Chapter 270 of the Laws of 2003, and will not duplicate any other requirement in State or federal law.

ALTERNATIVES:

The proposed amendment conforms the Commissioner's Regulations to Education Law section 305, subdivision 34, as amended by Chapter 270 of the Laws of 2003. There are no significant alternatives for meeting the statutory requirements and none were considered.

FEDERAL STANDARDS:

The proposed amendment relates to State standards for school bus drivers employed by private and parochial schools and does not exceed any minimal Federal standards.

COMPLIANCE SCHEDULE:

As required by the statute the training and testing requirements contained in the proposed amendment mirror the existing training and testing requirements for public school bus drivers. The primary impact will be limited to nonpublic schools, excluding daycares, camps and proprietary schools, offering instruction in any or all grades including pre-kindergarten through twelve.

The Department has consulted with the public school community including the Commissioner's School Bus Driver Instructor Advisory Committee to obtain their suggestions and assistance for an efficient and cost effective implementation of the requirements. In addition, the Department has consulted with the New York Association for Pupil Transportation, and the New York School Bus Contractor's Association to obtain their views. Nonpublic school groups and associations have been given the opportunity to review the proposed amendment and raise questions concerning its implementation. The Department has consulted with the public school community including the Commissioner's School Bus Driver Instructor Advisory Committee to obtain their suggestions for an efficient and cost effective implementation of the requirements by nonpublic schools. In addition, the department has consulted with the New York Association for Pupil Transportation, and the New York School Bus Contractor's Association to obtain their suggestions. Nonpublic school groups and associations have been given the opportunity to provide suggestions and raise issues concerning the statutes and the proposed regulations. The Department has in place a 1,000 plus member training corps of school bus driver instructors who are prepared to conduct pre-service training, administer the driver physical performance test, and teach the Basic Course of Instruction to nonpublic school bus drivers. Some have offered to provide initial low cost or no cost training for nonpublic schools in order to get their bus drivers into compliance as quickly as possible.

Therefore, it is anticipated that regulated parties can achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

EFFECT OF RULE:

The proposed amendment applies to all private and parochial schools offering instruction in any or all grades pre-kindergarten through twelve, which employ school bus drivers, including those schools that are operated as for-profit business corporations employing less than 100 employees.

COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to 305(34), as added by Chapter 270 of the Laws of 2003.

All drivers who operate transportation which is owned, leased or contracted for by a nonpublic school shall comply with the school bus safety practices instruction and retraining prescribed pursuant to Education Law section 3624 to the same extent as such requirements shall apply to drivers who operate transportation which is owned, leased or contracted for by public school districts.

Any person employed by a private or parochial school as a school bus driver on July 1, 2004 or later, shall be at least 21 years of age, be approved

for hire by the schools chief administrative office, and pass an annual medical exam prior to transporting pupils.

All school bus drivers employed by private and parochial schools as of January 1, 2005 shall have until January 1, 2008 to take and pass the driver physical performance test. All drivers hired by private and parochial schools after January 1, 2005 shall be required to pass the driver physical performance test before they may transport pupils. Once passed, all school bus drivers must complete and pass the driver physical performance test at least once every two years.

All school bus drivers employed by a private or parochial school subsequent to July 1, 2004 shall receive at least 2 hours of pre-service instruction or 3 hours of instruction if they exclusively transport pupils with disabilities. During the first year of employment, each school bus driver initially employed by a nonpublic school on or after July 1, 2005 shall complete a basic course of instruction in school bus safety practices approved by the Commissioner, which shall include 2 hours of instruction concerning the special needs of a pupil with a disability. Each school bus driver initially employed by a nonpublic school on or after July 1, 2004 and on or before June 30, 2005, shall complete such course within the first two years of such employment.

The chief school officer of private and parochial schools shall approve in writing the hiring of each school bus driver and shall ensure that they receive all required training and testing.

PROFESSIONAL SERVICES:

The proposed amendment proposes no additional professional services requirements on local governments, other than those already required by law.

Small businesses may incur expenses to hire the services of a certified School Bus Driver Instructor (SBDI) to teach the Basic Course of Instruction and administer the Physical Performance Test to school bus drivers. A waiver request may be submitted to permit a DMV certified 19A Examiner to administer the Physical Performance Test.

COMPLIANCE COSTS:

The proposed amendment is necessary to implement Chapters 270 of the Laws of 2003 and does not impose any additional costs beyond those inherent in the statute.

The addition of qualifications and standards for school bus drivers employed by a private or parochial school will result in additional incremental cost. Costs will vary for each private or parochial school based upon their individual past practices in training school bus drivers, and the availability of School Bus Driver Instructors on staff or nearby.

The proposed amendment phases in the testing and training requirements for nonpublic school bus drivers to the same degree that the requirements were phased in for public school bus drivers. It is difficult to accurately estimate the anticipated cost of the proposed amendment because we have no data on the number of school bus drivers employed by private and parochial schools. For purposes of estimating the cost of implementing the proposed amendment the following rates can be used: Physical Performance Test (every 2 years) - \$35, Basic Course of Instruction (once) - \$65, Pre-Service Training Course (once) - \$30, and two 2-hour refresher sessions (annually) - \$40, Medical Exam (annually) - \$30.

An individual employed as a school bus driver for the first time and by a private or parochial school would cost the school approximately \$95 in one-time only training the first year, an additional \$40 annually for refresher training, and \$65 in medical (every year instead of every 2 years) and physical performance testing every 2 years. Assuming an estimated 2,500 school bus drivers employed by private and parochial schools with 5% being new drivers each year, the total statewide cost would be \$195,125 (\$11,875 + 100,000 + 81,250 = \$195,124) or \$77.25 per year per school bus driver.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements on small businesses. Economic feasibility is addressed above under Compliance Costs.

MINIMIZING ADVERSE ECONOMIC IMPACT:

The proposed amendment phases in the testing and training requirements for school bus drivers employed by private and parochial schools to the same degree that the requirements were phased in for public school bus drivers. Also, the training and testing requirements contained in the proposed amendment mirror the existing training and testing requirements for school bus drivers. Nothing additional was proposed in the proposed amendment that was not already required of public school bus drivers.

SMALL BUSINESS PARTICIPATION:

Staff from the State Education Department have consulted with the public school community, including the Commissioner's School Bus

Driver Instructor Advisory Committee and the New York Association for Pupil Transportation to obtain their suggestions and assistance for an efficient and cost effective implementation of the requirements. In addition, the Department has consulted with members of the Commissioner's Advisory Council of Nonpublic Schools in order to provide small businesses with an opportunity to participate in the rule making process. The associations have made suggestions and raised important issues concerning the testing and training requirements for private and parochial school bus drivers. Their suggestions and concerns have been taken into account and incorporated into the final proposal. State Education Department staff also met with members of the Commissioner's School Bus Driver Instructor Advisory Committee, and members of the New York Association for Pupil Transportation. The advisory committee and the associations have made suggestions and raised important issues concerning the testing and training requirements for private and parochial school bus drivers. Their suggestions and concerns have been taken into account and incorporated into the final proposal.

Local Governments:

The proposed amendment is applicable to drivers who operate transportation which is owned, leased or contracted for by nonpublic schools, and does not impose any reporting, record keeping or other compliance requirements on school districts, boards of cooperative educational services or other local governments. Because it is evident from the nature of the proposed amendment that it does not affect local governments, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all private and parochial schools offering instruction in any or all grades pre-kindergarten through twelve, 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 amendment is necessary to conform the Commissioner's Regulations to 305(34), as added by Chapter 270 of the Laws of 2003.

All drivers who operate transportation which is owned, leased or contracted for by a nonpublic school shall comply with the school bus safety practices instruction and retraining prescribed pursuant to Education Law section 3624 to the same extent as such requirements shall apply to drivers who operate transportation which is owned, leased or contracted for by public school districts.

Any person employed by a private or parochial school as a school bus driver on July 1, 2004 or later, shall be at least 21 years of age, be approved for hire by the schools chief administrative office, and pass an annual medical exam prior to transporting pupils.

All school bus drivers employed by private and parochial schools as of January 1, 2005 shall have until January 1, 2008 to take and pass the driver physical performance test. All drivers hired by private and parochial schools after January 1, 2005 shall be required to pass the driver physical performance test before they may transport pupils. Once passed, all school bus drivers must complete and pass the driver physical performance test at least once every two years.

All school bus drivers employed by a private or parochial school subsequent to July 1, 2004 shall receive at least 2 hours of pre-service instruction or 3 hours of instruction if they exclusively transport pupils with disabilities. During the first year of employment, each school bus driver initially employed by a nonpublic school on or after July 1, 2005 shall complete a basic course of instruction in school bus safety practices approved by the Commissioner, which shall include 2 hours of instruction concerning the special needs of a pupil with a disability. Each school bus driver initially employed by a nonpublic school on or after July 1, 2004 and on or before June 30, 2005, shall complete such course within the first two years of such employment.

The chief school officer of private and parochial schools shall approve in writing the hiring of each school bus driver and shall ensure that they receive all required training and testing. The proposed amendment proposes no additional professional services requirements on local governments, other than those already required by law.

Small businesses may incur expenses to hire the services of a certified School Bus Driver Instructor (SBDI) to teach the Basic Course of Instruction and administer the Physical Performance Test to school bus drivers. A

waiver request may be submitted to permit a DMV certified 19A Examiner to administer the Physical Performance Test.

COSTS:

The proposed amendment is necessary to implement Chapters 270 of the Laws of 2003 and does not impose any additional costs beyond those inherent in the statute.

There should be no additional costs to rural school districts as a result of the proposed changes. The addition of qualifications and standards for nonpublic school bus drivers will not result in any increase in State Aid for pupil transportation. The amendment applies only to school bus drivers employed by private and parochial schools. Costs will vary for each nonpublic school based upon their individual past practices in training school bus drivers, and the availability of school bus driver instructors (SBDI) on staff or nearby.

The proposed amendment phases in the testing and training requirements for nonpublic school bus drivers to the same degree that the requirements were phased in for public school bus drivers. It is difficult to accurately estimate the anticipated cost of the proposed amendment because no true data is available on the number of school bus drivers employed by private and parochial schools. For purposes of estimating the cost of implementing the proposed amendment the following rates can be used: physical performance test (every 2 years) - \$35, Basic Course of Instruction (once) - \$65, Pre-Service Training Course (once) - \$30, and two 2-hour refresher training sessions (annually) - \$40, Medical Exam (annually) - \$30. Thus an individual employed as a school bus driver for the first time and by a nonpublic school would cost the school \$95 in one-time only training the first year, an additional \$40 annually for refresher training, and \$65 in medical and physical performance testing every 2 years. Assuming an estimated 2,500 school bus drivers employed by nonpublic schools with 5% of new drivers each year the total statewide cost would be \$195,125 (\$11,875 + 100,000 + 81,250 = \$195,125) or \$77.25 per school bus driver.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to the requirements of Education Law section 305(34), as added by Chapter 270 of the Laws of 2003, and does not have any impact on school districts, boards of cooperative education services (BOCES) or private pupil transportation contractors. The statute authorizes and directs the Commissioner of Education to promulgate regulations which apply school bus safety practices instruction and retraining requirements prescribed pursuant to section 3624 of Education Law, to drivers who operate pupil transportation which is owned, leased or contracted for by private and parochial schools to the same degree as such requirements apply to drivers who operate pupil transportation which is owned, leased or contracted for by public school districts. Since the statute requires uniform standards applicable to all nonpublic schools in the State, it was not possible to prescribe a lesser standard or exempt nonpublic schools located in rural areas.

The training and testing requirements contained in the proposed amendment mirror the existing training and testing requirements for public school bus drivers. The primary impact will be to nonpublic schools offering instruction in any or all grades pre-kindergarten through twelve.

RURAL AREA PARTICIPATION:

Copies of the proposed amendment were provided for review and comment to the Department's Rural Advisory Committee, whose memberships include schools located in rural areas. In addition, the Department has consulted with the public school community including the Commissioner's School Bus Driver Instructor Advisory Committee to obtain their suggestions for an efficient and cost effective implementation of the requirements by nonpublic schools. The Department has also consulted with the New York Association for Pupil Transportation, and the New York School Bus Contractor's Association to obtain their suggestions. Nonpublic school groups and associations have been given the opportunity to provide suggestions and raise issues concerning the statutes and the proposed regulations. The Department has in place a 1,000 plus member training corps of school bus driver instructors who are prepared to conduct pre-service training, administer the driver physical performance test, and teach the Basic Course of Instruction to nonpublic school bus drivers. Some have offered to provide initial low cost or no cost training for nonpublic schools in order to get their bus drivers into compliance as quickly as possible.

Job Impact Statement

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 270 of the Laws of 2003, relating to the qualifications, testing and training requirements for nonpublic school bus drivers.

The proposed amendment prescribes requirements for those individuals who are already employed, or who seek to become employed by a nonpublic school as a school bus driver; but it will not affect the number of jobs or employment opportunities available in this occupation. Because it is evident from the nature of the rule that it will have 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/PROPOSED
RULE MAKING
NO HEARING(S) SCHEDULED**

Impartial Hearing Officer Determinations Regarding Services for Students with Disabilities

I.D. No. EDU-28-04-00003-EP

Filing No. 763

Filing date: June 25, 2004

Effective date: June 25, 2004

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

Action taken: Amendment of section 279.12 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 311 (not subdivided), 4403(1) and (3), 4404(2) and 4410(13)

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to conform section 279.12 of the Commissioner's Regulations to the Federal Individuals with Disabilities Education Act (IDEA) and 34 CFR section 300.511, by deleting a provision that authorizes the State Review Officer to extend the timelines for issuing a decision to allow additional time to review an extensive record on appeal. The U.S. Department of Education has notified the State Education Department that this provision is out of compliance with CFR section 300.511.

Emergency action to adopt the proposed rule is necessary for the preservation of the general welfare to immediately conform the Commissioner's Regulations to the Federal Individuals with Disabilities Education Act (IDEA) and 34 CFR 300.511, and thereby ensure compliance with Federal requirements for receipt of funds under the IDEA. It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at the September 9-10, 2004 Regents meeting, effective September 30, 2004.

Subject: Procedures for State level review of impartial hearing officer determinations regarding services for students with disabilities.

Purpose: To delete a provision authorizing the State review officer to extend the timelines for issuing a decision to allow additional time to review an extensive record on appeal.

Text of emergency/proposed rule: Section 279.12 of the Regulations of the Commissioner of Education is amended, effective June 25, 2004, as follows:

§ 279.12 Decision of State Review Officer.

(a) . . .

(b) [The timelines in which the State Review Officer must issue a decision may be extended once for a period not to exceed 60 days from the date upon which the decision was originally due to be issued upon request by the Office of State Review and upon consent of both petitioner and respondent for the purpose of allowing a State Review Officer sufficient time to review an extensive record on appeal. For purposes of this subdivision, an extensive record on appeal is a record that contains more than 1,000 pages of transcript. The timeline for issuing a decision may also be extended by the Office of State Review: (i) for a period of time equal to the additional time that the Office of State Review has granted respondent and petitioner for the filing of an answer and reply, and/or (ii) in appeals in which the petitioner is the board of education, for the period of time during which the hearing record on appeal filed pursuant to section 279.9 of this Part is not complete.

(c) [The decision of the State Review Officer shall be mailed by the Office of State Review to counsel for petitioner and respondent, parties appearing pro se, and the superintendent of the school district involved as a party in the appeal or the superintendent's designee. The superintendent, or the superintendent's designee, shall forward a copy of the decision as soon as practicable to the principal and chairperson of the committee on special

education of the school involved in developing the most recent individualized education program (IEP) that was in contention in the appeal.

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 22, 2004.

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

Data, views or arguments may be submitted to: Kathy A. Ahearn, Education Department, Chief of Staff and Counsel and Deputy Commissioner for Legal Affairs, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 474-6400

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

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

Education Law section 207 provides the Regents with authority to establish the educational policies of the State and to adopt rules to carry into effect such policies and the powers and duties of the Department under the laws relating to education.

Education Law section 311 authorizes the Commissioner to regulate the practice of appeals from actions of local school officials brought pursuant to Education Law section 310.

Education Law section 4403(1) and (3) provide the Department with general authority to adopt regulations concerning the provision of a free appropriate public education to students with disabilities.

Education Law section 4404(2) provides for the review of determinations of impartial hearing officers regarding services for students with disabilities by a State Review Officer (SRO), and directs the Commissioner to adopt regulations governing the practice and procedures to be followed in proceedings before such Officer.

Education Law section 4410(13) authorizes the Commissioner to adopt regulations to implement the provisions of that statute, concerning special education services to preschool students with disabilities.

LEGISLATIVE OBJECTIVES:

The proposed amendment modifies the procedures concerning appeals of impartial hearing officers to a State Review Officer, pursuant to the authority conferred on the Commissioner by the aforementioned statutes to regulate the practice and procedures to be followed in proceedings before SROs, and is necessary to conform to Federal law.

NEEDS AND BENEFITS:

The proposed amendment is necessary to conform section 279.12 of the Commissioner's Regulations to the Federal Individuals with Disabilities Education Act (IDEA) and 34 CFR section 300.511, by deleting a provision that authorizes the State Review Officer to extend the timelines for issuing a decision to allow additional time to review an extensive record on appeal. The U.S. Department of Education has notified the State Education Department that this provision is out of compliance with CFR section 300.511.

COSTS:

Costs to State government: None.

Costs to local governments: None.

Costs to private regulated parties: None.

Costs to the regulating agency for implementation and continued administration of the rule: None.

The proposed amendment is necessary to conform the Commissioner's Regulations to Federal requirements and thereby ensure continued State funding under the IDEA.

LOCAL GOVERNMENT MANDATES:

The proposed amendment will not impose any program, service, duty, or responsibility upon local governments.

PAPERWORK:

The proposed amendment imposes no additional reporting requirements, forms or other paperwork.

DUPLICATION:

The proposed amendment does not duplicate existing State or Federal requirements, and is necessary to conform section 279.12 of the Commis-

sioner's Regulations to the Federal Individuals with Disabilities Education Act (IDEA) and 34 CFR section 300.511.

ALTERNATIVES:

There were no significant alternatives and none were considered.

FEDERAL STANDARDS:

The proposed amendment is necessary to conform section 279.12 of the Commissioner's Regulations to the Federal Individuals with Disabilities Education Act (IDEA) and 34 CFR section 300.511, by deleting a provision that authorizes the State Review Officer to extend the timelines for issuing a decision to allow additional time to review an extensive record on appeal. The U.S. Department of Education has notified the State Education Department that this provision is out of compliance with CFR section 300.511.

COMPLIANCE SCHEDULE:

It is anticipated that regulated persons will be able to comply with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to appeal procedures for State-level review of determinations of impartial hearing officers in hearings relating to the provision of special education to students with disabilities by school districts. The rule does not apply to small businesses since they are not parties to such hearings. The amendment will not impose additional reporting, recordkeeping or other compliance requirements on small businesses, nor will it have any adverse economic impact on small businesses. Because it is evident from the nature of the rule that it does not apply to small businesses, no further steps were needed to ascertain that fact and none were taken. Therefore, a regulatory flexibility analysis for small businesses is not required, and one has not been prepared.

Local Governments:

EFFECT OF RULE:

The proposed amendment is applicable to all public school districts in the State.

COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform section 279.12 of the Commissioner's Regulations to the Federal Individuals with Disabilities Education Act (IDEA) and 34 CFR section 300.511, by deleting a provision that authorizes the State Review Officer to extend the timelines for issuing a decision to allow additional time to review an extensive record on appeal. The U.S. Department of Education has notified the State Education Department that this provision is out of compliance with CFR section 300.511. The proposed amendment does not impose any compliance requirements on school districts.

PROFESSIONAL SERVICES:

The proposed amendment does not impose any professional service requirements.

COMPLIANCE COSTS:

The proposed amendment is necessary to conform section 279.12 of the Commissioner's Regulations to Federal requirements and thereby ensure continued State funding under the IDEA, and does not impose any compliance costs on school districts.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements or costs on local governments.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform section 279.12 of the Commissioner's Regulations to the Federal Individuals with Disabilities Education Act (IDEA) and 34 CFR section 300.511, by deleting a provision that authorizes the State Review Officer to extend the timelines for issuing a decision to allow additional time to review an extensive record on appeal. The U.S. Department of Education has notified the State Education Department that this provision is out of compliance with CFR section 300.511. The proposed amendment does not impose any compliance requirements or costs on school districts.

LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed amendment were solicited from school districts through the offices of the district superintendents of each supervisory district in the State.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment is applicable to all public school districts in the State, 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 amendment is necessary to conform section 279.12 of the Commissioner's Regulations to the Federal Individuals with Disabilities Education Act (IDEA) and 34 CFR section 300.511, by deleting a provision that authorizes the State Review Officer to extend the timelines for issuing a decision to allow additional time to review an extensive record on appeal. The U.S. Department of Education has notified the State Education Department that this provision is out of compliance with CFR section 300.511. The proposed amendment does not impose any compliance requirements or professional service requirements on school districts.

COMPLIANCE COSTS:

The proposed amendment is necessary to conform section 279.12 of the Commissioner's Regulations to Federal requirements and thereby ensure continued State funding under the IDEA, and does not impose any compliance costs on school districts.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform section 279.12 of the Commissioner's Regulations to the Federal Individuals with Disabilities Education Act (IDEA) and 34 CFR section 300.511, by deleting a provision that authorizes the State Review Officer to extend the timelines for issuing a decision to allow additional time to review an extensive record on appeal. The U.S. Department of Education has notified the State Education Department that this provision is out of compliance with CFR section 300.511. The proposed amendment does not impose any compliance requirements or costs on school districts.

RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment relates to appeal procedures for State-level review of determinations of impartial hearing officers in hearings relating to the provision of special education to students with disabilities by school districts and will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

NOTICE OF ADOPTION

Local Government Records Management

I.D. No. EDU-14-04-00012-A

Filing No. 762

Filing date: June 25, 2004

Effective date: July 15, 2004

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

Action taken: Amendment of sections 185.5 and 185.12 of Title 8 NYCRR.

Statutory authority: Education Law, section 207 (not subdivided); and Arts and Cultural Affairs Law, section 57.25(2)

Subject: Local government records management.

Purpose: To update Records Retention and Disposition Schedule ED-1.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-14-04-00012-P, Issue of April 7, 2004.

Final rule as compared with last published rule: No substantive 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 the Notice of Proposed Rule Making in the *State Register* on April 7, 2004, the following comment was received:

COMMENT:

Educational records such as National Honor Society student selection records should not be considered "records" within the meaning of Arts and Cultural Affairs Law. The Department should consider amending Arts and Cultural Affairs Law to properly address the unique nature of educational institutions and student records. In the interim, the Department should not include the National Honor Society student selection records item in Schedule ED-1.

DEPARTMENT RESPONSE:

The Department interprets the term "records," as defined in Section 57.17 of Arts and Cultural Affairs Law, to include records of school officials pertinent to their selection of students for membership in the National Honor Society and similar merit organizations. Because the intent of Section 57-A of Arts and Cultural Affairs Law is to comprehensively cover all records created or received in the course of public business, no amendment is needed to exclude certain types of records from coverage under that law. The proposed item for National Honor Society student selection records establishes appropriate retention periods for these records and is intended to protect the rights of students wishing to appeal selection decisions and to ensure that school officials have access to those records upon which such decisions were made in the event of such appeals.

NOTICE OF ADOPTION

Requirements for Licensure

I.D. No. EDU-15-04-00010-A

Filing No. 760

Filing date: June 25, 2004

Effective date: Sept. 1, 2004

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

Action taken: Amendment of section 52.30 and Part 74 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 210 (not subdivided); 212(3); 6501 (not subdivided); 6507(2)(a), (3)(a) and (4)(a); 7701(1); 7701(4)(b) and (c); (2)(b), (c) and (d); 7705(1) and (2); 7706(2) and (3); and 7707(2) and (4); Insurance Law, sections 3221(1)(4)(A) and (D) and 4303(i) and (n)

Subject: Requirements for licensure as a licensed master social worker and licensed clinical social worker and for registered college programs leading to licensure in these fields.

Purpose: To set forth requirements for licensure in the profession of social work, requirements for an authorization qualifying licensed clinical social workers for insurance reimbursement, and requirements relating to the supervision of licensed master social workers who provide licensed clinical social work services and for baccalaureate social workers who provide licensed master social work services.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-15-04-00010-P, Issue of April 14, 2004.

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 the proposed rule in the State Register on April 14, 2004, the State Education Department (SED) received the following comments:

COMMENT: I object to the regulation prescribing semester hours and content for the clinical coursework for the program leading to licensure in licensed clinical social work (hereinafter, "LCSW"). Schools should be permitted to design programs based on learning outcomes.

COMMENT: The regulation should not require programs leading to licensure in LCSW to include the 12 semester hours of clinical content. Possession of a Master's of Social Work degree, three years of supervised clinical experience, and completion of the examination are sufficient.

RESPONSE: Education Law section 7704 provides that the applicant for a license in LCSW must complete a master's of social work program, including a "core curriculum, which includes clinical content, in accordance with commissioner's regulations." This regulation implements the statute by requiring the completion of 12 semester hours or its equivalent covering three broad content areas: diagnosis and assessment in clinical and social work practice, clinical social work treatment, and clinical social work practice with general and special populations. SED believes that the regulation is reasonable and provides schools of social work a great deal of flexibility in designing their programs.

COMMENT: We support the 12-semester hours requirement in clinical content for programs leading to licensure in LCSW.

COMMENT: There should be 18 hours of clinical course content in the registered program that leads to licensure in LCSW.

RESPONSE: The 12-hour requirement was determined by SED to be reasonable, after consultation with the State Board for Social Work, gradu-

ate social work educators, and representatives of professional associations and the accrediting body for social work.

COMMENT: It is unnecessary to establish education requirements, including clinical content, for licensure in LCSW because these requirements are already embodied in accreditation standards.

RESPONSE: Education Law section 7704(2)(b) requires SED to establish in regulation education requirements for licensure in LCSW, and to establish a core curriculum which includes clinical content.

COMMENT: The regulation is unclear as to whether students who concentrate in management, community organizing, and/or research will be able to meet the educational requirements for LCSW licensure.

RESPONSE: Students may be licensed if they meet the educational requirements specified in the regulation.

COMMENT: It is unclear as to whether students will be able to use advanced standing credit granted for social work study at the baccalaureate level to meeting the clinical content and practicum requirements.

RESPONSE: The regulation does not prohibit advanced credit from being used to meet the clinical content or practicum requirements. Since advanced standing credit is awarded usually to recognize the completion of foundation course content, in most cases the entire clinical content will be completed during the MSW program. Also, the regulation provides that advanced standing credit is limited to no more than half of the total number of hours in the master's degree program.

COMMENT: The regulation fails to distinguish adequately between Licensed Master Social Work (hereinafter, "LMSW") and LCSW. The education requirement for licensure in LCSW should include six credit hours of foundation courses in specified areas, and at least 15 semester hours of specified advanced academic clinical education.

RESPONSE: The education requirements adequately distinguish between LMSW and LCSW. For the LCSW, the regulation requires completion of 12 semester hours in clinical content. The LMSW does not have this requirement. The regulation provides LCSW programs with flexibility to meet clinical content requirements.

COMMENT: Non-facility experience should not be permitted to meet the experience requirement for licensure in LCSW since it does not provide adequate accountability, supervision, or an adequate range of experience, and deviates from generally accepted standards.

RESPONSE: The regulation implements Education Law section 7704(2)(c), which specifically permits non-facility experience in psychotherapy to be used to meet the experience requirement for licensure in LCSW. SED has no authority to delete this alternative by regulation.

COMMENT: I support the provision that allows facility and non-facility experience to be combined to meet the requirement for licensure in LCSW and support a similar change to the requirements for the three-year credential in psychotherapy.

RESPONSE: Insurance Law sections 3221(1)(4)(A) and 4303(i) do not provide for the combining of such experience for the three-year credential.

COMMENT: I support the provision permitting facility experience for licensure in LCSW to include clinical social work services as a salaried employee or compensated independent contractor.

RESPONSE: No response is necessary.

COMMENT: An applicant completing the experience requirement for licensure in LCSW should be required to be a licensed master social worker.

RESPONSE: There is no requirement that the applicant be a licensed master social worker while completing the experience requirement for licensure in LCSW. However, many will be licensed master social workers working in a supervised experience. A candidate may also obtain the experience under a limited permit or through experience in another State or in an exempt setting, where licensure in LMSW is not required.

COMMENT: Specifying that "the applicant appraises the supervisor of the diagnosis and treatment of a client," during the supervision of the experience required for licensure in LCSW is inappropriate because it implies that the applicant is performing services beyond the scope of a licensed master social worker.

RESPONSE: Education Law section 7704(2)(c) provides an applicant may meet the experience requirement for licensure in LCSW by having three years of supervised facility experience "providing clinical social work services within the scope of practice of a licensed clinical social work." That scope of practice includes diagnostic assessments. While meeting the experience requirement for licensure in LCSW the applicant will be practicing LCSW under supervision.

COMMENT: All supervision of the experience requirements for licensure in LCSW should be in-person individual supervision.

RESPONSE: The regulation requires one hour per week or two hours every other week of in-person individual or group clinical supervision, provided that no more than 50 percent of the required hours of in-person supervision may be group clinical supervision. After consultation with interested parties, the State Board for Social Work determined the standard reasonably provides applicants with adequate supervision.

COMMENT: Supervised experience equal to that required for licensure in LCSW should be required for the limited permit to practice LCSW.

RESPONSE: Education Law section 7705(1) provides that a limited permit to practice LCSW may be issued to an applicant who meets the requirements for admission to the licensure examination. Those admission requirements do not include the completion of a supervised clinical experience. Some applicants will obtain such experience while under the limited permit.

COMMENT: The experience requirement for the LCSW should require psychotherapy experience, whether in a facility or non-facility setting.

RESPONSE: This degree of specificity is not needed. The regulation requires the applicant for licensure in LCSW to obtain a supervised facility experience providing clinical social work services. Pursuant to Education Law section 7704(2)(c), the applicant also may meet the experience requirement through a supervised non-facility experience in psychotherapy.

COMMENT: The requirement that individuals holding a baccalaureate in social work be supervised by a licensed master social worker or a licensed clinical social worker should include the opportunity for a waiver.

RESPONSE: Education Law section 7706(2) provides that a holder of a baccalaureate of social work degree or its equivalent may perform the work of a licensed master social worker, provided that the individual is supervised by a licensed master social worker or a licensed clinical social worker. The statute does not provide for a waiver of the supervision requirement.

COMMENT: The regulation should permit baccalaureate social workers providing licensed master social work services to be supervised by psychiatrists and psychologists.

RESPONSE: Baccalaureate social workers would be permitted only to perform licensed master social work services, which do not include psychotherapy. It is appropriate for baccalaureate social workers to be supervised by licensed master social workers and licensed clinical social workers, considering the services that they may perform.

COMMENT: In section 74.7, it is unclear why a supervisor must be available for "consultation" when supervising baccalaureate social workers because baccalaureate social workers cannot provide clinical social work services.

RESPONSE: Section 74.7 establishes requirements for the supervision of baccalaureate social workers when they provide licensed master social work services, and does not authorize them to provide licensed clinical social work services, as suggested. The regulation simply requires the supervisor to be available for consultation, assessment and evaluation, among other requirements.

COMMENT: Individuals with a MSW degree and five years of experience could be licensed in LMSW without a licensing examination.

COMMENT: The option that permits individuals with a MSW degree and five years of experience to be licensed in LMSW should be changed to three years or five years of part-time experience.

RESPONSE: Education Law section 7702(2) exempts individuals who have a MSW degree and five years of post-graduate social work employment on the effective date of the new law, from having to pass an examination to be licensed in LMSW. SED has no statutory authority to require these individuals to pass a licensing examination or to lower the requirement to three years or offer a part-time employment option.

COMMENT: Section 74.8(b) should not permit an applicant to be licensed in LCSW without having to meet a supervised experience requirement.

RESPONSE: Section 74.8(b) implements the grandfather provision of Education Law section 7707(4), permitting certain applicants to be licensed in LCSW upon meeting the experience requirements for a three-year or six-year psychotherapy privilege. The applicant for the privilege must meet a supervised experience requirement that is similar to the experience requirement for licensure under the regular route.

COMMENT: Individuals who are certified social workers with three years of experience, prior to the effective date of the new law, should not have to meet any additional requirements to be licensed in LCSW.

RESPONSE: The statute does not permit this. The statute includes a number of routes to licensure to ease the transition for individuals licensed as certified social workers under the old law.

COMMENT: Passing scores for the licensing examinations should be consistent across jurisdictions.

RESPONSE: The regulation provides that the passing score is determined by the State Board for Social Work, which is consistent with its statutory authority.

COMMENT: The requirements are fair and reasonable, and consistent with or exceed the competency standards for licensure in adjoining states.

RESPONSE: No response is necessary.

COMMENT: The statutory definition of the practice of LMSW includes some of the responsibilities of child welfare caseworkers employed by social services districts, professional staff employed by authorized agencies that provide human services, and counselors employed by the NYS Office of Children and Family Services. The regulation should clarify the scope to practice of licensed master social workers to prevent disruption of critical services.

RESPONSE: SED has no authority to narrow in regulation the statutory definition of the practice of LMSW. Chapter 433 of the Laws of 2003 exempts from licensure, until January 1, 2010, the employees of a program or service operated, regulated, funded or approved by the Office of Children and Family Services, among other entities.

COMMENT: The regulation should include a requirement for continuing education for the renewal of a license.

RESPONSE: Since the Education Law does not authorize a continuing education requirement for this profession, SED has no authority to establish it in regulation.

COMMENT: An applicant for licensure in LCSW should be required to undergo personal psychotherapy.

RESPONSE: Education Law does not require an applicant for licensure in LCSW to undergo personal psychotherapy, and SED has insufficient statutory authority to establish the requirement by regulation.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Regents Examinations

I.D. No. EDU-28-04-00005-P

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

Proposed action: Amendment of sections 8.2, 8.3 and 100.7 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 305 (not subdivided), 308 (not subdivided), 309 (not subdivided) and 3204 (not subdivided)

Subject: Admission to and passing mark on Regents examinations and college credits to meet high school equivalency diploma requirements.

Purpose: To require principals of public schools to admit to Regents examinations a candidate who is a school district resident and who seeks to take such examinations for the purpose of meeting the requirements for an earned degree pursuant to Regent Rule section 3.47(a)(2); clarify where there is an exception to the 65 passing mark on Regents examinations; and change the subject distribution of 24 college semester hours required for a pathway to earn a high school equivalency diploma.

Text of proposed rule: 1. Section 8.2 of the Rules of the Board of Regents is amended, effective September 30, 2004, as follows:

8.2 Admission to examinations.

(a) All pupils who have studied a subject at an approved school for a period of time not less than that prescribed by the commissioner shall have the right to be admitted to the Regents examination at such school.

(b) Except as provided in subdivision (c) of this section, other persons may be admitted to Regents examinations, for the purpose of demonstrating academic proficiency acquired through independent, out-of-school or other study, at the discretion of the principal of the school administering the examinations. *Subject to the requirements of subdivision (c) of this section, the principal of a public school administering the examinations shall admit a candidate who is a school district resident and who seeks to take such examination(s) for the purpose of meeting the requirements for an earned degree pursuant to section 3.47(a)(2) of this Title.* If the candidate is enrolled during the regular school year in an approved high school other than the school in which the examination is to be administered, the written permission of the principal of such other school shall be required. The school administering the examination may require that candidates provide adequate prior notice [,] and present satisfactory personal identifi-

cation, and *may require a candidate who is not a district resident to pay a reasonable fee to cover administrative and rating costs.*

(c) Only those persons who have satisfactorily met the laboratory requirements as stated in the State syllabus for a science shall be admitted to a Regents examination in such science.

2. Section 8.3 of the Rules of the Board of Regents is amended, effective September 30, 2004, as follows:

8.3 Passing mark.

[The] *Except as provided in section 100.5(a)(5)(i) of this Title, the minimum passing mark in Regents examinations shall be 65 percent.*

3. Paragraph (2) of subdivision (a) of section 100.7 of the Regulations of the Commissioner of Education is amended, effective September 30, 2004, as follows:

(2) In order to receive a high school equivalency diploma, candidates shall:

(i) . . .

(ii) . . .

(iii) provide satisfactory evidence that they have successfully completed 24 [credits (semester hours)] *semester hours* or the equivalent as a recognized candidate for a college-level degree or certificate at an approved institution. Beginning with applications made on or after September 1, 2000 and before September 30, 2004, the 24 [credits] *semester hours* shall be distributed as follows: six [credits] *semester hours or the equivalent* in English language arts including writing, speaking and reading (literature); six [credits] *semester hours or the equivalent* in mathematics; three [credits] *semester hours or the equivalent* in natural [science] *sciences*; three [credits] *semester hours or the equivalent* in social [science] *sciences*; three [credits] *semester hours or the equivalent* in humanities; and three [credits] *semester hours or the equivalent* in career and technical education and/or foreign languages. *Beginning with applications made on or after September 30, 2004, the 24 semester hours shall be distributed as follows: six semester hours or the equivalent in English language arts including writing, speaking and reading (literature); three semester hours or the equivalent in mathematics; three semester hours or the equivalent in natural sciences; three semester hours or the equivalent in social sciences; three semester hours or the equivalent in humanities; and six semester hours or the equivalent in any other courses within the registered degree or certificate program.*

Text of proposed 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

Data, views or arguments may be submitted to: James A. Kadamus, Deputy Commissioner, Education Department, Rm. 875, Education Bldg. Annex, Albany, NY 12234, (518) 474-5915, e-mail: jkadamus@mail.nysed.gov

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges the Department with the general management and supervision of public schools and the educational work of the State.

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

Education Law section 208 authorizes the Regents to establish examinations as to attainments in learning and to award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of graduation and of admission to colleges; to confer certificates or diplomas on students who satisfactorily pass such examinations; and requires the admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

Education Law section 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education, and shall execute all educational policies determined by the Board of Regents.

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Education Law section 309 charges the Commissioner with the general supervision of boards of education and their management and conduct of all departments of instruction.

Education Law section 3204(3) provides for required courses of study in the public schools and authorizes the State Education Department to alter the subjects of required instruction.

LEGISLATIVE OBJECTIVES:

The proposed amendments are consistent with the authority conferred by the above statutes and are necessary to implement policy enacted by the Board of Regents relating to admission to and passing mark for Regents examinations and high school equivalency diploma requirements.

NEEDS AND BENEFITS:

The proposed amendment to Regents Rule section 8.2 will require principals of public schools to admit to Regents examinations a candidate who is a school district resident and who seeks to take such examinations for the purpose of meeting the requirements for an earned degree pursuant to Regents Rule section 3.47(a)(2). This provision will be consistent with recent amendments to Regents Rules that establish an additional pathway for students beyond compulsory school age to earn a college degree by having passed and successfully completed all requirements for the following Regents examinations or the approved alternative assessments for these examinations: Comprehensive English, mathematics, U.S. history and government, global history and geography, and a science.

The proposed amendment to section 8.3 of the Regents Rules makes a technical change to add the citation in Regulations of the Commissioner of Education (section 100.5[a][5][i]) where there is an exception to the 65 passing mark on Regents examinations.

The proposed amendment to section 100.7 of the Regulations of the Commissioner of Education changes the subject distribution of the 24 college semester hours required for a pathway to earn a high school equivalency diploma. Provision is made to transition to the revised subject distribution that is anticipated to become effective September 30, 2004. The revised subject distribution will be consistent with recent amendments to Regents Rules relating to the satisfactory evidence candidates who are beyond compulsory school age must provide to degree-granting institutions to earn a college degree. The proposed amendment reduces the semester hour requirement in mathematics from six to three, eliminates the three semester hours in career and technical education and/or foreign languages, and allows a candidate to complete six semester hours in courses within the registered degree program.

COSTS:

(a) Costs to State government: None.

(b) Costs to local government: There may be minimal costs to local school districts for administering and rating additional Regents examinations taken by candidates who seek to take such examinations for the purpose of meeting the requirements for an earned degree pursuant to Regents Rule section 3.47(a)(2). The Department does not keep information regarding the costs of administering Regents examinations in public schools. However, based upon available information regarding nonpublic schools' administration of Regents examinations, it is estimated that the range for administering and scoring specific subject area Regents examinations would be \$.40 to \$2.22 per each additional examination. The proposed amendment would allow schools administering the Regents examinations to require candidates who are not district residents to pay a reasonable fee to cover such expenses.

(c) Costs to private regulated parties: None.

(d) Costs to regulating agency for implementation and continued administration of this rule: None.

LOCAL GOVERNMENT MANDATES:

The proposed amendment to Regents Rule section 8.2 will require principals of public schools to admit to Regents examinations a candidate who is a school district resident and who seeks to take such examinations for the purpose of meeting the requirements for an earned degree pursuant to Regents Rule section 3.47(a)(2). The proposed amendments to Regents Rule 8.3 and section 100.7 of the Regulations of the Commissioner of Education do not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

PAPERWORK:

The proposed amendment to Regents Rule section 8.2 may require school districts to prepare additional paperwork associated with adminis-

tering and rating Regents examinations taken by candidates who seek to take such examinations for the purpose of meeting the requirements for an earned degree pursuant to Regents Rule section 3.47(a)(2).

DUPLICATION:

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

ALTERNATIVES:

There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no related federal standards.

COMPLIANCE SCHEDULE:

It is anticipated that schools and school districts will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendments require principals of public schools to admit to Regents examinations a candidate who is a school district resident and who seeks to take such examinations for the purpose of meeting the requirements for an earned degree pursuant to Regents Rule section 3.47(a)(2); clarify where there is an exception to the 65 passing mark on Regents examinations; and change the subject distribution of the 24 college semester hours required for a pathway to earn a high school equivalency diploma to be consistent with a separate, proposed rulemaking to amend Regents Rule section 3.47 and Commissioner's Regulations section 100.10, relating to the satisfactory evidence candidates who are beyond compulsory school age must provide to degree-granting institutions to earn a college degree (EDU-09-04-00007; published in the March 3, 2004 *State Register*). The proposed amendments do not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendments that they do not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

EFFECT OF RULE:

The proposed amendments apply to each of the 703 public school districts in the State that are authorized to administer Regents examinations and issue high school equivalency diplomas.

COMPLIANCE REQUIREMENTS:

The proposed amendments to sections 8.2 and 100.7 are consistent with, and are needed to conform to, a separate, proposed rulemaking to amend Regents Rule section 3.47 and Commissioner's Regulations section 100.10, relating to the satisfactory evidence candidates who are beyond compulsory school age must provide to degree-granting institutions to earn a college degree (EDU-09-04-00007; published in the March 3, 2004 *State Register*). The proposed amendment to section 8.3 is needed to conform to its provisions to section 100.5(a)(5)(i) of the Commissioner's Regulations.

The proposed amendment to Regents Rule section 8.2 will require principals of public schools to admit to Regents examinations a candidate who is a school district resident and who seeks to take such examinations for the purpose of meeting the requirements for an earned degree pursuant to Regents Rule section 3.47(a)(2). The proposed amendment further specifies that the school administering the Regents examinations may require a candidate who is not a district resident to pay a reasonable fee to cover administrative and rating costs.

PROFESSIONAL SERVICES:

The proposed amendments do not impose any additional professional services requirements.

COMPLIANCE COSTS:

There may be minimal costs to local school districts for administering and rating additional Regents examinations taken by candidates who seek to take such examinations for the purpose of meeting the requirements for an earned degree pursuant to Regents Rule section 3.47(a)(2). The Department does not keep information regarding the costs of administering Regents examinations in public schools. However, based upon available information regarding nonpublic schools' administration of Regents examinations, it is estimated that the range for administering and scoring specific subject area Regents examinations would be \$.40 to \$2.22 per each additional examination. The proposed amendment would allow schools administering the Regents examinations to require candidates who are not district residents to pay a reasonable fee to cover such expenses.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendments will not impose any new technological requirements on local governments. Economic feasibility is addressed under the Compliance Costs section above.

MINIMIZING ADVERSE IMPACT:

The proposed amendments are necessary to implement policy enacted by the Board of Regents. The proposed amendments to Regents Rule section 8.2 and Commissioner's Regulations section 100.7 are consistent with, and are needed to conform to, a separate, proposed rulemaking to amend Regents Rule section 3.47 and Commissioner's Regulations section 100.10, relating to the satisfactory evidence candidates who are beyond compulsory school age must provide to degree-granting institutions to earn a college degree (EDU-09-04-00007; published in the March 3, 2004 *State Register*). These amendments minimize adverse impact by providing additional alternatives for students seeking to earn a college degree but who have been unable to provide acceptable documentation of high school preparation.

The proposed amendment to section 8.3 of the Regents Rules is necessary to conform its provisions to section 100.5(a)(5)(i) of the Commissioner's Regulations, which allows for an exception to the 65 passing mark on Regents examinations under certain specified circumstances.

LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed amendments were solicited from school districts through the offices of the district superintendents of each supervisory district in the State.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendments apply to all school districts in the State, 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 amendments to sections 8.2 and 100.7 are consistent with, and are needed to conform to, a separate, proposed rulemaking to amend Regents Rule section 3.47 and Commissioner's Regulations section 100.10, relating to the satisfactory evidence candidates who are beyond compulsory school age must provide to degree-granting institutions to earn a college degree (EDU-09-04-00007; published in the March 3, 2004 *State Register*). The proposed amendment to section 8.3 is needed to conform to its provisions to section 100.5(a)(5)(i) of the Commissioner's Regulations, which allows for an exception to the 65 passing mark on Regents examinations under certain specified circumstances.

The proposed amendment to Regents Rule section 8.2 will require principals of public schools to admit to Regents examinations a candidate who is a school district resident and who seeks to take such examinations for the purpose of meeting the requirements for an earned degree pursuant to Regents Rule section 3.47(a)(2). The proposed amendment further specifies that the school administering the Regents examinations may require a candidate who is not a district resident to pay a reasonable fee to cover administrative and rating costs.

The proposed amendment to section 100.7 of the Regulations of the Commissioner of Education changes the subject distribution of the 24 college semester hours required for a pathway to earn a high school equivalency diploma. Provision is made to transition to the revised subject distribution that is anticipated to become effective September 30, 2004. The revised subject distribution will be consistent with recent amendments to Regents Rules relating to the satisfactory evidence candidates who are beyond compulsory school age must provide to degree-granting institutions to earn a college degree. The proposed amendment reduces the semester hour requirement in mathematics from six to three, eliminates the three semester hours in career and technical education and/or foreign languages, and allows a candidate to complete six semester hours in courses within the registered degree program.

The proposed amendments do not impose any additional professional services requirements.

COMPLIANCE COSTS:

There may be minimal costs to local school districts for administering and rating additional Regents examinations taken by candidates who seek to take such examinations for the purpose of meeting the requirements for an earned degree pursuant to Regents Rule section 3.47(a)(2). The Department does not keep information regarding the costs of administering Regents examinations in public schools. However, based upon available information regarding nonpublic schools' administration of Regents examinations, it is estimated that the range for administering and scoring specific subject area Regents examinations would be \$.40 to \$2.22 per each

additional examination. The proposed amendment would allow schools administering the Regents examinations to require candidates who are not district residents to pay a reasonable fee to cover such expenses.

MINIMIZING ADVERSE IMPACT:

The proposed amendments are necessary to implement policy enacted by the Board of Regents. The proposed amendments to Regents Rule section 8.2 and Commissioner's Regulations section 100.7 are consistent with, and are needed to conform to, a separate, proposed rulemaking to Regents Rule section 3.47 and Commissioner's Regulations section 100.10, relating to the satisfactory evidence candidates who are beyond compulsory school age must provide to degree-granting institutions to earn a college degree (EDU-09-04-00007; published in the March 3, 2004 *State Register*). These amendments minimize adverse impact by providing additional alternatives for students seeking to earn a college degree but who have been unable to provide acceptable documentation of high school preparation.

The proposed amendment to section 8.3 of the Regents Rules is necessary to conform its provisions to section 100.5(a)(5)(i) of the Commissioner's Regulations, which allows for an exception to the 65 passing mark on Regents examinations under certain specified circumstances.

The Regents policy upon which the proposed amendments are based applies to all public schools. Therefore, it was not possible to establish different compliance and reporting requirements for entities in rural areas, or to exempt them from the provisions of the proposed amendments.

RURAL AREA PARTICIPATION:

Comments on the proposed amendments were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendments require principals of public schools to admit to Regents examinations a candidate who is a school district resident and who seeks to take such examinations for the purpose of meeting the requirements for an earned degree pursuant to Regents Rule section 3.47(a)(2); clarify where there is an exception to the 65 passing mark on Regents examinations; and change the subject distribution of the 24 college semester hours required for a pathway to earn a high school equivalency diploma to be consistent with a separate, proposed rulemaking to amend Regents Rule section 3.47 and Commissioner's Regulations section 100.10, relating to the satisfactory evidence candidates who are beyond compulsory school age must provide to degree-granting institutions to earn a college degree (EDU-09-04-00007; published in the March 3, 2004 *State Register*). The proposed amendments will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendments that they 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.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Requirements for Conferral of a College Degree and Home Instruction

I.D. No. EDU-09-04-00007-RP

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

Revised action: Amendment of sections 3.47 and 100.10(d) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 210 (not subdivided), 218(1); 224(4); 3204(2); 3205(1), (2) and (3); 3210(2)(d); 3212(2)(d); and 3234(1)

Subject: Requirements for the conferral of a college degree and the home instruction of students of compulsory attendance age and college study.

Purpose: To establish alternatives to the requirements that a candidate for a college degree hold a high school diploma, repeal the requirement that a student must have completed at least a four-year high school course or its equivalent before beginning degree study, require students who seek to meet compulsory educational requirements through full-time college study to obtain the approval of the school district, and establish requirements relating to the home instruction of students of compulsory attendance age and college study.

Text of revised rule: 1. Subdivisions (a) and (b) of section 3.47 of the Rules of the Board of Regents are repealed and new subdivisions (a) and (b) are added, effective September 30, 2004, as follows:

(a) General requirements.

(1) No earned degree shall be conferred in this State on any person who has not completed the program of study requisite to such degree, which institution shall be authorized to confer the same. No earned undergraduate or graduate degree shall be conferred unless the applicant has completed a program registered by the department.

(2) No earned degree shall be conferred unless the candidate has met the requirements of subparagraphs (i) or (ii) of this paragraph.

(i) Candidates who are of compulsory school age, pursuant to section 3205 of the Education Law or other requirement of law, shall provide the degree-granting institution with satisfactory evidence of meeting one of the following requirements:

(a) holding a high school diploma; or

(b) having completed the substantial equivalent of a four-year high school course, as certified by the superintendent of schools or comparable chief school administrator of the candidate's school district of residence at the time such course was completed.

(ii) Candidates who are beyond compulsory school age, pursuant to section 3205 of the Education Law or other requirement of law, shall provide the degree-granting institution with satisfactory evidence of meeting one of the following requirements:

(a) holding a high school diploma; or

(b) having completed the substantial equivalent of a four-year high school course, as certified by the superintendent of schools or comparable chief school administrator of the candidate's school district of residence at the time such course was completed; or

(c) holding a New York State high school equivalency diploma in accordance with the requirements of section 100.7 of this Title, or a local high school equivalency diploma in accordance with the requirements of section 100.8 of this Title, or a high school equivalency diploma issued by another state of the United States or an authorized local government of such state, or a high school equivalency diploma based on passing the General Educational Development (GED) test or its successor examination, or a high school equivalency diploma based upon completing requirements that are substantially equivalent to the requirements for a New York State high school equivalency diploma as prescribed in section 100.7 of this Title; or

(d) having successfully completed 24 semester hours or the equivalent as a recognized candidate for a college-level degree or certificate at a degree-granting institution as defined in clause (e) of this subparagraph, distributed as follows: six semester hours or the equivalent in English language arts, including writing, speaking and reading (literature); three semester hours or the equivalent in mathematics; three semester hours or the equivalent in natural sciences; three semester hours or the equivalent in social sciences; three semester hours or the equivalent in humanities; and six semester hours or the equivalent in any other courses within the registered degree or certificate program, all as verified by the institution conferring the degree; or

(e) having previously earned and been granted a degree from a degree-granting institution accredited by an accrediting agency approved by the United States Department of Education, pursuant to 20 USC 1099b; or from a postsecondary institution authorized by the Board of Regents to confer degrees; or from a degree-granting institution located in a jurisdiction outside the United States that is approved, authorized, or recognized by the jurisdiction's ministry of education or other governmental agency responsible for higher education; or

(f) having passed and successfully completed all requirements for the following Regents examinations or the approved alternative assessments for these examinations, pursuant to section 100.2(f) of this Title: the Regents Comprehensive Examination in English, the Regents examination in mathematics, the Regents examination in United States history and government, a Regents examination in science, and the Regents examination in global history and geography. For purposes of this clause, the passing score on the Regents examinations shall be 65 or, where applicable, a score of 55-64 as determined by the school district of residence, pursuant to section 100.5(a)(5)(i) of this Title.

(b) Preliminary requirement. Prior to enrolling, a student who seeks to meet the compulsory educational requirements of Education Law section 3205 through full-time study at a degree-granting institution, meaning enrollment for at least 12 semester hours in a semester or its equivalent, shall submit to the institution a valid and in effect individualized home instruction plan (IHIP), pursuant to section 100.10 of this Title, that authorizes such full-time study.

2. Subdivision (d) of section 100.10 of the Regulations of the Commissioner of Education is amended, effective September 30, 2004, as follows:

(d) Content of individualized home instruction plan (IHIP). Each child's IHIP shall contain:

(1) . . .

(2) . . .

(3) the dates for submission to the school district of the parents' quarterly reports as required in subdivision (g) of this section. These reports shall be spaced in even and logical periods; [and]

(4) the names of the individuals providing instruction; and

(5) a statement that the child will be meeting the compulsory educational requirements of Education Law section 3205 through full-time study at a degree-granting institution, meaning enrollment for at least 12 semester hours in a semester or its equivalent, if that is the case. In this situation, the IHIP shall identify the degree-granting institution and the subjects to be covered by that study.

Revised rule compared with proposed rule: Substantial revisions were made in sections 3.47(a)(2)(i)(b), (ii)(b), (d), (e), and (f), (b) and 100.10(d)(5).

Text of revised proposed 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

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Deputy Commissioner, Office of the Professions, Education Department, 2M West Wing Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: hedepcom@mail.nysed.gov

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

Revised Regulatory Impact Statement

Since publication of the Notice of Proposed Rule Making in the *State Register* on March 3, 2004, the proposed rule has been substantially revised, as follows:

Section 3.47(a)(2)(i)(b) and (ii)(b) of the Rules of the Board of Regents is non-substantially revised to add the word "substantial" before the word equivalent to clarify the regulation and more accurately reflect the statutory requirement that instruction given to a minor elsewhere than at a public school shall be substantially equivalent to instruction given in the public school.

Section 3.47(a)(2)(ii)(d) concerns the 24 semester hours alternative which students beyond compulsory school age may use to demonstrate preliminary education before obtaining a college degree. This requirement is changed to reflect core liberal arts and science requirements in college degree programs. The change would decrease the number of semester hours in mathematics from six to three, and substitute the requirement for three semester hours in career and technical education and/or foreign languages with six semester hours in courses within the registered degree or certificate program. This clause was also changed to require the student to complete the course work as a recognized candidate for a college-level degree or certificate at a degree-granting institution defined in the regulation to ensure course work qualify.

Section 3.47(a)(2)(ii)(e) is non-substantially revised to add the word "or" at the end of the clause to accommodate the added alternative in clause (f).

Section 3.47(a)(2)(ii)(f) is added to provide another alternative which students beyond compulsory school age may use to demonstrate preliminary education before obtaining a college degree: passing and meeting requirements for five specified Regents examinations or their approved alternatives. The Regents determined that this alternative was needed to provide flexibility, enabling students beyond compulsory school age to demonstrate preliminary education through another means.

Section 3.47(b) of the Rules of the Board of Regents is substantially revised. This subdivision concerns a preliminary requirement that must be met by students who are subject to compulsory educational requirements before they may enroll in college study. The requirement has been significantly narrowed to include only students who seek to meet compulsory educational requirements through full-time college study. The previous version required all students subject to compulsory educational requirements to obtain approval of the superintendent of schools or other school administrator before enrolling in a college credit course during the regular school day and year. This change responds to public comment that indicated that the previous requirement would be unduly onerous to administer.

Paragraph (5) of subdivision (d) of section 100.10 of Commissioner's Regulations is substantially revised in order to align with revised section 3.47(b) of the Regents Rules, as described above. The revised regulation requires the Individualized Home Instruction Plan (IHIP) of home

schooled students to include a statement that the child will be meeting the compulsory educational requirements through full-time study at a degree-granting institution, if that is the case, and to identify the degree-granting institution and the subjects to be covered by that study.

The aforementioned revisions require the following changes in the Regulatory Impact Statement:

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to establish alternatives to the requirement that a candidate for a college degree hold a high school diploma, repeal the requirement that a student must have completed at least a four-year high school course or its equivalent prior to beginning degree study, require students who seek to meet compulsory educational requirements through full-time college study to obtain the approval of the school district, and establish requirements relating to the home instruction of students of compulsory attendance age and college study.

Currently, Regents Rules require candidates for a college degree to demonstrate that they have completed at least a four-year high school course or its equivalent, prior to obtaining the degree. The amendment provides a number of alternative requirements that may be met instead of the holding of a high school diploma. Specifically, under the proposed amendment, the candidate for a degree who is beyond compulsory school age will be required to: hold a high school diploma, or have completed the substantial equivalent of a four-year high school course as certified by the superintendent of schools or comparable chief school administrator, or hold a high school equivalency diploma, or have completed 24 semester hours of college course work in designated subjects, or have previously earned and been granted a college degree, or have passed and met requirements for five specified Regents examinations or approved alternative assessments. The increasing variety of high school preparation, including by distance learning or through home instruction, has suggested that providing additional alternatives to the requirement that a candidate for a college degree hold a high school diploma would be helpful to students and colleges and universities in New York State. The Department believes that the proposed requirements provide needed flexibility in the regulation, permitting the candidate for a degree to demonstrate preliminary education through a variety of means.

The amendment does not extend these alternatives to a candidate for a degree who is of compulsory school age. Such a candidate must demonstrate to the college that he or she holds a high school diploma, or has completed the substantial equivalent of a four-year high school course, as certified by the superintendent of schools or comparable chief school administrator. This requirement is necessary because students of compulsory school age must be in high school or home schooled, unless they have already completed high school study, as signified by holding the high school diploma or the certification by the superintendent of schools of completion of the high school course.

The amendment removes the requirement that a student must complete at least a four-year high school course, or its equivalent, prior to beginning the course of study for a college degree. The Department does not believe this requirement is necessary because section 52.2(d) of the Commissioner's regulations already requires colleges to take into account the capacity of the student to undertake the program of study in their admission requirements for each degree program. In addition, the change is needed to resolve a conflict in the Rules of the Board of Regents and the Regulations of the Commissioner of Education. Section 100.7 of Commissioner's Regulations permits a student to earn a high school equivalent diploma through college study as a recognized candidate for a degree, but the provision proposed for repeal appears to prohibit that study.

The amendment also requires students who seek to meet compulsory educational requirements through full-time college study to submit to the college a valid and in effect individualized home instruction plan that authorizes that full-time study. This change provides a necessary link between the college and the school district for students subject to compulsory education. It helps to safeguard that these students are meeting the requirements for compulsory school attendance.

Finally, the amendment establishes an additional content requirement for individual home instruction plans (IHIPs) for home-schooled students. It requires the IHIP to include a statement that the student will be meeting the compulsory educational requirements of Education Law section 3205 through full-time study at a degree-granting institution, if that is the case, and requires the student to identify the degree-granting institution and the subjects to be covered by that study. This is needed to enable a home-schooled student subject to compulsory education requirements to easily demonstrate to the college that full-time college study is authorized by the school district.

4. COSTS:

(b) Costs to local government: The proposed amendment will not impose any additional costs on school districts. The proposed amendment to section 100.10(d) of the Commissioner's regulations requires that the individualized home instruction plan (IHIP) of a home-schooled child must include a statement that the child will be meeting compulsory educational requirements through full-time study at a degree-granting institution, if that is the case. The Commissioner's regulations already require school districts to review the individualized home instruction plan (IHIP) of a home-schooled child of compulsory attendance age to ensure that it includes prescribed content, and it is anticipated that this requirement will not impose any additional costs on school districts to review the IHIP to ensure compliance with this additional requirement.

(c) Costs to private regulated parties: The amendment is not expected to impose costs on private regulated parties, including candidates for college degrees, degree-granting institutions, or students who are home schooled. The amendment requires candidates for a college degree to demonstrate that the candidate holds a high school diploma or has met an alternative requirement. Degree-granting institutions will be required to ensure that candidates have provided satisfactory evidence of compliance. Currently, degree-granting institutions must ensure that candidates for a college degree have completed a preliminary education of at least a four-year high school course, or its equivalent. The Department does not believe that the change in the requirement will impose additional costs on degree-granting institutions beyond costs already borne to ensure that the candidate has completed an appropriate preliminary education, or that affording candidates the opportunity to demonstrate preliminary education through alternatives will impose any additional costs on candidates for a college degree. In addition, the amendment will not increase costs for home-schooled students. It simply requires their instructional plan to include a statement that the child will be meeting the compulsory educational requirements through full-time study at a degree-granting institution, if that is the case, and to identify the institution and the subjects to be covered.

5. LOCAL GOVERNMENT MANDATES:

Commissioner's regulations already require school districts to review the individualized home instruction plan (IHIP) of a home-schooled child of compulsory attendance age to ensure that it includes prescribed content. The proposed amendment includes a new element that must be included in the IHIP, a statement that the child will be meeting the compulsory educational requirements through full-time study at a degree-granting institution, if that is the case, and identifying the institution and the subjects to be covered.

6. PAPERWORK:

The proposed amendment requires students who seek to meet compulsory educational requirements through full-time study at a degree-granting institution to submit to the institution a valid and in effect IHIP that authorizes such study. The amendment does not impose any other paperwork requirements that are new or additional.

Revised Regulatory Flexibility Analysis

Since publication of the Notice of Proposed Rule Making in the *State Register* on March 3, 2004, the proposed rule has been revised as set forth in the Revised Regulatory Impact Statement submitted herewith. The revisions require the following changes in the Regulatory Flexibility Analysis for Small Businesses and Local Governments:

2. COMPLIANCE REQUIREMENTS:

(a) Small Businesses:

The proposed amendment establishes requirements that must be met by candidates for a college degree. Consequently, it will affect all degree-granting institutions in the State, include those classified as small businesses. Currently, Regents Rules require candidates for a college degree to demonstrate that they have completed at least a four-year high school course or its equivalent. The amendment provides a number of alternative requirements that may be met instead of holding a high school diploma. Specifically, under the proposed amendment, the candidate for a degree who is beyond compulsory school age will be required to: hold a high school diploma, or have completed the substantial equivalent of a four-year high school course as certified by the superintendent of schools or comparable chief school administrator, or hold a high school equivalency diploma, or have completed 24 semester hours of college course work in designated subjects, or have previously earned and been granted a college degree, or have passed and met requirements for five specified Regents examinations or approved alternative assessments.

The amendment provides that a candidate for a college degree who is still of compulsory school age must demonstrate to the college that he or she holds a high school diploma, or has completed a four-year high school

course as certified by the superintendent of schools or comparable chief school administrator.

The amendment removes the requirement that a student must complete at least a four-year high school course, or its equivalent, prior to beginning the course of study for a college degree. However, the amendment requires students who seek to meet compulsory educational requirements through full-time college study to submit to the college a valid and in effect individualized home instruction plan that authorizes that full-time study.

(b) Local Governments:

Commissioner's regulations already require school districts to review the individualized home instruction plan (IHIP) of a home-schooled child of compulsory attendance age to ensure that it includes prescribed content. The proposed amendment includes a new element that must be included in the IHIP, a statement that the child will be meeting the compulsory educational requirements through full-time study at a degree-granting institution, if that is the case, and identifying the institution and the subjects to be covered. School districts will have to review the IHIP for this new requirement.

4. COMPLIANCE COSTS:

(a) Small Businesses:

The proposed amendment does not impose any additional compliance costs on degree-granting institutions classified as small businesses. The amendment imposes requirements on candidates for college degrees to demonstrate that the candidate holds a high school diploma or meets an alternative requirement. Degree-granting institutions, including those that are classified as small businesses, will be required to ensure that candidate has provided satisfactory evidence of compliance. Currently, degree-granting institutions must ensure that candidates for a college degree have completed a preliminary education of at least a four-year high school course, or its equivalent. The Department does not believe that the change in the requirement will impose additional costs on degree-granting institutions beyond costs already borne to ensure that the candidate has completed an appropriate preliminary education.

(b) Local Governments:

The proposed amendment will not impose any additional costs on school districts. The proposed amendment to section 100.10(d) of the Commissioner's regulations requires that the individualized home instruction plan (IHIP) of a home-schooled child must include a statement that the child will be meeting the compulsory educational requirements through full-time study at a degree-granting institution, if that is the case, and identifying the institution and the subjects to be covered. The Commissioner's regulations already require school districts to review the individualized home instruction plan (IHIP) of a home-schooled child of compulsory school age to ensure that it includes prescribed content, and it is anticipated that this requirement will not impose any additional costs on school districts to review the IHIP to ensure compliance with this additional requirement.

Revised Rural Area Flexibility Analysis

Since publication of the Notice of Proposed Rule Making in the *State Register* on March 3, 2004, the proposed rule has been revised as set forth in the Revised Regulatory Impact Statement submitted herewith. The revisions require the following changes in the Rural Area Flexibility Analysis:

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

The proposed amendment establishes requirements that must be met by candidates for a college degree. Consequently, it will affect students and colleges in all parts of the State, including rural areas. Currently, Regents Rules require candidates for a college degree to demonstrate that they have completed at least a four-year high school course or its equivalent. The amendment provides a number of alternative requirements that may be met instead of holding a high school diploma. Specifically, under the proposed amendment, the candidate for a degree who is beyond compulsory school age will be required to: hold a high school diploma, or have completed the substantial equivalent of a four-year high school course as certified by the superintendent of schools or comparable chief school administrator, or hold a high school equivalency diploma, or complete 24 semester hours of college course work in designated subjects, or have previously earned and been granted a college degree, or have passed and met requirements for five specified Regents examinations or approved alternative assessments.

The amendment provides that a candidate for a college degree who is still of compulsory school age must demonstrate to the college that he or she holds a high school diploma, or has completed a four-year high school course as certified by the superintendent of schools or comparable chief school administrator.

The amendment removes the requirement that a student must complete at least a four-year high school course, or its equivalent, prior to beginning the course of study for a college degree. However, the amendment requires students who seek to meet compulsory educational requirements through full-time college study to submit to the college a valid and in effect individualized home instruction plan that authorizes that full-time study.

The amendment also establishes an additional content requirement for individual home instruction plans (IHIPs) for home-schooled students of compulsory school age. It requires the IHIP to include a statement that the student will be meeting the compulsory educational requirements of Education Law section 3205 through full-time study at a degree-granting institution, if that is the case, and to identify the degree-granting institution and the subjects to be covered by that study. Individuals submitting the IHIP for the home-schooled student must include this additional element in the IHIP, if it is applicable, and the school districts must review the IHIP for this additional information.

The proposed amendment would not require regulated parties to hire additional professional services in order to comply.

3. COSTS:

The proposed amendment does not impose any additional compliance costs on regulated parties, including those that are located in rural areas of the State. The amendment requires candidates for college degrees to demonstrate that the candidate holds a high school diploma or has met an alternative requirement. Degree-granting institutions will be required to ensure that candidates have provided satisfactory evidence of compliance. Currently, degree-granting institutions must ensure that candidates for a college degree have completed a preliminary education of at least a four-year high school course, or its equivalent. The Department does not believe that the change in the requirement will impose additional costs on degree-granting institutions beyond costs already borne to ensure that the candidate has completed an appropriate preliminary education, or that affording candidates the opportunity to demonstrate preliminary education through alternative means will impose any additional costs on candidates for a college degree.

The proposed amendment to section 100.10(d) of the Commissioner's regulations requires that the individualized home instruction plan (IHIP) of a home schooled child must also include a statement that the child will be meeting compulsory educational requirements through full-time study at a degree-granting institution, if this is the case, and identifying the institution and the subjects to be covered. The Commissioner's regulations already require school districts to review the individualized home instruction plan (IHIP) of a home-schooled child of compulsory school age to ensure that it includes prescribed content, and it is anticipated that this requirement will not impose any additional costs on school districts to review the IHIP to ensure compliance with this additional requirement.

Job Impact Statement

Since publication of the Notice of Proposed Rule Making on March 3, 2004, substantial revisions have been made to the proposed rule as set forth in the Revised Regulatory Impact Statement, submitted herewith. The proposed amendment, as revised, will establish alternatives to the requirement that a candidate for a college degree hold a high school diploma, repeal the requirement that a student must have completed at least a four-year high school course or its equivalent prior to beginning degree study, require students who seek to meet compulsory educational requirements through full-time college study to obtain the approval of the school district, and establish requirements relating to the home instruction of students of compulsory attendance age and college study. Because it is evident from the nature of the proposed amendment, as revised, that it will have no impact on jobs or employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

Assessment of Public Comment

Since publication of the proposed rule in the *State Register* on March 3, 2004, the State Education Department (SED) received the following comments:

COMMENT: The present home instruction process works effectively and the regulation is not needed.

RESPONSE: The regulation is needed to permit students beyond compulsory school age to demonstrate preliminary education to qualify for a college degree, through a variety of means: high school diploma, certification of the superintendent of completion of the substantial equivalent of a four-year high school program, high school equivalency diploma, completion of specified college coursework, previous earned college degree, or passing five Regents examinations. The regulation establishes a reasonable and flexible standard for demonstrating this preliminary education.

The regulation is also needed to ensure that students subject to compulsory education requirements and seeking to meet those requirements through full-time college study have the approval of the school district through an Individualized Home Instruction Plan (IHIP).

COMMENT: The regulation would create additional opportunities for home school students to be eligible for a college degree without ensuring that the student has obtained a high school diploma or its equivalent.

RESPONSE: The regulation provides a reasonable standard for a college student to demonstrate preliminary education before the student may receive a college degree. Students of compulsory school age must demonstrate that they hold a high school diploma or have completed the substantial equivalent of a four-year high school course through a certification by the superintendent of schools. Students beyond compulsory school age are offered five alternatives for demonstrating the preliminary education, as specified above.

COMMENT: The current restrictions on student access to college programs should be removed. College courses should be open to any student who is ready to benefit from college.

RESPONSE: The amendment actually eases regulatory requirements for admission to college by deleting the requirement that students must have completed a four-year high school course or its equivalent before beginning degree study. SED does not believe this requirement necessary because Commissioner's regulations already require colleges to take into account the capacity of the student to undertake the programs of study, prior to admission. Also, the change resolves a conflict in the regulations. Commissioner's regulations section 100.7 permits a student to earn a high school equivalency diploma through college study.

COMMENT: The regulation provides no options for students who cannot or will not obtain either the GED or the certification from their local school district, particularly those who are of compulsory school age. An alternative route should be provided that does not force superintendents to get involved, such as standardized test scores.

RESPONSE: Students beyond compulsory school age may show preliminary education for obtaining a college degree through five options. (The regulation has been revised to add the fifth, passing five Regents examinations.) Students who are of compulsory school age must show that they hold a high school diploma or have completed the substantial equivalent of a four-year high school course of study before they may obtain a college degree because they are required by law to be in high school or home schooled unless they have already completed their high school course of study.

COMMENT: My understanding is that a student will never be allowed to graduate from a college in New York without passing the GED.

RESPONSE: The comment is mistaken. The regulation expands the options for demonstrating preliminary education in order to qualify for a college degree. A student need not pass the GED, as suggested. Students beyond compulsory school age may also show preliminary education through completion specified college course work, passing five Regents examinations, and having previously earned a degree.

COMMENT: Practically, school districts do not have the ability to certify that home instruction is equivalent to a high school course of study. School districts do not have the authority to oversee home instruction.

RESPONSE: Education Law sections 3204(2) and 3210(2)(d) require that instruction given to a minor elsewhere than at a public school shall be substantially equivalent to instruction given in the public school. Section 100.10 of Commissioner's regulations requires a school district to review and approve the instructional plan (IHIP) of students of compulsory school age in meeting its responsibility of determining substantial equivalence of instruction being provided at home to students of compulsory school age. For students of compulsory school age, the superintendent has responsibility for determining whether the students have achieved the substantial equivalent of a four-year high school course of study.

COMMENT: The superintendent's certification as to the completion of the equivalent of a four-year high school course should certify to the "substantial equivalent" rather than the "equivalent".

RESPONSE: In response to this comment, the regulation has been revised to use the phrase "substantially equivalent" for the certification by the superintendent.

COMMENT: Home school regulations should be brought into alignment with the Regents higher standards by requiring that home school students pass the required Regents assessments.

RESPONSE: Education Law sections 3204(2) and 3210(2)(d) require that instruction given to a minor elsewhere than at a public school shall be substantially equivalent to instruction given in the public school. Section 100.10 of Commissioner's regulations require superintendents to review

and approve the IHIP of students of compulsory school age, based upon standards in that regulation, and requires parents file an annual assessment showing their child's progress. SED does not believe additional changes in the requirements for home schooled students is warranted.

COMMENT: SED should allow home-schooled students to take Regents level examinations.

RESPONSE: The regulation, as revised, permits a student who is beyond compulsory school age to demonstrate preliminary education through passing five specified Regents examinations. A coordinating regulation is planned to require school districts to permit district residents who are not students in schools of the district to take the Regents examinations.

COMMENT: The regulation discriminates against home schooled students because it requires them: to complete programs that are registered by SED; obtain permission from the superintendent before they are allowed to take college courses, and obtain certification from a superintendent in lieu of a Regents diploma or GED. Requiring superintendent's approval to take college courses is burdensome to school districts and colleges.

RESPONSE: The comment is mistaken. First, the reference to registered programs in the regulations refers to college degree programs. All such programs must be registered with SED, pursuant to Part 52 of the Commissioner's regulations. Second, the regulation originally required the superintendent's approval when any student of compulsory school age wanted to take a college course during the normal instructional year or hours of session of the public school. The regulation has been revised to require school district approval only when the student is seeking to meet compulsory education requirements through full-time college study. This requirement is reasonable and ensures that students are meeting the compulsory education requirements. It will not be overly burdensome on school districts or colleges because few students will be meeting compulsory education requirements through full-time college study. Third, the regulation requires students of compulsory school age to have a high school diploma or demonstrate completion of the substantial equivalent of a four-year high school program through the superintendent's certification before they may obtain a college degree. Students beyond compulsory school age may show preliminary education through five alternatives.

COMMENT: The regulation discriminates against home-schooled students because it requires them to have a GED for matriculation or admission to college. The GED carries a stigma. We urge the adoption of a new regulation that would use the student's SAT or ACT scores and a self-certified transcript and diploma as proof of high school graduation.

RESPONSE: The comment is mistaken. The regulation actually removes the requirement in Regents Rules that the student must complete a four-year high school course or its equivalent before beginning the course of study for a degree. However, there is a separate requirement in Education Law section 661(4)(c) that requires a student to have a certificate of graduation from a secondary school or the recognized equivalent of such certificate or have passed a Federally approved ability to benefit test in order to qualify for State student financial aid. The regulation at issue does not implement that requirement.

Instead of prescribing college admission requirements, the regulation prescribes requirements before a college degree may be conferred on a student, ensuring a preliminary education. Students of compulsory school age must show that they have completed a four-year high school course because the law requires them to be meeting the compulsory education requirements through high school attendance or home schooling unless they have already completed a four-year high school course of study. Students beyond compulsory school age are given the opportunity to show this preliminary education through five alternatives. The regulation provides such students who believe that there is a stigma associated with the GED with alternative means for showing a preliminary education.

COMMENT: College enrollment deadlines and IHIP schedules are not in sync. The need for an approval letter to register for college courses will impose cumbersome logistical problems on parents and superintendents.

RESPONSE: As revised, the regulations will require students who seek to meet compulsory education requirements through full-time college study to include that intention in their IHIP. This requirement is expected to affect few students, and SED will provide guidance to school districts on how to handle the expeditious approval of the IHIP in these situations.

COMMENT: The requirement that the IHIP contain a description of the college subjects that will be studied by the home instructed student in the school year is unreasonable because students may not know this when preparing the IHIP.

RESPONSE: The requirement, as revised, only applies to students seeking to meet the compulsory education requirements through full-time

college study. It is not unreasonable to require such students to specify in their IHIP the subjects to be covered by that study.

COMMENT: The regulation will drive well qualified home instructed students to other states for their college study.

RESPONSE: The regulation will provide additional flexibility for demonstrating preliminary education, and will in fact make it easier for home-schooled students to demonstrate such education.

COMMENT: SED is an administrative body and has overstepped its authority. These matters should be addressed by the legislature, not be appointed officials.

RESPONSE: SED has statutory authority to establish in regulation requirements for college degrees and for the education of students of compulsory school age, the subject of the regulation.

Department of Environmental Conservation

NOTICE OF ADOPTION

Sanitary Conditions of Shellfish Lands

I.D. No. ENV-09-04-00003-A

Filing No. 767

Filing date: June 29, 2004

Effective date: July 14, 2004

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

Action taken: Amendment of Part 41 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0307 and 13-0319

Subject: Sanitary condition of shellfish lands.

Purpose: To change certification of shellfish lands and extend seasonal harvest dates.

Text or summary was published in the notice of proposed rule making, I.D. No. ENV-09-04-00003-P, Issue of March 3, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Lisa P. Tettelbach, Department of Environmental Conservation, 205 N. Belle Meade Rd., Suite 1, E. Setauket, NY 11733, (631) 444-0478, e-mail: lptettle@gw.dec.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

DRGs, SIWs, Trimpoints and Arithmetic Mean LOS

I.D. No. HLT-28-04-00001-E

Filing No. 758

Filing date: June 23, 2004

Effective date: June 23, 2004

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

Action taken: Amendment of sections 86-1.62 and 86-1.63 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-c(3)

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

Specific reasons underlying the finding of necessity: The Department finds that the immediate adoption of this amendment is necessary to make

current regulations consistent with changes made to the diagnosis related group (DRG) classification system used by the Medicare prospective payment system (PPS). This is required by Section 2807-c(3) of the Public Health Law, which states, "The Commissioner shall establish as a basis for case classification for case based rates of payment the same system of diagnosis-related groups for classification of hospital discharges as established for purposes of reimbursement of inpatient hospital service pursuant to Title XVIII of the Federal Social Security Act (Medicare) in effect on the first day of July in the year preceding the rate period." Additionally, such amendments modify existing DRGs and add new DRGs to reflect medically appropriate patterns of health resource use. The current service intensity weights (SIWs) and trimpoints are also updated to be consistent with the proposed DRG modifications.

The SIWs and non-Medicare trimpoints are an integral part of the 2004 hospital Medicaid and like payor inpatient rates. The amendments provide payors of inpatient hospital services with the new values used to determine the correct case based payment for each DRG for each hospital so hospital claims can be submitted and paid in a timely manner. Additionally, the Legislature sought to have the DRGs used in the hospital reimbursement methodology be consistent with those used in Medicare reimbursement and reflect medically appropriate, efficient and economic patterns of health use and services. Such requirements warrant adoption of these amendments as soon as practicable.

Subject: Revision to the DRGs, SIWs, trimpoints and arithmetic mean LOS used to determine case based payments.

Purpose: To modify the DRG listing, SIWs, trimpoints and the arithmetic mean LOS.

Substance of emergency rule: 86-1.62 - Service Intensity Weights and Group Average Arithmetic Inlier Lengths of Stay

The proposed amendments of section 86-1.62 of Title 10 (Health) NYCRR are intended to change the diagnosis related group (DRG) classification system for inpatient hospital services and the corresponding service intensity weight (SIWs) and group average arithmetic inlier length of stay (LOS) for each DRG.

The DRG classification system used in the hospital case payment system is updated to incorporate those changes made by Medicare for use in the prospective payment system and additional changes to identify medically appropriate patterns of health resource use for services that are efficiently and economically provided. The SIWs were revised accordingly to reflect the costs of the redistributed cases.

86-1.63 - Non-Medicare Trimpoints

The proposed amendments of section 86-1.63 of Title 10 (Health) NYCRR are intended to change the non-Medicare trimpoints used to determine the outlier days in the hospital case based payment system.

The changes in the DRG classification system described above (section 86-1.62 of Title 10 (Health) NYCRR) cause a modification of the non-Medicare trimpoints to reflect the redistribution of cases from the existing DRGs to the new DRGs. These new trimpoint values are provided in section 86-1.63.

Provider/Payor Fiscal Impact:

The changes to the DRG classification system will enable providers to place patients in the most appropriate DRG and, therefore, they will receive adequate reimbursement for services provided. In the aggregate, these changes will have a budget-neutral impact on the reimbursement system.

Reasons for Initiating Regulation:

The Department is statutorily required to update the grouper to be consistent with changes made to the DRG classification system used by the Medicare prospective payment system (PPS) and to modify existing and add new DRGs to more accurately reflect patterns of health resource use.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 20, 2004.

Text of emergency rule and any required statements and analyses 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: regsqa@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

The authority for the subject regulations is contained in sections 2803(2) and 2807(3) of the Public Health Law (PHL), which require the State Hospital Review and Planning Council (SHRPC), subject to the approval of the Commissioner, to adopt and amend rules and regulations

for hospital reimbursement rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities. PHL section 2807-c(3) authorizes the SHRPC to adopt rules subject to the Commissioner's approval, to adjust the diagnosis related groups (DRGs) or establish additional DRGs to reflect subsequent revisions applicable to reimbursement for discharges of Medicare beneficiaries or to identify medically appropriate patterns of health resource use efficiently and economically provided and to subsequently amend the service intensity weights (SIWs) and trimpoints for each DRG.

Legislative Objectives:

The Legislature sought to have the DRGs used in the hospital reimbursement methodology be consistent with those used in Medicare reimbursement and reflect medically appropriate, efficient and economic patterns of health resource use and services.

Needs and Benefits:

The proposed amendments to sections 86-1.62 and 86-1.63 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are intended to make current regulations consistent with changes made to the diagnosis related group (DRG) classification system used by the Medicare prospective payment system (PPS) and to modify existing and add new DRGs to reflect medically appropriate patterns of health resource use. The current service intensity weights (SIWs) and trimpoints are also updated to be consistent with the proposed DRG modifications.

The SIWs and non-Medicare trimpoints are an integral part of the 2004 hospital Medicaid and like payor inpatient rates. The Department makes changes to the grouper used to assign inpatient cases to the appropriate DRG. As part of this process, the Department may make modifications, revisions and create new DRGs that reflect the current resources consumed by inpatients. After the grouper is modified, the SIWs and trimpoints must be recalculated consistent with the newly created and updated list of DRGs, thus creating new values for the SIWs and trimpoints in sections 86-1.62 and 86-1.63. Additionally, the amendments provide payors of inpatient hospital services with the new values used to determine the correct case base payment for each DRG so hospital claims can be submitted and paid in a timely manner.

Costs:

Costs to State Government:

The proposed regulations do not impact the cost base upon which payments are made. Therefore, costs to the State are not expected to markedly change as a result of these amendments.

Costs of Local Government:

No increase in costs to local governments is anticipated as a result of these amendments.

Costs to Private Regulated Parties:

In the aggregate, there will be no increases or decreases in hospital revenues as a result of these amendments. Changes to the DRG classification system will cause a realignment of cases among the DRGs. Those cases that require more intensive provision of care will realize an increase in the SIW (and reimbursement) for that DRG. The removal of such cases from the DRG to which they were previously assigned will decrease the SIW (and reimbursement) for that DRG. Therefore, revenues will shift among individual hospitals depending upon the diagnosis of and procedures performed on the patients they treat. The extent of the shift in revenues cannot be determined because it will depend upon future patient services.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of these amendments.

Local Government Mandates:

This regulation affects the costs to counties and New York City for services provided to Medicaid beneficiaries as described above. It imposes no program, service, duty or other responsibility upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

There is no additional paperwork required of providers as a result of these amendments.

Duplication:

These regulations do not duplicate existing State and Federal regulations.

Alternatives:

Based upon suggestions/recommendations received from hospital industry representatives, the Department revised the original proposed service intensity weights to provide more appropriate recognition of the costs related to new medical technologies. In addition, a change to the methodol-

ogy utilized to develop cost proxies for certain new DRG's was instituted based on this outreach. No other significant alternatives were considered.

Federal Standards:

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

Compliance Schedule:

The proposed rule establishes rates of payment as of January 1, 2004; there is no period of time necessary for regulated parties to achieve compliance.

Contact Person:

William R. Johnson
 New York State Department of Health
 Office of Regulatory Reform
 Corning Tower Building, Room 2415
 Empire State Plaza
 Albany, NY 12237
 (518) 473-7488
 (518) 486-4834 (FAX)
 REGSQNA@health.state.ny.us

Comments submitted to Department personnel other than this contact person may not be included in any assessment of public comment issued for this regulation.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the Institutional Cost Report, seven hospitals were identified as employing fewer than 100 employees.

Compliance Requirements

No new reporting, recordkeeping or other compliance requirements are being imposed as a result of this rule.

Professional Services

No new or additional professional services are required in order to comply with the proposed amendments.

Economic and Technological Feasibility

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are intended to make current regulations consistent with changes made to the DRG classification system used by the Medicare prospective payment system (PPS), and add new DRGs to reflect medically appropriate patterns of health resource use. The current SIWs and tripoints are also updated to be consistent with the proposed DRG modifications.

Compliance Costs

No initial capital costs will be imposed as a result of this rule, nor will there be an annual cost of compliance. In the aggregate, as a result of these amendments, there will be no anticipated increases or decreases in hospitals' revenues in the aggregate. Revenues will shift among individual hospitals depending upon the diagnoses of and procedures performed on the patients they treat and the extent to which they would be classified into the modified diagnosis related groups.

Minimizing Adverse Impact

The proposed amendments will be applied to all general hospitals. The Department of Health considered approaches specified in section 202-b(1) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given the reimbursement system mandated in statute.

Small Business and Local Government Participation

Local governments and small businesses were given notice of this proposal by its inclusion in the agenda of the Fiscal Policy Committee of the State Hospital Review and Planning Council for its November 20, 2003 meeting. That agenda is mailed to general hospitals qualifying as small businesses, providers, members of the Fiscal Policy Committee, the New York State Legislature and representatives of the hospital associations, among others. The associations are member organizations that represent the interests and concerns of hospitals across New York State, including small businesses and local governments. This outreach resulted in the Department of Health receiving comments and suggestions related to additional changes that industry representatives recommended be implemented. Based on this feedback, the Department did make additional changes to the service intensity weights to incorporate several of these comments and suggestions.

Rural Area Flexibility Analysis

Effect on Rural Areas

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000:

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

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements

No new reporting, recordkeeping, or other compliance requirements are being imposed as a result of this proposal.

Professional Services

No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

Compliance Costs

No initial capital costs will be imposed as a result of this rule, nor will there be an annual cost of compliance. In the aggregate, as a result of these amendments, there will be no increases or decreases in hospitals' revenues. Revenues will shift among individual hospitals depending upon the diagnoses of and approved procedures performed on the patients they treat.

Minimizing Adverse Impact

The proposed amendments will be applied to all general hospitals. The Department of Health considered the approaches specified in section 202-bb(2) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given the reimbursement system mandated in statute.

Opportunity for Rural Area Participation

Rural areas were given notice of this proposal by its inclusion in the agenda of the Fiscal Policy Committee of the State Hospital Review and Planning Council for its November 20, 2003, meeting. That agenda is mailed to members of the Fiscal Policy Committee, the New York State Legislature and representatives of the hospital associations, among others. The associations are member organizations, which represent the needs and concerns of providers across New York State, including rural areas. The amendment was described at meetings of the Fiscal Policy Committee prior to the filing of the notice of proposed rulemaking.

This outreach resulted in the Department of Health receiving comments and suggestions related to additional changes that industry representatives recommended be implemented. Based on this feedback, the Department did make additional changes to the service intensity weights to incorporate several of these comments and suggestions.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulations update the diagnosis related group (DRG) classification system for inpatient hospital services and the corresponding service intensity weights and length of stay standards for each DRG. This classification system, which has been in effect since 1988 in New York State, is utilized to reimburse hospitals for inpatient services rendered to Medicaid beneficiaries. Since this is merely an update, the proposed regulations have no implications for job opportunities.

Department of Labor

NOTICE OF ADOPTION

Proof of Citizenship and Residence in Connection with the Employment of Persons Upon Public Work

I.D. No. LAB-17-04-00005-A

Filing No. 765

Filing date: June 25, 2004

Effective date: July 14, 2004

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

Action taken: Repeal of Part 225 of Title 12 NYCRR.

Statutory authority: Labor Law, section 222

Subject: Proof of citizenship and residence in connection with the employment of persons upon public work.

Purpose: To repeal an obsolete rule.

Text or summary was published in the notice of proposed rule making, I.D. No. LAB-17-04-00005-P, Issue of April 28, 2004.

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 Motor Vehicles

NOTICE OF ADOPTION

Orleans County Motor Vehicle Use Tax

I.D. No. MTV-17-04-00017-A

Filing No. 769

Filing date: June 29, 2004

Effective date: July 14, 2004

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(aa) 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: Orleans 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-17-04-00017-P, Issue of April 28, 2004.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Special Number Plates

I.D. No. MTV-19-04-00007-A

Filing No. 768

Filing date: June 29, 2004

Effective date: July 14, 2004

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

Action taken: Amendment of sections 16.6 and 16.7 of Title 15 NYCRR.
Statutory authority: Vehicle and Traffic Law, sections 215(a) and 404(1)

Subject: Special number plates.

Purpose: To issue special plates.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-19-04-00007-P, Issue of May 12, 2004.

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

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

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Deferred Accounting by New York American Water Company

I.D. No. PSC-30-01-00006-A

Filing date: June 29, 2004

Effective date: June 29, 2004

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

Action taken: The commission, on May 5, 2004, adopted an order in Case 01-W-0714 allowing New York American Water Company, Inc. to defer purchased water expenses.

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

Subject: Request for deferred accounting treatment.

Purpose: To recover increased water prices.

Substance of final rule: The Commission approved a request by New York American Water Company, Inc. for deferral accounting treatment for the increase in the cost of water purchased from Westchester Joint Water Works Company, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (01-W-0714SA1)

NOTICE OF ADOPTION

Deferred Accounting Treatment by Aquarion Water Company of New York

I.D. No. PSC-35-02-00021-A

Filing date: June 29, 2004

Effective date: June 29, 2004

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

Action taken: The commission, on May 5, 2004, adopted an order in Case 02-W-0985 allowing Aquarion Water Company of New York to defer purchased water expenses.

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

Subject: Request for deferred accounting treatment.

Purpose: To defer the expenses associated with an increase in water prices.

Substance of final rule: The Commission approved a request by Aquarion Water Company New York for deferral accounting treatment for the

increase in the cost of water purchased from Westchester Joint Water Works Company, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(02-W-0985SA1)

NOTICE OF ADOPTION

Deferred Accounting by Aquarion Water Company of New York

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

Filing date: June 29, 2004

Effective date: June 29, 2004

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

Action taken: The commission, on May 5, 2004, adopted an order in Case 03-W-1007 allowing Aquarion Water Company of New York to defer purchased water expenses.

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

Subject: Request for deferred accounting treatment.

Purpose: To defer the expenses associated with an increase in water prices.

Substance of final rule: The Commission approved a request by Aquarion Water Company New York for deferral accounting treatment for the increase in the cost of water purchased from Westchester Joint Water Works Company, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-W-1007SA1)

NOTICE OF ADOPTION

Electronic Tariff Schedule by Fishers Water Corporation

I.D. No. PSC-04-04-00020-A

Filing date: June 29, 2004

Effective date: June 29, 2004

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

Action taken: The commission, on June 2, 2004, adopted an order in Case 03-W-1810 approving revisions to Fishers Island Water Works Corporation's (Fishers Island) tariff schedule, P.S.C. No. 2—Water.

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

Subject: Tariff filing by Fishers Island Water Works Corporation.

Purpose: To increase annual revenues.

Substance of final rule: The Commission authorized an increase in Fishers Island Water Works Corporation's annual revenues by \$88,172 or 20.8%, effective July 1, 2004, and directed the company to file revised tariff leaves, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(03-W-1810SA1)

NOTICE OF ADOPTION

Attachment of AT&T Wireless Facilities by Niagara Mohawk Power Corporation

I.D. No. PSC-07-04-00026-A

Filing date: June 23, 2004

Effective date: June 23, 2004

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

Action taken: The commission, on June 2, 2004, adopted an order in Case 04-M-0101 authorizing AT&T Wireless PCS, LLC (AT&T) to attach wireless facilities to certain Niagara Mohawk Power Corporation (Niagara Mohawk) electric transmission facilities.

Statutory authority: Public Service Law, section 70

Subject: Joint petition of Niagara Mohawk and National Grid Communications, Inc. to attach wireless facilities on Niagara Mohawk's transmission lines.

Purpose: To allow AT&T to install an antenna array and an equipment shelter on Niagara Mohawk's electric transmission facility.

Substance of final rule: The Commission approved a joint proposal by Niagara Mohawk Power Corporation (Niagara Mohawk) and National Grid Communications, Inc. authorizing AT&T Wireless PCS, LLC to make wireless attachments to Niagara Mohawk transmission tower #76 on the New Scotland-Northfield 345kV transmission line in the Town of Schodack, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(04-M-0101SA1)

NOTICE OF ADOPTION

Standby Service by Central Hudson Gas & Electric Corporation

I.D. No. PSC-16-04-00004-A

Filing date: June 23, 2004

Effective date: June 23, 2004

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

Action taken: The commission, on June 23, 2004, adopted an order in Case 02-E-1108 approving revisions to Central Hudson Gas and Electric Corporation's (Central Hudson) tariff schedule, P.S.C. No. 15—Electricity.

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

Subject: Tariff filing by Central Hudson.

Purpose: To allow Central Hudson to modify the rates, terms and conditions for the provisions of standby service.

Substance of final rule: The Commission approved amendments to Central Hudson Gas & Electric Corporation's electric tariff schedule in compliance with the Order Establishing Electric Standby Rates issued December 4, 2003 and the Order Directing Modifications to Standby Service Tariffs issued January 23, 2004.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (02-E-1108SA2)

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

Approval of Loans by Dunkirk & Fredonia Telephone Company and Cassadaga Telephone Corporation

I.D. No. PSC-28-04-00006-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, or modify (in whole or in part) a joint petition filed by Dunkirk & Fredonia Telephone Company and Cassadaga Telephone Corporation seeking approval of their participation in their parent corporation's line of credit.

Statutory authority: Public Service Law, section 106

Subject: Approval of loans.

Purpose: To authorize participation in the parent corporation's line of credit.

Substance of proposed rule: By joint petition filed June 24, 2004, Dunkirk and Fredonia Telephone Company and Cassadaga Telephone Corporation seek approval to participate in their parent corporation's \$2 million line of credit with M&T Bank.

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.

(04-C-0771SA1)

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

New Types of Electricity Meters, Transformers and Ancillary Devices by Rochester Gas and Electric Corporation

I.D. No. PSC-28-04-00007-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 request filed by Rochester Gas and Electric Corporation for approval of the Sentry 30E, Sentry 50, and Sentry 70 isolation relays.

Statutory authority: Public Service Law, section 67(1)

Subject: Approval of new types of electricity meters, transformers, and ancillary devices.

Purpose: To permit electric utilities in New York State to use the Sentry 30E, Sentry 50, and Sentry 70 isolation relays.

Substance of proposed rule: The Commission will consider a request from Rochester Gas and Electric Corporation for approval and use of the Sentry 30E, Sentry 50, and Sentry 70 isolation relays for revenue billing in New York State. The Sentry product is a solid state relay that provides isolated input and output circuits for the purpose of protecting pulses from a revenue meter. The Sentry isolation relays are designed to meet the minimum requirements as stated in ANSI C12.1. The cost of these isolation relays will range from \$110 - \$250 depending on the model selected.

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.

(04-E-0731SA1)

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

Transfer, Financing and Lightened Regulation by Great Lakes Power, Inc. and Orion Power Holdings, Inc.

I.D. No. PSC-28-04-00008-P

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

Proposed action: The commission is considering a petition from Great Lakes Power, Inc. and Orion Power Holdings, Inc. requesting approval of the transfer of ownership of 102 MW in one combined cycle cogeneration facility and 674 MW in 73 hydroelectric generation facilities and a financing of \$730 million related to the transfer, and the lightened regulation of the facilities in the hands of the new owners. The commission may adopt, modify or reject, in whole or in part, the relief requested.

Statutory authority: Public Service Law, sections 2(13), 5(b), 64, 65, 66, 67, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b, 119-c

Subject: Transfer, financing and lightened regulation of one combined cycle cogeneration and 73 hydroelectric generation facilities.

Purpose: To approve the transfer, financing and lightened regulation.

Substance of proposed rule: The Commission is considering a petition from Great Lakes Power, Inc. and Orion Power Holdings, Inc. requesting approval of the transfer of ownership of 102 MW in one combined cycle cogeneration facility and 674 MW in 73 hydroelectric generation facilities and a financing of \$730 million related to the transfer, and the lightened regulation of the facilities in the hands of the new owners. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

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.

(04-E-0789SA1)

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

Discontinuance of Bill Credit by National Fuel Gas Distribution Corporation

I.D. No. PSC-28-04-00009-P

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

Proposed action: The commission is considering a petition from National Fuel Gas Distribution Corporation (the company) for discontinuance of a \$5 million dollar credit issued by the company and applied to customer bills pursuant to the company's rate plan. The commission may adopt, modify or reject, in whole or in part, the relief requested.

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

Subject: Discontinuance of a \$5 million dollar bill credit.

Purpose: To approve the discontinuance.

Substance of proposed rule: The Commission is considering a petition from National Fuel Gas Distribution Corporation (the company) for discontinuance of a \$5 million dollar credit issued by the company and applied to customer bills pursuant to the company's rate plan. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

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. Brilling, 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.

(00-G-1858SA7)

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

Calculation of Franchise Fees by Cablevision of Ossining and the City of Peekskill

I.D. No. PSC-28-04-00010-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 petition by Cablevision of Ossining for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees.

Statutory authority: Public Service Law, section 216(1)

Subject: Calculation of franchise fees.

Purpose: To exclude the amount of the franchise fees collected from subscribers from inclusion in the company's calculation of gross receipts.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by Cablevision of Ossining for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the City of Peekskill (Westchester County). Section 595.1(o)(2) requires franchise contract language to express franchise fees as a percentage of gross revenues derived from the operation of the cable system. Gross revenues are defined in the referenced section as "all revenues required to be reported to the commission . . . pursuant to 9 NYCRR Part 595". Section 595.1(o)(2) permits exclusions from that revenue base, but requires that such base include all "revenue received directly from subscribers for any cable services purchased by subscribers on a regular, recurring monthly basis". Franchise fee collections fall within these definitions of gross revenues. Therefore, a waiver of rules is required to permit exclusion of franchise fee collections from calculation of gross revenues.

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. Brilling, 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.

(04-V-0767SA1)

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

Calculation of Franchise Fees by Cablevision of Wappingers Falls, Inc. and the Town of Cortlandt

I.D. No. PSC-28-04-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by Cablevision of Wappingers Falls, Inc. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees.

Statutory authority: Public Service Law, section 216(1)

Subject: Calculation of franchise fees.

Purpose: To exclude the amount of the franchise fees collected from subscribers from inclusion in the company's calculation of gross receipts.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by Cablevision of Wappingers Falls, Inc. for a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Town of Cortlandt (Westchester County). Section 595.1(o)(2) requires franchise contract language to express franchise fees as a percentage of gross revenues derived from the operation of the cable system. Gross revenues are defined in the referenced section as "all revenues required to be reported to the commission . . . pursuant to 9 NYCRR Part 595". Section 595.1(o)(2) permit exclusions from that revenue base, but requires that such base include all "revenues received directly from subscribers for any cable services purchased by subscribers on a regular, recurring monthly basis". Franchise fee collections fall within these definitions of gross revenues. Therefore, a waiver of rules is required to permit exclusion of franchise fee collections from calculation of gross revenues.

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. Brilling, 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.

(04-V-0768SA1)

State University of New York

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

Terms and Conditions of Employment

I.D. No. SUN-28-04-00012-EP

Filing No. 770

Filing date: June 29, 2004

Effective date: June 29, 2004

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

Action taken: This is a consensus rule making to amend Part 335 and Appendices B-1 and B-2 and addition of Appendix B-3 to Title 8 NYCRR.

Statutory authority: Education Law, sections 355(2)(b) and 355-a

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

Specific reasons underlying the finding of necessity: The rule implements the results of completed negotiations between the State of New York and United University Professions, the collective bargaining representative for certain employees of the State University of New York.

Subject: Terms and conditions of employment of certain employees of the State University of New York.

Purpose: The remove certain professional titles of State University of New York employees involved in fundraising from eligibility for permanent appointment and provide eligibility for term appointments for such professional titles.

Substance of emergency/proposed rule (Full text is not posted on a State website): § 335.5(b) is amended to clarify that a State University employee who serves in a professional title listed in Appendix B-2, relating to athletic titles, is not eligible for permanent appointment, and to provide that a State University employee who serves in a professional title listed in new Appendix B-3, relating to fundraising titles, is not eligible for permanent appointment.

§ 335.15 is amended to make technical changes to subsection (g) thereof.

Section 335.15 is further amended to add subsection (h) thereof to provide that a State University employee who serves in a professional title listed in new Appendix B-3, relating to fundraising titles, shall be eligible for initial term appointment of one-to-three years, and after the fourth year of employment for a term appointment of three years. An effect of new subsection (h) is to provide that such employees shall not be eligible for permanent appointment, as presently. This section implements the results of negotiations between the State of New York and United University Professions.

Appendices B-1 and B-2 are amended to make a technical correction, the deletion of the title of Director of Athletics from Appendix B-1 and the addition to Appendix B-2 of the title of Director of Athletics. A new Appendix B-3 is added to set forth fundraising titles which are subject to term appointment.

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 26, 2004.

Text of rule and any required statements and analyses may be obtained from: Michael D. Morgan, State University of New York, State University Plaza, Albany, NY 12246, (518) 443-5886, e-mail: morganmi@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.

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Consensus Statement

Part 335 of 8 NYCRR and related appendices set forth matters relating to the appointment of certain employees of the State University of New York. The proposed amendments to Part 335, in part, effect technical changes, and, in part, conform sections of Part 335 to the results of completed negotiations between the State of New York and United University Professions, the collective bargaining representative of the State University employees who are the subject of the rule. Implementation of the results of the subject collective bargaining is not discretionary on the part of the State University. No person affected by the rule is likely to object to the adoption of the rule as written because such persons are represented by United University Professions and bound by the terms of the completed collective bargaining negotiations.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. The rule relates to terms and conditions of employment of certain employees of the State University of New York, and implements the results of completed negotiations between the State of New York and United University Professions, the collective bargaining representative for certain employees of the State University of New York. The rule will not have any adverse impact on the number of jobs or employment.