

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.

Banking Department

EMERGENCY RULE MAKING

Supervision of Art. XII Investment Company Holding Companies and Their Subsidiaries

I.D. No. BNK-23-05-00003-E

Filing No. 562

Filing date: May 19, 2005

Effective date: May 23, 2005

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

Action taken: Addition of Part 114 to Title 3 NYCRR.

Statutory authority: Banking Law, sections 14(1), (1)(k) and art. XII

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

Specific reasons underlying the finding of necessity: Need to meet European Commission timetable for being designated as providing equivalent supervision for certain U.S. headquartered financial groups with business activities in the European economic community.

Subject: Supervision of art. XII investment company holding companies and their subsidiaries for purposes of the European Union Financial Conglomerates Directive.

Purpose: To clarify the examination, supervision, regulation and enforcement authority of the superintendent of banks over financial conglomerates for purposes of carrying out equivalent supervision.

Text of emergency rule: Part 114

SUPERVISION AND REGULATION OF ARTICLE XII INVESTMENT COMPANY HOLDING COMPANIES AND THEIR SUBSIDIARIES FOR PURPOSES OF THE EUROPEAN UNION FINANCIAL CONGLOMERATES DIRECTIVE

(Statutory Authority: Banking Law §§ 14[1], 14[1][k], Article XII)

§ 114.1 Purpose and Scope.

Article XV of the Banking Law authorizes the formation of investment companies and Article XII of the Banking Law sets forth the rights and obligations of such investment companies. The purpose of this Part is to clarify the Superintendent's examination, supervision, regulation, and enforcement authority over financial conglomerates for purposes of carrying out equivalent supervision under the European Union Financial Conglomerates Directive.

§ 114.2 Definitions.

For purposes of this Part:

"Banking Law" means the New York Banking Law.

"Banking organization" means all banks, trust companies, private bankers, savings banks, safe deposit companies, savings and loan associations, credit unions and investment companies organized under the Banking Law.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of an investment company, whether by means of the ownership of the voting stock or equity interests of such investment company or of one or more persons controlling such investment company, by means of a contractual arrangement or otherwise. Control shall be presumed to exist if any company, directly or indirectly, owns, controls or holds with the power to vote ten per centum or more of the voting stock or other equity interests of any investment company or of any company which owns, controls or holds with power to vote ten per centum or more of the voting stock or other equity interests of such investment company.

"Equivalent supervision" means a supervisory and regulatory regime meeting the standards required under the Financial Conglomerates Directive.

"Financial conglomerate" means a group meeting the definition of financial conglomerate under the Financial Conglomerates Directive and having an investment company within its structure.

"Financial Conglomerates Directive" means the European Union Financial Conglomerates Directive 2002/87/EC, as it may be amended from time to time.

"Investment company" means a banking organization organized pursuant to the Banking Law and subject to the provisions of Article XII of the Banking Law.

"Investment company holding company" means the top tier corporation or other entity that controls an investment company.

"Subsidiary" means a corporation or other entity at least 10 per centum of the voting stock or other equity interests of which is controlled directly or indirectly by an investment company holding company.

"Supervision Agreement" means an individual agreement entered into between a financial conglomerate and the Superintendent which provides for a detailed plan of supervision by the Superintendent over the financial conglomerate, including specific regulatory requirements applicable to the investment company holding company and its subsidiaries.

§ 114.3 *Examination, Supervision, Regulation, and Enforcement Authority of the Superintendent over Investment Company Holding Companies and their Subsidiaries for Purposes of the European Union Financial Conglomerates Directive.*

To assist the Banking Department in carrying out equivalent supervision of a financial conglomerate for purposes of carrying out the requirements of the Financial Conglomerates Directive, the Superintendent shall have examination, supervision, regulation, and enforcement authority over an investment company holding company and any of its subsidiaries to the same extent as he or she has examination, supervision, regulation, and enforcement authority over any banking organization under the Banking Law.

This authority includes, but is not limited to, the authority to:

(1) apply Banking Law Section 36 relating to examinations and confidentiality of information to an investment company holding company and its subsidiaries, as if such entities were banking organizations;

(2) issue orders to an investment company holding company and its subsidiaries as provided in Banking Law Section 39, as if such entities were banking organizations;

(3) impose monetary penalties for violation of law or regulation, as provided in Banking Law Section 44, as if such entities were banking organizations;

(4) impose capital requirements on an investment company holding company and its subsidiaries, as appropriate or required in the judgment of the Superintendent;

(5) prescribe requirements for the keeping of books and records by the investment company holding company and its subsidiaries;

(6) require filing by the investment company holding company and its subsidiaries with the Superintendent of periodic reports of condition, reports of income, risk profiles, large exposures and such other reports as may be required by the Superintendent;

(7) levy assessments on the investment company holding company and its subsidiaries, as provided in Banking Law Section 17, as if such entities were banking organizations;

(8) issue such general or specific rules or regulations as may be necessary to effectuate the examination, supervision, regulation, and enforcement authority over investment company holding companies and their subsidiaries for purposes of meeting the requirements of equivalent supervision under the Financial Conglomerates Directive.

§ 114.4 *Supervision Agreements with Financial Conglomerates.*

The Superintendent may enter into one or more Supervision Agreements with each financial conglomerate. Such Supervision Agreements will set forth the specific plan of supervision and detailed regulatory requirements applicable to an investment company holding company and its affiliates (e.g. capital requirements, reporting requirements, transactional limitations, etc.). The Superintendent may exercise enforcement authority under Banking Law Sections 39 and 44 for breaches or violations of such Supervision Agreements.

Such Supervision Agreements shall be in addition to, and shall not serve as a limitation on, the Superintendent's examination, supervision, regulation and enforcement authority provided under this Part over investment holding companies and their subsidiaries to the same extent as the Superintendent has examination, supervision, regulation, and enforcement authority over any banking organization under the Banking Law.

§ 114.5 *Limitations.*

The Superintendent's examination, supervision, regulation, and enforcement authority over investment company holding companies and their subsidiaries as provided in this Part is limited to those cases in which the Banking Department needs to provide equivalent supervision for a specific financial conglomerate under the Financial Conglomerates Directive.

The provisions of Banking Law Article XIII governing voluntary and involuntary liquidations of banking organizations shall not be applicable to investment company holding companies, although they are applicable to investment companies.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 16, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Sam L. Abram, Banking Department, One State St., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Section 14(1) of the Banking Law empowers the Banking Board to make, alter and amend rules and regulations not inconsistent with law. In addition, Section 14(1)(k) permits the Banking Board to prescribe the methods and standards to be used in examinations and valuations of assets of banking organizations. Article XII sets forth the powers as well as the duties and responsibilities of Article XII investment companies.

2. Legislative objective:

The rule promotes the legislative objective of maintaining the safety and soundness of banking organizations through effective examination and supervision. Banking Law Section 10 declares it to be the policy of New York that all banking organizations shall be supervised and regulated by the Banking Department in such manner as to ensure the safe and sound conduct of such business and to protect the public interest. Article XII sets forth the powers as well as the duties and responsibilities of Article XII companies. Such duties include recordkeeping and the provision of reports to the Superintendent. As banking organizations, Article XII companies are subject to examination by the Superintendent (B.L. Section 36) as well as to enforcement actions by the Superintendent (e.g., enforcement actions under B.L. 39; monetary penalties under B.L. 44).

The new rule clarifies the Superintendent's ability to carry out this supervision in those cases where equivalent supervision is required under the European Union Financial Conglomerates Directive (2002/87/EC) (the "Financial Conglomerates Directive" or "Directive") recently passed by the European Parliament.

3. Needs and benefits:

The purpose of the new rule is to clarify the Superintendent's examination, supervision, regulation and enforcement authority over Article XII investment companies (i.e., banking organizations formed pursuant to Article XII of the Banking Law) and their affiliates in situations where the Banking Department is responsible for providing "equivalent supervision" (as defined in the rule) for such banking organizations and their affiliates, under the Financial Conglomerates Directive.

The Directive will require supervisors in non-European countries to provide so-called "equivalent supervision" over a financial conglomerate to that which would be required in Europe. Under the Directive, groups or conglomerates that have activities in one or more financial business areas, including banking, insurance and securities, will be required to demonstrate that a financial regulator in their home country provides adequate supervision for the conglomerate on a consolidated basis.

The Banking Department currently has several conglomerates or financial groups with operations in Europe that will become subject to the supervision requirements of the Financial Conglomerates Directive in January 2005. These are large organizations which own Article XII banking corporations in New York and, as a result thereof, it is possible that the Banking Department would be required or requested to provide the required equivalent supervision for these organizations.

The ability of a U.S. supervisor fulfilling the role of equivalent supervisor to effectively examine and supervise a financial conglomerate must be clear. The requirements of the so-called "equivalent supervision" are broader than the supervision currently exercised by the Superintendent over Article XII investment companies owned by such entities, in that the Directive requires that the U.S. regulators effectively supervise the broader organization (i.e., from the parent level down) on a consolidated basis.

While this does not necessarily require that one supervisor functionally supervise and regulate each entity within a conglomerate, one supervisor will be relied upon to provide a coordinating role, and that supervisor must have a demonstrable ability to supervise, examine and regulate and take enforcement action against, if necessary, the organization as a whole. The Directive recognizes that many countries, including the U.S., regulate diverse financial conglomerates on a "functional" basis (i.e., insurance regulators regulate the insurance entities, securities regulators regulate the securities entities, etc.).

The Department has significant experience in providing consolidated supervision to large banking organizations, both in its role as supervisor of banks within a holding company structure and in its role as a consolidated supervisor for several Article XII companies owned by large financial institutions that have operations in Europe and abroad. The Department is also very accustomed to coordinating supervision among various regulators, including the banking, insurance and securities regulators in the U.S., as well as banking and other financial regulators in Europe and in other countries abroad.

The new rule is necessary to demonstrate and set forth unambiguously the Superintendent's powers and duties vis-à-vis the larger conglomerate organization in a situation where comprehensive equivalent supervision is required to be provided by the Superintendent. The regulation therefore

serves the purpose of making it clear to both the European Union regulators and to the conglomerate organization the authority of the Superintendent in this regard. Specifically, the regulation makes explicit that the parent company of an Article XII organization within a financial conglomerate is an Article XII holding company and that, to carry out the required equivalent supervision, the Superintendent has the authority to exercise examination, supervision, regulation and enforcement authority over the Article XII holding company and any of its subsidiaries in the same manner as over any banking organization. In this way, the Superintendent can exercise the supervisory tools necessary to provide effective consolidated supervision. The regulation makes clear that this authority to supervise and regulate the Article XII holding company and its subsidiaries in the same manner as a banking organization only is necessary and therefore only will be employed when the Superintendent is required to provide equivalent supervision under the Financial Conglomerates Directive. Thus, the applicability of the rule is limited to such situations involving these financial conglomerates.

The Superintendent's authority to examine and exercise certain control over affiliates (*e.g.*, parent, sister companies) of any banking organization is already quite broad (see *e.g.*, Banking Law Section 36). However, in order for a U.S. supervisor to be deemed capable of equivalent supervision, the authority to both regulate and take enforcement action against the affiliates of a banking organization must be apparent. The new rule provides that clarification. The financial conglomerate organizations themselves favor such clarification since they wish to demonstrate that their home country supervisors can provide the required equivalent supervision.

If the European Union determines that the supervision in the organization's home country is not "equivalent" to that provided to an entity headquartered in the European Economic Community, the organization will be forced to restructure its European operations so that equivalent supervision may be provided by a European regulator from a top tier entity located in Europe. For most U.S. organizations, this is a highly undesirable result that would involve costly restructuring in Europe and added layers of regulatory oversight.

Accordingly, the new rule demonstrating the Superintendent's authority and ability to carry out supervision in a manner deemed acceptable under the Directive serves the public need for U.S. financial conglomerate organizations to demonstrate consolidated supervision by a home country regulator.

4. Costs:

No significant new costs are imposed as a result of this rule. Banking organizations are already subject to monitoring and reporting requirements. This reporting would now be required at a consolidated level within the organization, which in many cases, is already being done. Any additional reporting or compliance requirements are a direct result of European Union Financial Conglomerates Directive itself. As noted in Section 3, "Needs and Benefits" above, U.S. organizations that are deemed to be financial conglomerates are in favor of the Superintendent's regulatory authority since, without such clarification, heavy costs of restructuring operations or duplicative regulation might be required to satisfy the European Union Directive.

5. Local government mandates:

The regulation imposes no burdens on local governments.

6. Paperwork:

Banking organizations, including Article XII companies, are currently subject to monitoring and reporting requirements. These requirements will continue and may need to be supplemented by reporting at the consolidated organizational level, which, in many cases is already done. Any such additional paperwork requirements, however, are a direct result, not of the new rule, but of new requirements imposed on the organizations under the European Union Directive which imposes new requirements on these organizations as a result of their European operations. These organizations favor reporting to a U.S. supervisor as a less costly alternative to direct reporting to European supervisors.

7. Duplication:

None. Various other U.S. supervisors, such as the Federal Reserve, the U.S. Securities and Exchange Commission, the Office of the Comptroller of the Currency and the Office of Thrift Supervision may be required to provide equivalent supervision to institutions under their jurisdiction that have European operations. However, supervision by federal regulators and the Banking Department would not be conflicting or duplicative, as an organization would only have one designated "equivalent supervisor" for purposes of the European Union Directive.

8. Alternatives:

a. Rely on Existing Authority

Consideration was given to relying on the Superintendent's existing authority to examine banking organizations and their affiliates, including the authority of the Superintendent to enter into quasi-contractual Supervision Agreements with an organization, such as a financial conglomerate. Although it was thought that it might be possible to demonstrate to the European Union that the Superintendent could carry out equivalent supervision based on existing authority, it was ultimately determined, in part based upon outreach to the European Commission ("Commission") and one organization that will be required to have consolidated equivalent supervision (see Section 11, "Outreach" below), that a regulation was necessary to clarify the extent of the Superintendent's examination, supervision, regulation and enforcement authority.

Banking Law Section 36 clearly grants the Superintendent the authority to examine banking organizations (which includes Article XII investment companies) as well as affiliates of banking organizations when necessary to determine the financial condition of a banking organization. The Superintendent can also issue enforcement orders against banking organizations under B.L. Section 39, and it is possible that certain activities of affiliates (*e.g.*, ordering cease and desist, etc.) might be reachable through such orders. However, based on discussions with the Commission and European supervisors, it was clear to Department staff that the Commission, in order to make a determination that a supervisor could effectively provide equivalent supervision, strongly preferred, and would likely require, demonstrable express statutory or regulatory authority of the supervisor to carry out examination, supervision, regulation and enforcement over the conglomerate.

In the absence of the proposed rule, the Superintendent's authority to supervise the conglomerate in the manner required would be less clear. While the Superintendent has clear examination authority over affiliates when necessary to determine the financial condition of a banking organization, it is not clear that the Superintendent's authority to issue regulations applicable to, or enforcement orders or monetary penalties against, the financial conglomerate, extends to the banking organization's affiliates or parent company directly. The European Union as well as the financial conglomerate organizations for which the Banking Department may serve as equivalent supervisor both desire clarification to this effect. The proposed rule therefore would clarify that, for those organizations for which the Department is equivalent supervisor, the Superintendent's examination, supervision, regulation and enforcement authority extends to the Article XII company's top tier parent organization and other affiliates to the same extent as to any other banking organization.

A second approach utilizing the Department's existing authority would be to rely on the Superintendent's authority to enter into formal "Supervision Agreements" which set forth the Superintendent's plan of supervision, as well as the Superintendent's authority over the organization, and the organization's responsibilities as a supervised entity. Such agreements have been used in the past where consolidated supervision is required, and the uniqueness of each organization requires a tailored agreement. In fact, the new rule still calls for the use of such agreements with individualized supervision plans as part of the equivalent supervision framework. While in the past such comprehensive Supervision Agreements alone would be sufficient to demonstrate to European regulators that the U.S. regulator has a comprehensive plan of supervision for the organization, the new European Directive appears to require a firm statutory or regulatory expression of a U.S. supervisor's authority.

b. Promulgate a Regulation to Further Define Superintendent's Examination Authority Under Banking Law Section 36.

Another alternative that was considered was to adopt a general regulation of the Banking Board which would further define the scope of the Superintendent's examination authority under Banking Law Section 36. Such a regulation would also have been limited in nature and would have sought to define what is meant by "examination" of a banking organization in a situation where the banking organization is part of a group or conglomerate that requires equivalent supervision in the U.S. under the European Union Financial Conglomerates Directive.

This alternative was rejected by Department staff as less clear and less effective than the approach decided upon. For example, to accomplish the required end, the regulation would have needed to very broadly define the term "examination" to encompass the ability of the Superintendent to issue regulations and enforcement actions against both the banking organization and its affiliates.

Rather than demonstrate the Superintendent's authority as based solely on the examination authority described in B.L. Section 36, Department staff believes it is more appropriate to demonstrate the Superintendent's

authority as arising out of her overall ability to supervise and regulate Article XII banking organizations and their affiliates.

The new rule is therefore a general Banking Board regulation based on Banking Law Section 14(1), 14(1)(k) and Article XII defining the Superintendent's specific expanded supervisory powers over the entities in a conglomerate whose top tier company is defined as an Article XII holding company in those cases in which the Banking Department needs to provide equivalent supervision as required under the Financial Conglomerates Directive.

9. Federal standards:

Not applicable. As noted above, various federal financial supervisors may also demonstrate their authority to provide consolidated equivalent supervision, but there are no specific standards which can be compared to those the Banking Department would apply to organizations under its supervision. While the supervisory regimes would likely be similar in order to accommodate the requirements of the European Union Directive, the specific requirements applicable to any given organization are individualized and part of a unique supervision plan.

10. Compliance schedule:

Not applicable. Organizations under the Department's supervision do not need to take affirmative steps to comply with the rule. Based upon the decision of European regulators whether the Banking Department will be required to provide equivalent supervision, the rule will either be applicable to such organizations or it will not. An individualized Supervision Agreement will then be worked out between the Banking Department and the organization, in consultation with European regulators.

11. Outreach:

In March 2004, a delegation of the Banking Department traveled to Brussels, Belgium and London, England to meet with staff of the Commission and the U.K.'s Financial Services Authority ("FSA"), respectively. The Commission is responsible for providing guidance to the various European financial supervisors on the supervisory regimes in other countries, including the U.S. Therefore, this body (including its technical committees) has the responsibility and the authority to determine whether the supervisory regimes in other countries are sufficiently "equivalent" to European regimes as required by the Directive. The Commission is therefore analyzing other supervisors' laws and regulations and practical approaches to supervision.

The FSA is one of the European financial supervisors with a major role in carrying out the Directive, particularly with respect to several of the U.S.-based financial conglomerates. This is because significant decision-making about which U.S. supervisor is best qualified to provide equivalent supervision to a particular organization rests with the European financial supervisor where the majority of the conglomerate organization's operations reside.

The Banking Department delegation explained to both the Commission and the FSA how the Banking Department conducts supervision of banking organizations, the authority of the Superintendent, and the legal and regulatory framework for supervision. The FSA has worked extensively with the Department over the years and was already quite familiar with the Department as a supervisor. In addition, in March, the delegation shared with both these entities a draft of the new rule and explained how it would clarify the Superintendent's authority over conglomerates for purposes of the Financial Conglomerates Directive. The Commission staff indicated that it would provide comments as this body has the primary responsibility for evaluating equivalence. In May 2004, the Commission staff commented favorably on the proposed rule and indicated its belief that the rule would be found sufficient for the purposes of the Directive. The staff suggested only a few minor wording changes to more closely conform certain terminology to that of the Directive.

The draft regulation was also shared with one of the organizations under the Department's supervision that will require equivalent supervision and for which it is most likely that the Department might be required to be the supervisor to provide such supervision.

The organization in general found the draft rule to be helpful and acceptable in form. After consideration of the organization's comments the Department determined to adopt the rule on an emergency basis in its present form.

The organization also questioned whether the language in the rule stating that the Superintendent has authority over an Article XII holding company and its subsidiaries "to the same extent" as over banking organizations implied that all such affiliates of an Article XII must therefore be regulated as if they were banking organizations. The Banking Department advised that is that this is clearly not the intent of the rule or of the European Union Directive. Rather, this language reflects the Department's

understanding that the European Commission wishes to see the equivalent authority available to the Superintendent for the supervision of the conglomerate as it would have over banking organizations.

The organization also had some inquiries about the technical terminology employed in the rule vis-à-vis the European Union Directive. These questions were cleared up to the organization's satisfaction based upon further discussions between the Department and the Commission staff to clarify this terminology.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not submitted because the proposed rule will not impose any adverse economic impact, or reporting, or record-keeping or other compliance requirements on small businesses or local governments. The proposed rule relates to supervision of the parents and affiliates of Article XII investment companies having financial business operations within the European Union. These entities are large financial conglomerates, which do not qualify as small businesses in New York State and are not local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted because the rule does not result in any hardship to a rural area based on the character and nature of a rural area. The rule relates to supervision of large financial conglomerates. It is apparent from the nature and purpose of the rule that it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A Job Impact Statement is not submitted because the proposed rule has no effect on the creation or elimination of jobs. The rule clarifies the Superintendent's examination, supervision, regulation and enforcement authority over Article XII companies and their affiliates in situations where the Banking Department needs to provide equivalent supervision for purposes of the European Union Financial Conglomerates Directive. Accordingly, it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

**EMERGENCY
RULE MAKING**

High Cost Home Loans

I.D. No. BNK-23-05-00004-E

Filing No. 563

Filing date: May 19, 2005

Effective date: May 23, 2005

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 3 NYCRR.

Statutory authority: Banking Law, sections 6-i and 6-l

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

Specific reasons underlying the finding of necessity: Chapter 626 of the Laws of 2002 became effective on April 1, 2003. Provisions of chapter 626, by the enactment of section 6-l of the Banking Law, affect the making of certain home mortgage loans, known as high cost home loans, on after the effective date. Part 41 of Title 3 NYCRR has governed the making of such loans prior to the effective date and is not in conformity with certain provisions of the chapter 626. Also, in certain limited instances, the proposed amendments to Part 41 will clarify certain provisions enacted by chapter 626. The revised Part 41 provides a comprehensive regulatory scheme under which mortgage lenders and brokers will be able to make high cost home loans.

Subject: The making of certain residential mortgage loans, referred to as high cost home loans.

Purpose: To conform the provisions of Part 41 of Title 3 NYCRR to various provisions of section 6-l of the Banking Law, and also clarify certain provisions of such section 6-l.

Substance of emergency rule: Summary of proposed amendments to Part 41:

Section 41.1(a) is amended to revise the definition of a lender subject to Part 41.

Section 41.1(b) is amended to revise the definition of an affiliate.

Section 41.1(c) is amended to make technical revisions.

Section 41.1(d) is amended to revise the definition of a bona fide loan discount point.

Section 41.1(e) is amended to revise the definition of a high cost home loan in regard to the points and fees threshold for determining such loans and limiting the exclusion of certain discount points in the computation of points and fees.

Section 41.1(f) is amended to revise the definition of loan amount.

Section 41.1(g) is amended to substitute a definition of "borrower" for "obligor".

Section 41.1(h) is amended to revise the definition of points and fees.

Section 41.1(j) is amended to make certain technical revisions.

Section 41.2(a) is amended to clarify the exceptions to the prohibition upon accelerating the indebtedness of high cost home loans.

Section 41.2(b) is amended to increase the term of a balloon mortgage payment to fifteen years.

Section 41.2(e) is amended to make certain technical revisions.

Section 41.2(g), relating to modification and deferral fees, is repealed and then added as a new paragraph 2 to section 41.3(d), relating to refinancing of high cost home loans.

Section 41.3(a) is amended by adding a new disclosure requirement and revising the time limits pertaining to an existing disclosure requirement.

Section 41.3(b) is amended to revise requirements relating to the residual income guidelines and the presumption of affordability; to add certain conditions in order to determine that repayment ability has been "corroborated by independent verification"; and to substitute "borrower(s)" for "obligor(s)" where the term appears in the text.

Section 41.3(c) is amended to revise the percentage of points and fees that may be financed in making a high cost home loan, and to revise the charges that may be excluded from such financed points and fees.

Section 41.3(d) is re-titled and amended to revise the limitations upon points and fees that may be charged by any lender when refinancing high cost home loans and to add a previously repealed paragraph (see revisions to section 41.2(g)) relating to modification of an existing high cost home loan.

Section 41.3(f) is added to prohibit the refinancing of special mortgages, except under certain conditions.

Section 41.3(g) is amended to delete a reference to median family income and to revise certain references.

Section 41.4(a) is amended to revise certain time limits applicable to a disclosure requirement.

Section 41.4(b) is amended to make a technical revision.

Section 41.4(d) is amended to revise certain time limits applicable to a disclosure requirement and to clarify the location of the disclosure upon certain mortgage loan application forms.

Section 41.5(a) is amended to clarify deceptive acts relating to splitting or dividing loan transactions.

Section 41.5(b)(2) is amended to clarify retention of fees by lenders and brokers in relation to unfair, deceptive or unconscionable practices.

Section 41.5(b)(4) is amended to revise the definition of loan flipping, as an unfair or deceptive practice, and to add revised conditions to determine whether a loan has a "net tangible benefit" to the borrower.

Section 41.5(b)(5) is amended to revise the definition of packing to make it consistent with other revisions to Part 41 and to revise certain time limits applicable to a disclosure requirement.

Section 41.5(b)(6) is amended to clarify the standards to determine that recommending or encouraging default of a home loan or other debt is an unfair or deceptive practice.

Section 41.7 is amended to revise the legend that appears on a high cost home loan mortgage.

Section 41.8 is amended to delete VA and FHA mortgage loans from the definition of exempt products.

Section 41.9 is amended to repeal the current provisions relating to correction of errors and to add new provisions.

Section 41.11, relating to prohibiting the financing of single premium insurance, is re-titled and amended to include other insurance premiums or payments for any cancellation or suspension contract or agreement.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 16, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Sam L. Abram, Secretary of the Banking Board, Banking Department, One State St., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Banking Law section 14(1) authorizes the Banking Board to adopt regulations not inconsistent with the law. Section 6-i of the Banking Law specifically states that no banking organization, partnership, corporation exempt organization, or other entity (hereafter "lenders") can make a mortgage loan in New York State unless those entities conform to Banking Law requirements pertaining to mortgage bankers (Article 12-D of the Banking Law) and rules and regulations promulgated by the Banking Board. Section 6-l of the Banking Law imposes new requirements upon the making of certain mortgage loans. Part 41 of the rules and regulations of the Banking Board was adopted pursuant to section 6-i of the Banking Law, and prior to approval of chapter 626 of the laws of 2002, which enacted section 6-l. Provisions of section 6-l, which are inconsistent with certain provisions of Part 41, supercede such regulatory provisions, and the Banking Board, in promulgating the amendments to Part 41, makes Part 41 consistent with section 6-l.

2. Legislative objectives:

Part 41 is intended to provide consumer protections by establishing important consumer disclosure requirements and prohibiting contractual terms and practices that are unfair in the making of residential mortgage loans that are offered on a high-cost basis. Section 6-l is intended to have the same objectives. Since Part 41 provides the broad regulatory scheme under which high cost mortgage loans are made, it is necessary that its provisions be in conformity with section 6-l and also, in limited instances, clarify certain provisions of such section in order that lenders and brokers appropriately make high cost loans in conformity with the intended legislative objectives.

3. Needs and benefits:

Part 41 was intended to regulate the making of residential mortgage loans within a certain segment of the mortgage loan market, referred to as the sub-prime, or non-conventional, mortgage loan market. The regulatory scheme defined by Part 41, by requiring certain disclosures and practices to be followed in the making of such loans, sought to prevent occurrences of predatory lending. Predatory lending occurs when the borrower or debtor does not have sufficient income or other financial resources to pay the monthly principal and interest payments or when equity in a residential property is stripped by repeated re-financings, primarily by the charging of excessive points and fees, when the borrower realizes no economic benefit.

Since the Legislature established a number of different standards regarding disclosures and practices in the making of such residential mortgage loans by enactment of section 6-l of the Banking Law, it is necessary that the comparative standards in Part 41 be made consistent with section 6-l.

Further, it is also necessary that certain provisions of section 6-l be clarified by the amendments to Part 41 in order that lenders and brokers may be in compliance with the requirements section 6-l when making such loans, given that such provisions are not otherwise defined by section 6-l nor has the Legislature provided any other guidance which would clarify the intended meaning of those provisions. The clarifying provisions of the amendments to Part 41 address determining "corroboration by independent verification" of a borrower's repayment ability and "net tangible benefit" to a borrower, both of which are critical standards in assessing whether instances of predatory lending have occurred.

4. Costs:

The amendments to Part 41 should impose no additional cost upon mortgage lenders or brokers not otherwise imposed by the enactment of the comparative provisions of section 6-l of the Banking law to which the amendments conform Part 41. The amendments impose no additional cost upon the Banking Department or any other state agency, or any unit of local government.

5. Local government mandates:

The amendments to Part 41 do not impose any requirements or burdens upon any units of local government.

6. Paperwork:

The amendments to Part 41 do not impose any new paperwork requirements.

7. Duplication:

None.

8. Alternatives:

The Banking Department considered whether to forego amending Part 41 or to repeal Part 41 in light of the enactment of section 6-l of the Banking Law, given that section 6-l may be viewed legally as occupying the field of regulation of high cost home loans in the state of New York. It was determined that Part 41 provides a more extensive regulatory scheme than section 6-l for the making of such mortgage loans, and therefore it is appropriate to make the non-conforming provisions of Part 41 consistent

with the comparative statutory provisions of section 6-1. In addition, the provisions of section 6-1 that are clarified by the amendments will eliminate uncertainty among mortgage lenders and brokers in the making of such loans by articulating appropriate conditions, which such lenders and brokers must meet in order to be in compliance with certain non-defined statutory standards established by section 6-1.

9. Federal standards:

In the initial promulgation of Part 41, the Banking Department stated the regulations established thresholds that were lower than the thresholds set by the Home Ownership Equity Protection Act (HOEPA). Subsequently, federal regulators modified the annual percentage rate threshold for first mortgages under HOEPA by making it identical to the corresponding threshold in Part 41. Section 6-1 of the Banking Law establishes modified points and fees thresholds in certain instances that are more lenient for brokers and lenders than the comparable threshold in HOEPA. The definition of points and fees, in part, established by section 6-1 refers to certain—but not all—provisions of HOEPA that define points and fees. The amendments would adopt the thresholds and definition established by section 6-1.

10. Compliance schedule:

None. Any modification of existing disclosures or practices by lenders or brokers in regard to any cost home loans made on or after April 1, 2003 are the result of standards established by section 6-1 of the Banking Law. Chapter 626, which enacted section 6-1, was approved on October 3, 2002, and brokers and lenders have had sufficient time to familiarize themselves with these standards and subsequently modify their disclosures and practices, if necessary, to comply with the standards of section 6-1. The revise provisions of Part 41 will assist brokers and lenders in complying with the section 6-1 requirements.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Business and Local Government is not submitted, based on the Department's conclusion that the amendments to Part 41 will not impose any adverse economic or technological impact upon small business beyond any such effects that may be caused by the requirements established by section 6-1 of the Banking Law, applicable to the making of high cost home loans, to which the amendments conform Part 41. The amendments will not impose any adverse economic or technological impact upon local governments. The proposed amendments will impose no adverse reporting, record keeping or compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for Small Business and Local Government is not submitted, based on the Department's conclusion that the amendments to Part 41 will not impose any adverse economic impact upon private entities in rural areas beyond any such effects that may be caused by the requirements established by section 6-1 of the Banking Law, applicable to the making of high cost home loans, to which the amendments conform Part 41. The amendments will not impose any adverse economic impact upon public entities in rural areas. The proposed amendments will impose no adverse reporting, record keeping or compliance requirements private on public entities in rural areas.

Job Impact Statement

A Job Impact Statement is not attached because the proposed amendments to Part 41 will not have any appreciable and/or substantial adverse impact on jobs and employment opportunities beyond any such effects that may be caused by the requirements established by section 6-1 of the Banking Law, applicable to the making of high cost home loans, to which the amendments conform Part 41.

Division of Criminal Justice Services

NOTICE OF ADOPTION

Laboratory Accreditation

I.D. No. CJS-10-05-00001-A

Filing No. 564

Filing date: May 20, 2005

Effective date: June 8, 2005

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

Action taken: Amendment of section 6190.5(b) of Title 9 NYCRR.

Statutory authority: Executive Law, sections 837(13) and 995-b(1)

Subject: Laboratory accreditation.

Purpose: To clarify that only laboratories accredited under the ASCLD/LAB-Legacy Program must undergo an interim audit during the third year of the five-year accreditation period.

Text or summary was published in the notice of proposed rule making, I.D. No. CJS-10-05-00001-P, Issue of March 9, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Mark Bonacquist, Division of Criminal Justice Services, Four Tower Place, Albany, NY 12203, (518) 457-8420

Assessment of Public Comment

The agency received no public comment.

Education Department

EMERGENCY RULE MAKING

Homeless Children

I.D. No. EDU-05-05-00013-E

Filing No. 573

Filing date: May 24, 2005

Effective date: May 24, 2005

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

Action taken: Amendment of Parts 275 and 276 and section 100.2(x) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2), 310 (not subdivided), 311 (not subdivided), 3202(1) and (8), 3209(7), and 3713(1) and (2)

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to conform the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The State is required to comply with the requirements of the McKinney-Vento Act and the NCLB as a condition to its receipt of Federal funds. The proposed amendment modifies the procedures for appeals to the Commissioner of Education pursuant to Education Law section 310, that concern a homeless child's or youth's access to a free, appropriate public education pursuant to 8 NYCRR section 100.2(x).

The proposed amendment was adopted at the January 10-11, 2005 Regents meeting, as an emergency measure effective January 18, 2005, to conform the Commissioner's Regulations regarding the procedures for appeals involving homeless children that are brought pursuant to Educa-

tion Law section 310 to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110], and thereby ensure the rights of homeless individuals consistent with Federal statutes and ensure compliance with requirements for receipt of Federal funds. A Notice of Emergency Adoption and Proposed Rule Making was published in the *State Register* on February 2, 2005.

The proposed amendment was readopted as a second emergency measure, effective April 12, 2005, to ensure that the emergency rule adopted at the January Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

The proposed amendment has now been substantially revised in response to public comment. The revised rule corrects an inadvertent omission in section 276.5(b) by providing for alternative service of affidavits, exhibits and other supporting materials in accordance with section 275.8(e), in addition to section 275.8(b) and section 275.13(b). The revised rule also requires, in section 100.2(x)(7)(ii)(b), that the written explanation of a school district's determination to decline to enroll and/or transport a homeless child or youth to the school of origin or a school requested by the parent or guardian shall also include the name, post office address and telephone number of the local educational liaison and the form petition for commencing an appeal to the Commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation. This will ensure that parents and guardians will be able to contact the local educational liaison for assistance in appealing a school district's final determination. In addition, the revised rule also requires, in section 100.2(x)(7)(iii)(b), that each school district shall ensure that the local educational agency liaison provides an unaccompanied youth with the form petition for commencing an appeal to the Commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation. This will ensure that unaccompanied youths will be able to obtain the assistance of the local educational liaison in appealing a school district's final determination. The revisions are necessary to ensure the rights of homeless individuals consistent with Federal statutes and ensure compliance with requirements for receipt of Federal funds.

The revised rule cannot be permanently adopted until expiration of the 30-day public comment period mandated by State Administrative Procedure Act (SAPA) section 202(4-a) and cannot be made effective until notice of its permanent adoption is published in the *State Register*.

It is anticipated that the revised rule will be presented to the Board of Regents for adoption as a permanent rule, with an effective date of July 14, 2005, at their June 20-21, 2005 meeting, which is the first scheduled meeting after expiration of the 30-day public comment period mandated by SAPA. A third emergency adoption is necessary to immediately adopt the revisions made in response to public comment and to otherwise ensure that the rule remains continuously in effect until the effective date of its adoption as a permanent rule, and thereby ensure the rights of homeless individuals consistent with Federal statutes and ensure compliance with requirements for receipt of Federal funds.

Subject: Education Law, section 310 appeals involving homeless children.

Purpose: To modify the procedures concerning appeals involving homeless children that are brought pursuant to Education Law, section 310, to conform the commissioner's regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110].

Substance of emergency rule: The State Education Department proposes to amend Parts 275 and 276 and section 100.2(x) of the Regulations of the Commissioner of Education, effective May 24, 2005, regarding procedures for appeals to the Commissioner of Education pursuant to Education Law section 310, that concern a homeless child's or youth's access to a free, appropriate public education pursuant to 8 NYCRR section 100.2(x). The proposed rule was published in the *State Register* on February 2, 2005 and has been revised in response to public comment. The following is a summary of the substantive provisions of the revised proposed rule.

Section 275.3 is amended to provide that if the petitioner is a parent or guardian of a homeless child or youth or unaccompanied youth as defined in 8 NYCRR section 100.2(x) and if such petitioner submits a form petition prescribed by the commissioner, the pleadings shall be legible but shall not be required to be submitted in typewritten form.

Section 275.4 is amended to provide that if the petitioner is the parent or guardian of a homeless child or youth or unaccompanied youth, the petitioner may, in lieu of endorsing the pleadings with petitioner's name,

post office address and telephone number, endorse all pleadings and appeal papers with the name, post office address and telephone number of the local educational liaison for homeless children and youth.

Section 275.5 is amended to provide that the parent or guardian of a homeless child or youth or unaccompanied youth, in lieu of verifying the pleadings, may include a signed statement in the pleading indicating that based on information and belief the information contained in the pleading is true to the best of his/her knowledge and an acknowledgment that to knowingly offer a false instrument for filing is a violation of Offering a False Instrument for Filing in the 2nd Degree, a Class A Misdemeanor, pursuant to Penal Law section 175.30.

Section 275.7 is amended to provide that, in lieu of an affidavit, a parent or guardian of a homeless child or youth may provide a signed statement that the information contained in the pleading is true to the best of his/her knowledge and an acknowledgment that to knowingly offer a false instrument for filing is a violation of Penal Law section 175.10.

Section 275.8 is amended to establish criteria for the alternative service of pleadings in appeals regarding the education of a homeless child or youth, including provisions for service upon the local educational agency liaison for homeless children and youth on behalf of a school district, officer and/or employee named as a party.

Section 275.9 is amended to establish filing criteria for appeals regarding the education of homeless children or youth, and to specify that no fee shall be required in appeals regarding a homeless child's or youth's access to a free, appropriate public education pursuant to 8 NYCRR section 100.2(x).

Section 275.13 is amended to establish alternative criteria for the service of the answer and supporting papers in an appeal regarding the education of a homeless child or youth.

Section 275.14 is amended to establish criteria for the service of a reply in an appeal regarding a homeless child's or youth's access to a free, appropriate public education pursuant to 8 NYCRR section 100.2(x), including a provision that the reply shall be served in the manner set forth in section 275.8(b) or (e).

Section 276.3 is amended to provide that the petitioner in an appeal regarding the education of a homeless child or youth may elect to provide notice of an application for an extension of time to reply to an answer by delivering a written application, postmarked not later than five days prior to the date on which the time to reply will expire, to the local educational agency liaison for homeless children and youth, who shall mail the application to all parties and the State Education Department's Office of Counsel.

Section 276.4 is amended to establish alternative criteria for the service of petitioner's memorandum of law.

Section 276.5 is amended to establish alternative criteria for the service of additional affidavits, exhibits and other supporting papers. Section 276.5(b) has been revised to provide for alternative service of affidavits, exhibits and other supporting materials in accordance with section 275.8(e), in addition to section 275.8(b) and section 275.13(b).

Section 276.7 is amended to provide that a copy of the Commissioner's decision shall also be forwarded to the local educational liaison for homeless children or youth in an appeal regarding a homeless child's or youth's access to a free, appropriate public education pursuant to 8 NYCRR section 100.2(x).

Section 276.8 is amended to establish criteria for the service of an application to reopen a prior Commissioner's decision in an appeal regarding a homeless child's or youth's access to a free, appropriate public education pursuant to 8 NYCRR section 100.2(x).

Section 100.2(x)(7)(iv) is relettered (ii) and a new clause (c) is added to require school districts, as part of the dispute resolution process for homeless children and youth, to delay for thirty days the implementation of a final determination to decline to either enroll in and/or transport a homeless child or youth or unaccompanied youth to the school of origin or a school requested by the parent or guardian or unaccompanied youth; provided that if the parent or guardian commences an appeal to the Commissioner pursuant to Education Law section 310 with a stay application within thirty days of the final determination, the child or youth shall be permitted to continue attending the school he or she is enrolled in at the time of the appeal until the Commissioner renders a decision on the stay application. Section 100.2(x)(7)(ii)(b), as relettered, has been revised to require that the written explanation of a school district's determination to decline to enroll and/or transport a homeless child or youth to the school of origin or a school requested by the parent or guardian shall also include the name, post office address and telephone number of the local educational liaison and the form petition for commencing an appeal to the Commis-

sioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation.

Section 100.2(x)(7)(v) is relettered (iii) and clause (c) is added to prescribe the duties of the local educational agency liaison to assist the parent or guardian of a homeless child or youth in commencing an appeal of a final determination regarding enrollment, school selection and/or transportation, including: providing a form petition; assisting in the completion of the form petition; arranging for copying of the form petition, without cost; accepting service of the form petition; providing a signed and dated acknowledgment verifying receipt of the form petition; and transmitting the form petition and other pleadings to the State Education Department's Office of Counsel; accepting service of subsequent pleadings or papers, including any appeal correspondence, if the parent or guardian so elects. The school district shall ensure that the local educational agency liaison maintains a record of all appeals of enrollment, school selection and transportation determinations. Section 100.2(x)(7)(iii)(b), as relettered, has been revised to require that each school district shall ensure that the local educational agency liaison provides an unaccompanied youth with the form petition for commencing an appeal to the Commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. EDU-05-05-00013-EP, Issue of February 2, 2005. The emergency rule will expire July 22, 2005.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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 authorizes the Regents and Commissioner to adopt rules and regulations implementing State law regarding education.

Education Law section 215 provides the Commissioner with authority to require schools to submit reports containing such information as the Commissioner may prescribe.

Education Law section 305(1) designates the Commissioner as chief executive officer of the State system of education and the Regents, and authorizes the Commissioner to enforce laws relating to the educational system and to execute the Regents' educational policies. Section 305(2) authorizes the Commissioner to have general supervision over schools subject to the Education Law.

Education Law section 310 provides that an aggrieved party may appeal by petition to the Commissioner of Education in consequence of certain specified actions by school districts and school officials.

Education Law section 311 authorizes the Commissioner to regulate the practice of appeals to the Commissioner brought pursuant to Education Law section 310.

Education Law section 3202(1) specifies the school district of residence as the school district in which children residing in New York State are entitled to attend school without the payment of tuition. That section is intended to assure that each child residing within the State is able to attend school on a tuition-free basis in accordance with Article XI, section 1 of the New York State Constitution. Moreover, it is the policy of the Legislature, as expressed in Education Law section 3205(1) to require instruction for each child of compulsory school age within the State.

Education law section 3202(8) establishes the right of homeless children whose families are placed in temporary housing by a local social services district or runaway and homeless youth housed in a residential program for runaway and homeless youth to designate either the school district of last attendance or the school district of current location as the school district such children or youth will attend. Paragraph (a) of subdivision (8) specifically authorizes and requires the Commissioner to adopt regulations defining the terms "homeless child," "runaway youth," and "school district of last attendance" for the purposes of the statute, and otherwise implementing the provisions of the statute.

Education Law section 3209 sets forth requirements for the education of homeless children. Subdivision (7) of section 3209 authorizes the Com-

missioner to promulgate regulations to carry out the provisions of the statute.

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes to regulate the practice and procedures to be followed in Education Law section appeals, and is necessary to ensure State compliance with the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. Law 107-110]. The proposed amendment modifies the procedures concerning appeals involving homeless children that are brought pursuant to Education Law section 310.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The State is required to comply with the requirements of the McKinney-Vento Act and the NCLB as a condition to its receipt of Federal funds. The proposed amendment modifies the procedures concerning appeals involving homeless children that are brought pursuant to Education Law section 310 to ensure the rights of homeless individuals consistent with Federal statutes.

4. COSTS:

Cost to the State: None.

Costs to local government: None.

Cost to private regulated parties: None.

Cost to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment is necessary to conform the Commissioner's Regulations to the requirements of the McKinney-Vento Act, as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The State and local governments are required to comply with the Federal statutes as a condition to its receipt of Federal funding. The proposed amendment will not impose any costs on the State or local governments beyond those imposed by State and Federal statutes. The proposed amendment applies to school districts and does not impose any costs or compliance requirements on private parties.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to conform the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110].

The proposed amendment will not impose any additional program, service, duty or responsibility beyond those imposed by State and Federal statutes. The proposed amendment modifies existing procedures in certain appeals brought pursuant to Education Law section 310 that involve the education of homeless children, to ensure the rights of homeless individuals consistent with Federal statutes. The State and school districts are required to comply with these Federal statutes as a condition to their receipt of Federal funding.

School districts must delay for thirty (30) days the implementation of a final determination to decline to either enroll in and/or transport the homeless child or youth or unaccompanied youth to the school or origin or a school requested by the parent or guardian or unaccompanied youth; provided that if the parent or guardian of a homeless child or youth or unaccompanied youth commences an appeal to the Commissioner pursuant to Education Law section 310 with a stay application within thirty (30) days of such final determination, the homeless child or youth or unaccompanied youth shall be permitted to continue attending the school he or she is enrolled in at the time of the appeal until the Commissioner renders a decision on the stay application.

School districts shall inform school personnel, service providers and advocates working with homeless families of the duties of the local educational agency liaison.

The proposed amendment also requires the local educational agency liaison to assist the homeless child's or youth's parent or guardian or the unaccompanied youth in commencing an appeal to the Commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation.

School districts shall ensure that the local educational agency liaison provides an unaccompanied youth with the form petition for commencing an appeal to the Commissioner pursuant to Education Law section 310 of a

final determination regarding enrollment, school selection and/or transportation.

6. PAPERWORK:

The proposed amendment imposes no additional reporting, forms or other paperwork requirements. The proposed amendment modifies existing procedures in certain appeals brought pursuant to Education Law section 310, that involve the education of homeless children, to ensure the rights of homeless individuals consistent with the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110].

The written explanation of a school district's determination to decline to enroll and/or transport a homeless child or youth to the school of origin or a school requested by the parent or guardian shall also include the name, post office address and telephone number of the local educational liaison and the form petition for commencing an appeal to the Commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation.

The proposed amendment also requires the local educational agency liaison to assist the homeless child's or youth's parent or guardian or the unaccompanied youth in commencing an appeal to the Commissioner of a final determination regarding enrollment, school selection and/or transportation including providing and assisting in the completion of a form petition; arranging for the copying of the form petition and supporting documents; accepting service of the form petition and supporting papers on behalf any school district employee or officer named as a party or the school district if it is named as a party or arranging for service by mail; providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgment verifying that the local educational agency liaison has received the form petition and supporting documents; transmitting the form petition or any pleading or paper to the State Education Department; providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgement verifying that the local educational agency liaison has received the form petition and supporting documents and will transmit these documents to the Office of Counsel; and accepting service of any subsequent pleadings or papers, including any correspondence related to the appeal, if the parent or guardian or unaccompanied youth so elects, and making such correspondence available to the parent or guardian or unaccompanied youth.

School districts shall also ensure that the local educational agency liaison maintains a record of all appeals of enrollment, school selection and transportation determinations.

7. DUPLICATION:

The proposed amendment does not duplicate, overlap or conflict with State and Federal rules or requirements, and is necessary to conform to the Commissioner's Regulations to ensure the State's compliance with the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110].

8. ALTERNATIVES:

There were no significant alternatives. The proposed amendment is necessary to conform to the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110].

9. FEDERAL STANDARDS:

The proposed amendment does not exceed any minimum standards of the Federal government for the same or similar subject areas. The proposed amendment conforms to the Commissioner's Regulations to ensure the State's compliance with the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110].

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the provisions of the proposed amendment by its effective date. The proposed amendment conforms to the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The proposed amendment does not impose any compliance requirements beyond those required by State and Federal statutes.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to procedures for appeals involving homeless children that are brought pursuant to Education Law section 310,

and does not apply to small businesses since they are not parties to such proceedings. The proposed amendment will not impose any 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 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 to the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The State is required to comply with the requirements of the McKinney-Vento Act and the NCLB as a condition to its receipt of Federal funds. The proposed amendment modifies existing procedures in certain appeals brought pursuant to Education Law section 310, that involve the education of homeless children, to ensure the rights of homeless individuals consistent with the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements on local governments beyond those imposed by Federal and State statutes.

School districts must delay for thirty (30) days the implementation of a final determination to decline to either enroll in and/or transport the homeless child or youth or unaccompanied youth to the school of origin or a school requested by the parent or guardian or unaccompanied youth; provided that if the parent or guardian of a homeless child or youth or unaccompanied youth commences an appeal to the Commissioner pursuant to Education Law section 310 with a stay application within thirty (30) days of such final determination, the homeless child or youth or unaccompanied youth shall be permitted to continue attending the school he or she is enrolled in at the time of the appeal until the Commissioner renders a decision on the stay application.

The written explanation of a school district's determination to decline to enroll and/or transport a homeless child or youth to the school of origin or a school requested by the parent or guardian shall also include the name, post office address and telephone number of the local educational liaison and the form petition for commencing an appeal to the Commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation.

School districts shall inform school personnel, service providers and advocates working with homeless families of the duties of the local educational agency liaison.

School districts shall require the local educational agency liaison for homeless children and youth to assist the homeless child's or youth's parent or guardian or the unaccompanied youth in commencing an appeal of a final determination regarding enrollment, school selection and/or transportation by:

(1) providing the parent or guardian or unaccompanied youth with a form petition prescribed by the Commissioner;

(2) assisting the parent or guardian or unaccompanied youth in completing the form petition;

(3) arranging for the copying of the form petition and supporting documents for the parent or guardian or unaccompanied youth, without cost to the parent or guardian or unaccompanied youth;

(4) accepting service of the form petition and supporting papers on behalf any school district employee or officer named as a party or the school district if it is named as a party or arranging for service by mail by mailing the form petition and supporting documents to any school district employee or officer named as a party and, if the school district is named as a party, to a person in the office of superintendent who has been designated by the board of education to accept service on behalf the school district;

(5) providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgment verifying that the local educational agency liaison has received the form petition and supporting documents and will either accept service of these documents on behalf of the school district employee or office or school district or effect service by mail by mailing the form petition and supporting documents to any school district employee or officer named as a party and, if the school district is named as

a party, to a person in the office of superintendent who has been designated by the board of education to accept service on behalf the school district;

(6) transmitting on behalf of the parent or guardian or unaccompanied youth, within five days of after the service of the form petition or any pleading or paper to the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234;

(7) providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgement verifying that the local educational agency liaison has received the form petition and supporting documents and will transmit these documents on behalf of the parent, guardian or unaccompanied youth to the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234; and

(8) accepting service of any subsequent pleadings or papers, including any correspondence related to the appeal, if the parent or guardian or unaccompanied youth so elects related to the appeal on behalf of the parent or guardian or unaccompanied youth and making such correspondence available to the parent or guardian or unaccompanied youth.

School districts shall also ensure that the local educational agency liaison maintains a record of all appeals of enrollment, school selection and transportation determinations.

PROFESSIONAL SERVICES:

The proposed amendment will not increase the level of professional services needed by local governments to comply with its requirements.

COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to the requirements of the McKinney-Vento Act, as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The State is required to comply with the Federal statutes as a condition to its receipt of Federal funding. The proposed amendment will not impose any costs on school districts beyond those imposed by State and Federal statutes.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements on local governments. Economic feasibility is addressed under the compliance costs section above.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The State is required to comply with the requirements of the McKinney-Vento Act and the NCLB as a condition to its receipt of Federal funds. The proposed amendment modifies the procedures concerning appeals involving homeless children that are brought pursuant to Education Law section 310. The proposed amendment does not impose any additional reporting, record-keeping or other compliance requirements on local governments beyond those imposed by Federal and State statutes.

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 applies 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. At present 2 school districts and 11 BOCES serve rural areas.

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

The proposed amendment is necessary to conform the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The State is required to comply with the requirements of the McKinney-Vento Act and the NCLB as a condition to its receipt of Federal funds. The proposed amendment modifies existing procedures in certain appeals brought pursuant to Education Law section 310, that involve the education of homeless children, to ensure the rights of homeless individuals consistent with the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements on rural areas beyond those imposed by Federal and State

statutes. The proposed amendment will not increase the level of professional services needed to comply with its requirements.

School districts must delay for thirty (30) days the implementation of a final determination to decline to either enroll in and/or transport the homeless child or youth or unaccompanied youth to the school or origin or a school requested by the parent or guardian or unaccompanied youth; provided that if the parent or guardian of a homeless child or youth or unaccompanied youth commences an appeal to the Commissioner pursuant to Education Law section 310 with a stay application within thirty (30) days of such final determination, the homeless child or youth or unaccompanied youth shall be permitted to continue attending the school he or she is enrolled in at the time of the appeal until the Commissioner renders a decision on the stay application.

The written explanation of a school district's determination to decline to enroll and/or transport a homeless child or youth to the school of origin or a school requested by the parent or guardian shall also include the name, post office address and telephone number of the local educational liaison and the form petition for commencing an appeal to the Commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation.

School districts shall inform school personnel, service providers and advocates working with homeless families of the duties of the local educational agency liaison.

School districts shall require the local educational agency liaison for homeless children and youth to assist the homeless child's or youth's parent or guardian or the unaccompanied youth in commencing an appeal of a final determination regarding enrollment, school selection and/or transportation by:

(1) providing the parent or guardian or unaccompanied youth with a form petition prescribed by the Commissioner;

(2) assisting the parent or guardian or unaccompanied youth in completing the form petition;

(3) arranging for the copying of the form petition and supporting documents for the parent or guardian or unaccompanied youth, without cost to the parent or guardian or unaccompanied youth;

(4) accepting service of the form petition and supporting papers on behalf any school district employee or officer named as a party or the school district if it is named as a party or arranging for service by mail by mailing the form petition and supporting documents to any school district employee or officer named as a party and, if the school district is named as a party, to a person in the office of superintendent who has been designated by the board of education to accept service on behalf the school district;

(5) providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgement verifying that the local educational agency liaison has received the form petition and supporting documents and will either accept service of these documents on behalf of the school district employee or officer or school district or effect service by mail by mailing the form petition and supporting documents to any school district employee or officer named as a party and, if the school district is named as a party, to a person in the office of superintendent who has been designated by the board of education to accept service on behalf the school district;

(6) transmitting on behalf of the parent or guardian or unaccompanied youth, within five days of after the service of the form petition or any pleading or paper to the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234;

(7) providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgement verifying that the local educational agency liaison has received the form petition and supporting documents and will transmit these documents on behalf of the parent, guardian or unaccompanied youth to the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234; and

(8) accepting service of any subsequent pleadings or papers, including any correspondence related to the appeal, if the parent or guardian or unaccompanied youth so elects related to the appeal on behalf of the parent or guardian or unaccompanied youth and making such correspondence available to the parent or guardian or unaccompanied youth;

School districts shall also ensure that the local educational agency liaison maintains a record of all appeals of enrollment, school selection and transportation determinations.

COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to the requirements of the McKinney-Vento Act, as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The State is required to comply with the Federal statutes as a condition to its receipt of Federal funding. The proposed amendment will

not impose any costs on school districts beyond those imposed by State and Federal statutes.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 *et seq.*), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub. L. 107-110]. The State is required to comply with the requirements of the McKinney-Vento Act and the NCLB as a condition to its receipt of Federal funds. The proposed amendment modifies the procedures concerning appeals involving homeless children that are brought pursuant to Education Law section 310. The proposed amendment does not impose any additional reporting, record-keeping or other compliance requirements on rural areas beyond those imposed by Federal and State statutes. Because these Federal and State requirements are applicable State-wide, it was not possible to prescribe lesser requirements for rural areas.

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 Education Law section 310 appeal procedures involving homeless children 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.

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the *State Register* on February 2, 2005, the State Education Department received the following public comment:

1. COMMENT:

To better ensure that parents, guardians, and unaccompanied youth experiencing homelessness are able to contact the local educational agency (LEA) liaison to request assistance with an appeal, section 275.3 should be revised to require school districts to include the name, address, and telephone number of the LEA liaison on the form petitions.

DEPARTMENT RESPONSE:

Placing information regarding a specific LEA liaison on a form petition runs the risk of having such information become outdated if the person assigned as liaison leaves such position or changes his or her address or telephone number, and school districts would face additional expense to reprint and distribute petitions with updated information. The Department believes that the intent of the comment may be satisfactorily addressed by revising section 100.2(x)(7)(ii)(b) of the proposed rule to require that the written explanation of a school district's determination to decline to enroll and/or transport a homeless child or youth to the school of origin or a school requested by the parent or guardian shall also include the name, post office address and telephone number of the LEA liaison and the form petition for commencing an appeal to the Commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation. The proposed rule has been revised accordingly. In addition, section 100.2(x)(7)(iii)(b) has been revised to require that school districts ensure that the LEA liaison provides the form petition to unaccompanied youths.

2. COMMENT:

In addition to requiring that the petition forms be made available at the LEA liaison's office, the regulations should also require that the forms be available in all schools, district offices, locations where families apply for shelter, places where they receive shelter, and programs serving homeless and runaway youth. Since many parents, guardians, and unaccompanied youth never have contact with the LEA liaisons or are unaware that there is an LEA liaison, it is imperative that the form petitions be distributed more widely.

DEPARTMENT RESPONSE:

The Department believes that the proposed change is unnecessary and could be detrimental. Pursuant to amended 8 NYCRR section 100.2(x)(7)(iii)(c)(1), the LEA liaison is required to provide the homeless parent or guardian or unaccompanied youth with the form petition and assist homeless families and unaccompanied youths at all phases of the appeal process. The Department is concerned that a required wider dissemination of the form petition would undermine the ability of the LEA liaison to assist homeless families and unaccompanied youths with the appeal process by encouraging the filing of appeals without the LEA liaisons'

assistance. Without the assistance of the LEA liaisons, it is likely that a number of these appeals will be dismissed on procedural grounds because the homeless families or unaccompanied youths will be unaware of all of the procedural requirements for commencing appeals. The Department believes the intent of this comment can be satisfactorily addressed through the proposed revision of section 100.2(x)(7)(ii)(b), as discussed in the Department's response to Comment #1 above, to require that the written explanation of a school district's determination to decline to enroll and/or transport a homeless child or youth to the school of origin or a school requested by the parent or guardian shall also include the name, post office address and telephone number of the LEA liaison and the form petition for commencing an appeal to the Commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation.

3. COMMENT:

Part 275.8(e) creates a significant barrier to the delivery of educational services to homeless children and youth by only allowing parents to deliver the pleadings to the LEA liaison. We recommend that the proposed rule be amended to allow parents to deliver or mail the pleadings to the LEA liaison, or deliver the pleadings to the principal or assistant principal at the school where the dispute arose.

DEPARTMENT RESPONSE:

As part of its efforts to improve homeless families' and unaccompanied youths' access to the appeal process, the Department designed the amendments to require the LEA liaisons to assist homeless families and unaccompanied youths at all phases of the appeal process. Allowing homeless families and accompanied youth to mail the petition to either the LEA liaisons or principals or assistant principals would undermine the aforementioned purpose of the amendments because homeless families and accompanied youths would not have to meet with the LEA liaisons in order to commence appeals. Without the assistance of the LEA liaisons, it is likely that a number of these appeals will be dismissed on procedural grounds because the homeless families or unaccompanied youths will be unaware of all of the procedural requirements for commencing appeals. Furthermore, it would also be too burdensome on school districts' administration to require principals and assistant principals to accept service of the petition and any supporting documents. Additionally, the amendments do not require principals and assistant principals to assist homeless families and unaccompanied youths in commencing appeals. Therefore, it is in the homeless families' and unaccompanied youths' best interests to commence an appeal by delivering the petition to the LEA liaisons who have a duty to assist them throughout the process. Finally, if homeless families and unaccompanied youths were permitted to deliver the petition to principals or assistant principals, it would make it difficult for the LEA liaisons to maintain the required record of all appeals of enrollment, school selection and transportation determinations (see, 8 NYCRR § 100.2[x][7][iii][8][d]).

4. COMMENT:

There may have been an oversight in section 276.5(b), regarding additional affidavits, exhibits and other supporting papers, because it does not include the alternative service method for petitioners provided under section 275.8(e). The regulation should be amended to provide for service of affidavits, exhibits and other supporting materials in accordance with either section 275.8(b) or (e) or section 275.13(b).

DEPARTMENT RESPONSE:

The Department agrees with the comment and has revised section 276.5(b) to include alternative service under 275.8(e).

5. COMMENT:

In order to ensure that schools actually enroll students before the dispute resolution process begins, in conformity with the McKinney-Vento Act, 42 U.S.C. § 11432(g)(3)(E)(i), the proposed regulation should be revised to require each school district to immediately admit the homeless child or youth to the school in which enrollment is sought if a dispute arises over school selection or enrollment in a school.

DEPARTMENT RESPONSE:

The proposed amendment is unnecessary because both Education Law § 3209(2)(e)(1) and 8 NYCRR § 100.2(x)(4)(1) state that, after receiving the designation form, the designated school district must immediately admit the homeless child or youth.

6. COMMENT:

The proposed regulation conflicts with the McKinney-Vento Act to the extent it requires that parents, guardians, and unaccompanied youth make an additional application for a stay along with their appeal and that they only receive pendency until a decision is rendered on the stay application. Under the McKinney-Vento Act, children and youth are entitled to remain

in the school in which enrollment is sought pending resolution of the dispute, not any stay application, 42 U.S.C. § 11432(g)(3)(E)(i). The regulation should be revised to provide that if the parent or guardian of a homeless child or youth or unaccompanied youth commences an appeal to the Commissioner pursuant to Education Law section 310, the school district shall delay the implementation of a final determination and permit the child or youth to continue to attend the school he or she is enrolled in until the Commissioner renders a decision on the section 310 appeal.

DEPARTMENT RESPONSE:

8 NYCRR § 100.2(x)(7)(ii)(c) is not in conflict with 42 U.S.C. § 11432(g)(3)(E)(i). The public comment misinterprets the pendency requirements of 42 U.S.C. § 11432(g)(3)(E)(i). 42 U.S.C. § 11432(g)(3) only discusses local educational agency requirements, not state educational agency requirements. Thus, 42 U.S.C. § 11432(g)(3)(E)(i) only requires that the homeless child or youth continue to attend the school that he or she is enrolled pending resolution of the enrollment dispute at the local educational agency/school district level, not the state educational agency/SED level. Additionally, the United States Department of Education's Non-Regulatory Guidance of the Education of Homeless Children and Youth Program ("Non-Regulatory Guidance") states that the homeless child or youth must continue to be enrolled in the school pending the local educational agency's/school district's resolution of the enrollment dispute (see, Non-Regulatory Guidance, Section G-5, p. 14). Consequently, no change needs to be made to this amendment.

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

Middle-Level Education

I.D. No. EDU-23-05-00019-EP

Filing No. 574

Filing date: May 24, 2005

Effective date: May 24, 2005

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

Action taken: Amendment of sections 100.3, 100.4 and 80-5.12 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 215 (not subdivided), 305(1) and (2), 308 (not subdivided), 309 (not subdivided), 4403(3) and 3713(1) and (2)

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement policy adopted by the Board of Regents in February 2005.

Under existing regulations, middle-level schools (those with grades 5, 6, 7, and 8 or a lesser combination of these grades) have limited programmatic flexibility. This makes it difficult for low-performing schools to respond to the academic and personal needs of their students and for new or high-performing schools to develop new approaches to enhance their students' education. The proposed amendment offers districts with low-performing schools and high-performing schools additional flexibility to develop programs that address their students' academic and personal needs.

Under the proposed amendment, districts with low-performing schools will be allowed to propose a program that strengthens core academic subjects and effective academic intervention services, and provides all students with exploratory subjects that address the learning standards, are of high interest to students, and further reinforce core academic learning (Model B). The low-performing schools would receive regulatory relief from the prescribed time requirements for units of study in the exploratory courses in order to implement their proposed program. Under the proposed amendment, districts with new or high-performing schools will be allowed to propose new ideas for restructuring the full educational program (Model C#1) or specific program refinements (Model C#2) and be granted relief from programmatic regulatory requirements.

The proposed amendment offers school districts additional flexibility in meeting the State's intermediate learning standards and in increasing student proficiency in English language arts and mathematics consistent with the No Child Left Behind federal legislation. With large numbers of middle grades students regularly not achieving proficiency (in 2003-04, 52% of grade 8 students did not achieve proficiency in English language

arts and 42% of grade 8 students did not achieve proficiency in mathematics), districts, especially those with schools in which large numbers of students are not achieving proficiency, need additional flexibility to develop programs that target the academic core and strengthen their academic intervention services. Districts with high-performing schools also need additional flexibility to develop creative approaches to restructure the educational experience in the middle grades or to enhance specific aspects of the middle grades program in order to meet their students' needs.

The proposed amendment also makes technical changes to align the Commissioner's regulations with the State learning standards, clarifies testing requirements related to students with disabilities, and reauthorizes the experiment in school organization to provide additional flexibility to all schools.

Emergency action to adopt the proposed amendment in May 2005 will allow sufficient time for the State Education Department to distribute and publicize the Model B, C#1, and C#2 application materials and process, and provide eligible districts with sufficient time to develop and submit applications for implementation beginning in September 2005, and for the Department to review and act on the applications prior to the end of the 2004-05 school year. This schedule will give districts with approved applications time during the summer to complete their staffing assignments, school schedules, academic intervention programs and curriculum revisions. Without emergency action in May 2005, there will be insufficient time for the Department to distribute the application, for schools to complete the application, and for the Department to review and act on the application for implementation beginning in September 2005 which, in practical terms, means that districts will be unable to take advantage of the new flexibility in the proposed amendment until the 2006-07 school year.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to immediately establish criteria for middle-level education program models, consistent with Regents policy, to ensure sufficient time for districts with eligible low-performing schools and eligible new or high-performing schools to prepare and submit Model B, C#1 or C#2 applications, for the Department to review and act on the applications, and for the districts to make the necessary programmatic adjustments to begin implementing their approved programs in the 2005-06 school year.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at the September 2005 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: Middle-level education.

Purpose: To implement Regents policy statement on middle-level education.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.regents.nysed.gov/2005Meetings/May2005/0505monthem.html) The Commissioner of Education proposes to amend sections 100.3, 100.4 and 80.5-12 of the Regulations of the Commissioner of Education, effective May 24, 2005, relating to implementation of the Regents Policy Statement on Middle-Level Education in grades five, six, seven, and eight. The following is a summary of the substance of the proposed amendment:

Section 100.3 is amended to:

- (1) apply only to pre-kindergarten through grade four so that it is in alignment with the State' elementary learning standards;
- (2) clarify language related to testing accommodations for students with disabilities, consistent with the federal No Child Left Behind Act (NCLB); and
- (3) include language related to the annual testing in English language arts and mathematics in grades 3 and 4 to conform to the NCLB.

Section 100.4 is amended to:

- (1) include existing provisions pertaining to grades five and six (previously located in section 100.3) so as to align section 100.4 with the State's intermediate learning standards and the Regents Policy Statement on Middle-Level Education;
- (2) allow schools to begin to meet the unit of study requirements for technology education and home and career skills in grade 5;
- (3) clarify language related to instruction in languages other than English in grades five, six, seven and eight, the administration of the second language proficiency examination, and the awarding of high school credit;
- (4) clarify language dealing with home instruction to conform with Regents policy;
- (5) clarify language related to testing accommodations and alternative assessments for students with disabilities, consistent with the NCLB;

(6) include language related to the annual testing in English language arts and mathematics in grades 5, 6, 7 and 8, consistent with the NCLB; and

(7) add a new subdivision (h) to implement the Regents Policy Statement on Middle-Level Education through the establishment of a three model system for middle-level education programs: a Model A middle-level education program meets all the requirements in section 100.4 and all other applicable sections of the Rules of the Board of Regents and the Regulations of the Commissioner of Education; a Model B middle-level education program strengthens the attainment of the learning standards measured by required State assessments, provides effective academic intervention services, and ensures all students receive instruction in those areas where there are no required State assessments; a Model C middle-level education program either restructures the delivery of the instruction designed to facilitate the attainment of the State's intermediate learning standards (Model C#1) or enhances instruction related to one or more of the State's intermediate learning standards for which there are no required State assessments (Model C#2).

Section 100.4(h)(1) establishes definitions for the Model middle-level education programs.

Section 100.4(h)(2) requires each school district to conduct its middle-level education program in accordance with either Model A, Model B or Model C.

Section 100.4(h)(2)(i) prescribes eligibility, application, plan and compliance requirements for Model A programs. All school districts are eligible to select Model A. No application or plan is required. All schools not approved to operate under Models B or C shall operate under Model A. A Model A program shall meet the requirements of section 100.4 and all other applicable sections of Rules of the Board of Regents and the Regulations of the Commissioner of Education and shall also meet the following six design principles:

(1) districts shall administer required middle grade State assessments in English language arts, mathematics, social studies and science;

(2) districts shall employ teaching staff that are properly certified to teach assigned subjects and classes;

(3) districts shall ensure that the middle-level program is aligned with the Regents Policy Statement on Middle-Level Education and the State Education Department's Essential Elements of Standards-Focused Middle-Level Schools and Programs;

(4) students who are at risk of not meeting the State learning standards shall receive academic intervention services in accordance with section 100.2(ee) of the Commissioner's Regulations;

(5) students shall receive instruction in all of the State learning standards, with instruction in English language arts, mathematics, social studies, science and physical education occurring each year in each of the middle grades;

(6) students shall be provided opportunities for taking high school courses on an accelerated basis in accordance with section 100.4(d).

Section 100.4(h)(2)(ii) prescribes eligibility, application, plan, compliance and approval requirements for Model B programs.

Section 100.4(h)(2)(iii) prescribes eligibility, application, plan, compliance and approval requirements for Model C programs.

The following school districts are eligible for Model B: a district proposing a program for a school identified as a school requiring academic progress (SRAP) in year 3, 4 or 5, including a school identified for school improvement for three or more consecutive years under 20 USC section 6316(b), or a school or schools under registration review (SURR) pursuant to section 100.2(p) of the Commissioner's Regulations.

The following school districts are eligible for Model C: a district proposing a program for a newly formed, or an existing, school or schools, other than those schools that are eligible for Model B.

A district seeking to operate under Model B or Model C shall have its application approved by the superintendent of schools prior to its submission to the Commissioner. The district shall submit with its application a report from the district's shared decision-making team, that provides evidence that consultation took place at the district and building levels and that identifies the concerns expressed by the constituents. Special application requirements are provided for Model B and Model C applications submitted by the New York City School District. Model C applications for specified program enhancements (Model C#2) submitted by a school district, other than a city school district with 125,000 inhabitants or more, shall be approved by the superintendent of schools and the board of education, and submitted to the district superintendent of the supervisory district in which the school district is located for his or her recommenda-

tion, prior to submission of the application to the Commissioner for approval.

Each district submitting a Model B application shall prepare a plan consistent with the requirements of section 100.2(p), which shall address the results of a State-developed, locally conducted self-study, shall conform to the six design principles described above under Model A, and be submitted as part of the application.

A district selecting Model C and proposing to restructure the delivery of instruction designed to facilitate the attainment of the State intermediate learning standards shall prepare a plan that, where applicable, is consistent with the requirements of section 100.2(p), which shall address the results of a State-developed, locally conducted self-study, shall conform to the six design principles described above under Model A, and be submitted as part of the application. A district proposing specific program enhancements (Model C#2) shall not be required to complete the State-developed, locally conducted self-study but must include in its application a description of the program enhancement, its relationship to student achievement, student interests, and/or student development, and a plan for evaluating its effectiveness and the impact of the program enhancement on student learning and development.

All Model B programs shall meet the requirements of section 100.4 and all other applicable sections of the Rules of the Board of Regents and the Regulations of the Commissioner of Education and the six design principles described above under Model A, except that the prescribed time requirements for units of study in courses where there are no required State assessments as set forth in 100.4(c)(1) shall be met subject to such modifications as set forth in the approved application and plan.

All Model C programs shall meet the requirements of section 100.4 and all other applicable sections of the Rules of the Board of Regents and the Regulations of the Commissioner of Education, subject to any modifications of such requirements as provided for in the district's approved application and plan, and shall also meet the six design principles described above under Model A.

Approval of a Model B or C application shall be based upon the Commissioner's acceptance of the measurable indicators and evidence of school change and improvement as proposed in the application and plan. Approval shall be for a five-year implementation period. A district may reapply for continued approval for one additional five-year period. The district shall monitor and publicly report its progress on specified criteria. The Commissioner may terminate approval at any time upon a determination that the district has failed to comply with the requirements of its approved application and the prescribed compliance requirements.

The proposed amendment also requires that, in those districts where public school choice is required under section 120.3 of the Commissioner's Regulations, the district's Model C application for any newly formed school must include an agreement that a minimum of 20% of seats shall be offered to students seeking transfer, consistent with State and federal law.

In addition the proposed amendment specifies that applications for no more than 75 schools for Model C shall be approved, of which no more than 30 schools shall be approved for restructuring the full education program (Model C#1) and no more than 45 schools shall be approved for specified program enhancements (Model C#2).

Section 80.5-12 is amended to re-authorize the "Experiment in Organization" regulation that expired in February 2004, and additional provisions are added to require that teachers assigned to the proposed experiment shall meet the qualification requirements of section 120.6 of the Commissioner's Regulations, relating to the NCLB; and to require that a school district may not continue the assignment of a teacher for more than five school years unless the teacher has obtained the teaching certificate or certificate extension appropriate to such assignment. A new subdivision (c) is added to provide that a person who holds a permanent or professional certificate in English language arts (7-12), language other than English (7-12), mathematics (7-12), biology (7-12), chemistry (7-12), earth science (7-12), physics (7-12), or social studies (7-12) and whose teaching assignment covered by an experiment in organizational change during three of the five years of an experiment approved by the Commissioner on or before February 1, 2004 is in the subject of the certificate held but is in grades 5-6, may be issued a statement of continued eligibility pursuant to which such person may continue to teach in such assignment without the extension prescribed in section 80-4.3 (b) of this Part to teach the subject in grades 5-6. In order for such person to be eligible for the statement of continuing eligibility, his or her experience in teaching the subject in grades 5-6 must have occurred on or after July 1, 1993. A statement of continued eligibility shall be limited to the specific permanent or profes-

sional certificate that was extended to authorize such service but shall be valid for service in any school district. Applications for the statement of continued eligibility must be filed with the Department.

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 August 21, 2005.

Text of rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, 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 authorizes the Regents to appoint the Commissioner of Education as the chief administrative officer of the Department, which is charged with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 authorizes the Regents and the Commissioner to adopt rules and regulations to carry out the 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 215 provides the Commissioner with authority to require schools to submit reports containing such information as the Commissioner may prescribe.

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 authorizes the Commissioner to enforce laws relating to the educational system and to execute the Regents' educational policies.

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 education.

Education Law section 4403(3) authorizes the Commissioner to formulate such rules and regulations pertaining to the physical and educational needs of such children as the Commissioner shall deem to be in their best interests.

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

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement Regents policy.

NEEDS AND BENEFITS:

The proposed amendment is necessary to implement policy adopted by the Board of Regents in February 2005, and will help ensure that school districts have the flexibility they need to ensure that all students in State public schools are provided instruction in the State learning standards areas and have the skills, knowledge, and understanding necessary for success.

Under existing regulations, middle-level schools (those with grades 5, 6, 7 and 8 or a lesser combination of these grades) have limited programmatic flexibility. This makes it difficult for low-performing schools to respond to the academic and personal needs of their students and for new or high-performing schools to develop new approaches to enhance their students' education. The proposed amendment offers districts additional flexibility in meeting State intermediate learning standards and increasing student proficiency in English language arts and mathematics consistent with the federal No Child Left Behind Act.

Districts with low-performing schools will be allowed to propose a program that strengthens core academic subjects and effective academic intervention services, and provides all students with exploratory subjects that address the learning standards, are of high interest to students, and further reinforce core academic learning (Model B). Low-performing schools would receive regulatory relief from the prescribed time requirements for units of study in the exploratory courses in order to implement their proposed program. Districts with new or high-performing schools will be allowed to submit proposals for restructuring the full educational program (Model C#1) or specific program refinements (Model C#2) and be granted relief from programmatic regulatory requirements.

With large numbers of middle-grade students regularly not achieving proficiency (in 2003-04, 52% of grade 8 students did not achieve proficiency in English language arts and 42% of grade 8 students did not achieve proficiency in mathematics), districts, especially those with schools in which large numbers of students are not achieving proficiency, need additional flexibility to develop programs that target the academic core and strengthen their academic intervention services. Districts with high-performing schools also need additional flexibility to develop creative approaches to restructure the educational experience in the middle grades or to enhance specific aspects of the middle grades program in order to meet their students needs.

In addition, the proposed amendment will allow districts under certain circumstances to apply for approval to implement an "Experiment in Organization" that provides for the flexible assign of certified teaching staff.

The proposed amendment also makes technical changes to align the Commissioner's regulations with the State learning standards and clarifies testing requirements related to students with disabilities.

COSTS:

(a) Costs to the State: None. The Education Department will be required to fund the development of the new English language arts and mathematics tests for grades 3, 5, 6 and 7. Such testing is required by the accountability provisions of the federal No Child Left Behind Act of 2001 [Pub. L. 107-110, (NCLB)]. The State is required to comply with the NCLB as a condition to its receipt of federal funding under Title I of the ESEA, as amended. The proposed amendment will not impose any additional costs on the State beyond those imposed by State and Federal law.

(b) Costs to local government: School districts will be required to assume the cost burden of scoring the new assessments in grades 3, 5, 6 and 7. Such testing is required by the accountability provisions of the NCLB. School districts and other local educational agencies (LEAs) are required to comply with the NCLB as a condition to their receipt of federal funding under Title I of the ESEA, as amended. The proposed amendment will not impose any costs on these entities beyond those imposed by State and Federal law. Costs to implement the other provisions of the proposed amendment, including those related to implementation of the Models for Middle-Level Education programs and Experiments in Organizational Change, will not place an additional cost burden on LEAs and may result in cost savings due to the increased flexibility provided by the amendment.

(c) Cost to private regulated parties: None. The proposed amendment does not impact private parties in any way.

(d) Cost to regulating agency for implementation and continued administration of this rule: The Education Department will be required to fund the development of the new English language arts and mathematics tests for grades 3, 5, 6 and 7, and to review and approve Model B, C#1 and C#2 applications. The Department will be required to fund the data collection activities associated with the implementation of the new regulations including the development and maintenance of a database to track and monitor the implementation of approved Model B, C#1 and C#2 applications. It is anticipated that any implementation costs will be absorbed using existing staff and resources.

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility on school districts or other local governments but instead aligns the Commissioner's Regulations with policy enacted by the Regents to provide districts with low-performing schools and high-performing schools additional flexibility to develop programs that address their students' academic and personal needs.

Districts with low-performing schools may propose a program that strengthens core academic subjects and effective academic intervention services, and provides all students with exploratory subjects that address the learning standards, are of high interest to students, and further reinforce core academic learning (Model B). The low-performing schools would receive regulatory relief from the prescribed time requirements for units of

study in the exploratory courses in order to implement their proposed program. Districts with new or high-performing schools may propose new ideas for restructuring the full educational program (Model C#1) or specific program refinements (Model C#2) and be granted relief from programmatic regulatory requirements. In the alternative, a district may choose to continue to comply with all applicable regulations (Model A).

Districts must conduct annual testing in English language arts and mathematics in grades 3, 5, 6 and 7 (in addition to grades 4 and 8) as is now required by the NCLB. Districts with eligible schools may request relief from specific regulatory requirements related to the amount of instructional time devoted to specific standards areas if such instruction provides for excellence in education and is in the best interests of students. Districts may also request approval of an "Experiment in Organization" that provides for the flexible assignment of certified staff.

PAPERWORK:

Districts that wish to proceed under Model B or Model C must submit an application and plan in a form and according to such timelines as prescribed by the Commissioner, including a report from the district's shared decision-making team. Districts proceeding under Model A will not be required to submit an application or plan. Districts with approved applications must submit an annual report on the implementation of their application. Districts may also apply to the Commissioner for approval of an "Experiment in Organization" that provides for the flexible assignment of staff.

DUPLICATION:

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

ALTERNATIVES:

Since February 2004, the Board of Regents has discussed several possible strategies for implementing the Regents Policy Statement on Middle-Level Education. One alternative was to require all schools to continue to comply with the existing regulations. This approach was rejected because it did not allow sufficient flexibility, based upon local needs and circumstances, for schools to develop programs consistent with the Regents Policy Statement that would improve student achievement. A second alternative was to grant all schools, regardless of their needs and circumstances, unregulated flexibility to implement the Regents Policy Statement. This was rejected because of a concern that it could be used to limit or eliminate instruction in learning standards areas rather than to strengthen program and student achievement.

In lieu of a single prescription or model for transforming middle-level schools or provide unregulated flexibility, the Regents determined that school districts should be provided opportunities, based upon their needs and circumstances, to develop programs that address their students' academic and personal needs and thereby ensure that all students in State public schools are provided instruction in the learning standards areas and have the skills, knowledge, and understanding necessary for success. The proposed amendment will allow districts to conduct their middle-level education programs in accordance with three models, which taken collectively, constitute a continuum of options based upon a district's or school's needs and capacity to change:

Model A : the district would continue to comply with the current regulations, making full use of the existing flexibility provisions in the regulations;

Model B: the district would be able to propose a program for approval by the commissioner that strengthens core academic subjects and effective academic intervention services, and provide all students with exploratory subjects that address the State learning standards, are of high interest to students and further reinforce academic learning;

Model C: the district would be able to propose new ideas for structuring the full educational program (Model C#1) or specific program refinements (Model C#2) and be granted relief by the commissioner from programmatic regulatory requirements, while ensuring that all students receive opportunities to achieve all of the State learning standards.

FEDERAL STANDARDS:

There are no related federal standards.

COMPLIANCE SCHEDULE:

It is anticipated that school districts will be able to implement the middle-level education model programs by the beginning of the 2005-2006 school year. Applications will be available on May 20, 2005. Completed applications for Model B, C#1 and C#2 programs beginning in the 2005-06 school year will be accepted for review and action by the Department through June 17, 2005. In subsequent years, applications for Model B, C#1 and C#2 must be received by the Department by January 15 for implementation beginning in the following school year.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to implementation of the Regents Policy Statement on Middle-Level Education in grades five through eight, and will not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

EFFECT OF RULE:

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

COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements on school districts but instead aligns the Commissioner's Regulations with policy enacted by the New York State Board of Regents to provide districts with low-performing schools and high-performing schools additional flexibility to develop programs that address their students' academic and personal needs.

The proposed amendment will allow school districts under certain circumstances to:

(a) apply for relief from specific regulatory requirements related to the amount of instructional time devoted to specific standards areas if such instruction provides for excellence in education and is in the best interests of students;

(b) begin to meet the unit of study requirements for technology education and home and career skills in grade 5;

(c) apply for approval to implement an "Experiment in Organization" that provides for the flexible assign of certified staff.

Under the proposed amendment, districts with low-performing schools may propose a program that strengthens core academic subjects and effective academic intervention services, and provides all students with exploratory subjects that address the learning standards, are of high interest to students, and further reinforce core academic learning (Model B). The low-performing schools would receive regulatory relief from the prescribed time requirements for units of study in the exploratory courses in order to implement their proposed program. Districts with new or high-performing schools may propose new ideas for restructuring the full educational program (Model C#1) or specific program refinements (Model C#2) and be granted relief from programmatic regulatory requirements. In the alternative, a district may choose to continue to comply with all applicable regulations (Model A).

School districts must conduct annual testing in English language arts and mathematics in grades 3, 5, 6, and 7 (in addition to grades 4 and 8) as is now required by the No Child Left Behind Act of 2001 [Pub. L. 107-110, (NCLB)].

PROFESSIONAL SERVICES:

The proposed amendment does not impose additional professional services requirements on school districts.

COMPLIANCE COSTS:

School districts will be required to assume the cost burden of scoring the new assessments in grades 3, 5, 6 and 7. Such testing is required by the accountability provisions of the federal No Child Left Behind Act of 2001 [Pub. L. 107-110, (NCLB)]. School districts and other local educational agencies (LEAs) are required to comply with the NCLB as a condition to their receipt of federal funding under Title I of the ESEA, as amended. The proposed amendment will not impose any costs on these entities beyond those imposed by State and Federal law. Costs to implement the other provisions of the proposed amendment, including those related to implementation of the Models for Middle-Level Education programs and Experiments in Organizational Change, will not place an additional cost burden on LEAs and may, in fact, result in cost savings due to the increased flexibility provided by the proposed amendment.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment will not require any new technological requirements. Economic feasibility is addressed above under compliance costs.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy enacted by the Board of Regents and to comply with the federal testing requirements associated with the No Child Left Behind Act. The proposed amendment has been carefully drafted to meet statutory requirements, federal legislation, and Regents policy while minimizing the impact on school districts.

Where possible, the proposed amendment incorporates existing requirements and eliminates redundant requirements to minimize work at the local level. The proposed amendment emphasizes local flexibility in meeting the regulatory requirements.

Since February 2004, the Board of Regents has discussed several possible strategies for implementing the Regents Policy Statement on Middle-Level Education. One alternative was to require all schools to continue to comply with the existing regulations. This approach was rejected because it did not allow sufficient flexibility, based upon local needs and circumstances, for schools to develop programs consistent with the Regents Policy Statement that would improve student achievement. A second alternative was to grant all schools, regardless of their needs and circumstances, unregulated flexibility to implement the Regents Policy Statement on Middle-Level Education. This was rejected because of a concern that it could be used to limit or eliminate instruction in learning standards areas rather than to strengthen program and student achievement.

In lieu of a single prescription or model for transforming middle-level schools or provide unregulated flexibility, the Regents determined that school districts should be provided opportunities, based upon their needs and circumstances, to develop programs that address their students' academic and personal needs and thereby ensure that all students in New York State public schools are provided instruction in the seven learning standards areas and have the skills, knowledge, and understanding they will need to succeed.

LOCAL GOVERNMENT PARTICIPATION:

The Board of Regents and the State Education Department engaged the educational community (including teachers, administrators, members of boards of education, community members) in the development of the policy and the drafting of the amended regulations from the beginning. Since 2000, members of the Board of Regents and representatives of the State Education Department have conducted numerous (more than 100) informational hearings around the State explaining and discussing Regents policy and the regulatory implications and gathering input on possible draft language. Written comments were also solicited throughout the process. The results of the informational hearings and the comments received were considered during the drafting of the proposed regulations.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts in the State, including the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment does not impose any additional compliance requirements on school districts but instead aligns the Commissioner's Regulations with policy enacted by the New York State Board of Regents to provide districts with low-performing schools and high-performing schools additional flexibility to develop programs that address their students' academic and personal needs.

The proposed amendment will allow school districts under certain circumstances to:

(a) apply for relief from specific regulatory requirements related to the amount of instructional time devoted to specific standards areas if such instruction provides for excellence in education and is in the best interests of students;

(b) begin to meet the unit of study requirements for technology education and home and career skills in grade 5;

(c) apply for approval to implement an "Experiment in Organization" that provides for the flexible assign of certified staff.

Under the proposed amendment, districts with low-performing schools may propose a program that strengthens core academic subjects and effective academic intervention services, and provides all students with exploratory subjects that address the learning standards, are of high interest to students, and further reinforce core academic learning (Model B). The low-performing schools would receive regulatory relief from the prescribed time requirements for units of study in the exploratory courses in order to implement their proposed program. Districts with new or high-performing schools may propose new ideas for restructuring the full educational program (Model C#1) or specific program refinements (Model C#2) and be granted relief from programmatic regulatory requirements. In the alternative, a district may choose to continue to comply with all applicable regulations (Model A).

School districts must conduct annual testing in English language arts and mathematics in grades 3, 5, 6, and 7 (in addition to grades 4 and 8) as is now required by the No Child Left Behind Act of 2001 [Pub. L. 107-110, (NCLB)].

The proposed amendment does not impose additional professional services requirements on school districts.

COSTS:

School districts will be required to assume the cost burden of scoring the new assessments in grades 3, 5, 6 and 7. Such testing is required by the accountability provisions of the federal No Child Left Behind Act of 2001 [Pub. L. 107-110, (NCLB)]. School districts and other local educational agencies (LEAs) are required to comply with the NCLB as a condition to their receipt of federal funding under Title I of the ESEA, as amended. The proposed amendment will not impose any costs on these entities beyond those imposed by State and Federal law. Costs to implement the other provisions of the proposed amendment, including those related to implementation of the Models for Middle-Level Education programs and Experiments in Organizational Change, will not place an additional cost burden on LEAs and may, in fact, result in cost savings due to the increased flexibility provided by the proposed amendment.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy enacted by the Board of Regents and to comply with the federal testing requirements associated with the No Child Left Behind Act. The proposed amendment has been carefully drafted to meet statutory requirements, federal legislation, and Regents policy while minimizing the impact on school districts. Where possible, the proposed amendment incorporates existing requirements and eliminates redundant requirements to minimize work at the local level. The proposed amendment emphasizes local flexibility in meeting the regulatory requirements. The Regents policy upon which the proposed amendment is based applies to all schools. Therefore, it was not possible to establish different compliance and reporting requirements for school districts in rural areas, or exempt them from the provisions.

Since February 2004, the Board of Regents has discussed several possible strategies for implementing the Regents Policy Statement on Middle-Level Education. One alternative was to require all schools to continue to comply with the existing regulations. This approach was rejected because it did not allow sufficient flexibility, based upon local needs and circumstances, for schools to develop programs consistent with the Regents Policy Statement that would improve student achievement. A second alternative was to grant all schools, regardless of their needs and circumstances, unregulated flexibility to implement the Regents Policy Statement on Middle-Level Education. This was rejected because of a concern that it could be used to limit or eliminate instruction in learning standards areas rather than to strengthen program and student achievement.

In lieu of a single prescription or model for transforming middle-level schools or provide unregulated flexibility, the Regents determined that school districts should be provided opportunities, based upon their needs and circumstances, to develop programs that address their students' academic and personal needs and thereby ensure that all students in New York State public schools are provided instruction in the seven learning standards areas and have the skills, knowledge, and understanding they will need to succeed.

RURAL AREA PARTICIPATION:

The Board of Regents and the State Education Department engaged the educational community (including teachers, administrators, members of boards of education, and community members, from rural areas) in the development of the policy and the drafting of the amended regulations from the beginning. Since 2000, members of the Board of Regents and representatives of the State Education Department have conducted numerous (more than 100) informational hearings around the State explaining and discussing Regents policy and the regulatory implications and gathering input on possible draft language. Written comments were also solicited throughout the process. The results of the informational hearings and the comments received were considered during the drafting of the proposed regulations.

Job Impact Statement

The proposed amendment relates to implementation of the Regents Policy Statement on Middle-Level Education in grades five through eight, and will not have an adverse impact on jobs or employment opportunities. The proposed amendment provides increased flexibility to school districts to structure their middle-level education instructional programs. Because it is evident from the nature of the rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed

to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION

Unprofessional Conduct in the Social Work and Mental Health Practitioner Professions

I.D. No. EDU-09-05-00012-A

Filing No. 570

Filing date: May 24, 2005

Effective date: June 9, 2005

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

Action taken: Amendment of sections 29.2, 29.15 and 29.16 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 6504 (not subdivided); 6506(1); 6509(9); 7701(1) and (2); 7702(1); 7708(1) and (2); 8402(1); 8403(1); 8404(1); 8405(1); and 8407(1) and (2)

Subject: Unprofessional conduct in the social work and mental health practitioner professions.

Purpose: To establish definitions of unprofessional conduct in the practice of the licensed professions of licensed master social work, licensed clinical social work, creative arts therapy, marriage and family therapy, mental health counseling, and psychoanalysis.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-09-05-00012-P, Issue of March 2, 2005.

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

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

Assessment of Public Comment

A Notice of Proposed Rule Making concerning the proposed amendment was published in the State Register on March 2, 2005. Below is a summary of the written comments received during the public comment period, and the State Education Department's response:

COMMENT: Proposed Regents Rule section 29.15 should require the licensed mental health practitioner to obtain a medical consultation for a patient when: the licensee believes the patient has a serious mental illness; the patient currently is being treated for a serious mental illness or reports a prior history of serious mental illness or hospitalization for a serious mental illness within the past 10 years; or the patient reports a prior psychiatric hospitalization within the past 10 years.

RESPONSE: The proposed regulation closely follows the requirements of section 8407 of the Education Law. Regents Rule 29.15 makes it unprofessional conduct for a licensed mental health practitioner to provide mental health services on a continuous and sustained basis for specified serious mental illnesses, without a medical evaluation of the illness by and a consultation with a physician regarding the illness. The proposed regulation is adequately prescriptive, and the Department plans to issue guidelines to provide additional guidance to licensees.

The suggestion that a medical evaluation and consultation should be required if the patient reports a prior history of serious mental illness or hospitalization for a serious mental illness within the past 10 years or a prior psychiatric hospitalization within the past 10 years is unduly restrictive and beyond the requirements of section 8407 of the Education Law.

COMMENT: Regents Rule section 29.15 should require the physician who performs the medical evaluation to be a psychiatrist because psychiatrists are qualified by education and training to diagnose and treat mental illness.

RESPONSE: As stated above, Regents Rule section 29.15 follows the requirements of section 8407 of the Education Law. For defined serious mental illnesses, section 8407 requires the licensed mental health practitioner to obtain a medical evaluation of the illness by a physician and to consult with the physician regarding the illness. The statute requires the medical evaluation to be conducted by a physician. It does not require the physician to be a psychiatrist. The proposed rule is consistent with the statutory requirement.

COMMENT: If the patient seeking treatment from a licensed mental health practitioner refuses to secure a medical evaluation when directed to do so, section 29.15 of the Regents Rules should provide that the licensed mental health practitioner must discontinue treatment. Furthermore, if the recommendation of the medical evaluation is that the person needs medical care and treatment, and the patient does not follow such recommendation,

the Regents Rule should provide that the licensed mental health practitioner must discontinue treatment. These provisions are essential to prevent circumvention of the statute.

RESPONSE: Education Law section 8407 prohibits a licensed mental health practitioner from providing mental health services on a continuous and sustained basis for specified serious mental illnesses, without a medical evaluation of the illness by and a consultation with a physician regarding the illness. Section 29.15 of the Regents Rules mirrors the language of section 8407. It defines such conduct as unprofessional conduct in the practice of the licensed mental health practice professions. Therefore, as to the first point of the comment, it would be unprofessional conduct for the licensed mental health practitioner to treat the patient for the prescribed serious mental illnesses on a continuous and sustained basis without the medical evaluation and consultation.

As to the second point, in a situation where the patient refuses to accept a medical recommendation, the licensed mental health practitioner would have to determine whether he or she is competent to continue to provide treatment. This judgment would be made after the licensed mental health practitioner has met his or her obligation to consult with a physician regarding the illness. Regents Rules already require licensees to ensure that they are practicing within the scope of practice of their license and are competent to provide the rendered services (See, Regents Rule Section 29.1[a][9]).

COMMENT: Regents Rule section 29.15 does not provide adequate guidance on when and how often the required medical evaluations must take place.

RESPONSE: The proposed Regents Rule follows the requirements of Education Law section 8407, requiring that a medical evaluation must take place prior to treatment of the patient for prescribed serious mental illnesses on a continuous and sustained basis. The regulation is adequately prescriptive.

COMMENT: Regents Rule section 29.15 does not prescribe what a licensed mental health practitioner must do if a patient refuses medical evaluation or denies consent for the consultation with a physician.

RESPONSE: The Regents Rule is clear that it would be unprofessional conduct for the mental health practitioner to treat a patient for a serious mental illness on a continuous and sustained basis without a medical evaluation of the illness by and a consultation with a physician on the illness. Therefore, it would be unprofessional conduct for a licensed mental health practitioner to treat such a patient who refuses medical evaluation or denies consent for the consultation.

COMMENT: Regents Rule section 29.15 does not define the phrase "on a continuous and sustained basis," and it is unclear what this phrase means.

RESPONSE: The Department does not believe it to be reasonable to establish a fixed standard, which establishes for all cases when treatment is considered to be "on a continuous and sustained basis." This will depend upon the circumstances of individual cases. The Department is planning to issue guidance information on this issue.

COMMENT: Regents Rule section 29.15 does not define what triggers the determination that the patient has a serious mental illness.

RESPONSE: It is within the scope of their practice for licensed mental health practitioners to assess and evaluate patients to identify and evaluate dysfunctions and disorders for purposes of providing appropriate services. Based upon such evaluations, licensed mental health practitioners will determine whether the medical evaluation by and consultation with a physician is necessary for the treatment of a serious mental illness.

COMMENT: We are concerned that the statutory exemptions from the licensure requirements in the social work professions for employees prescribed in paragraphs (e) and (f) of subdivision (5) of section 7706 of the Education Law are being used by licensed master social workers to unlawfully provide clinical social work services, when they do not meet the requirements of the exemptions. The Regents Rules should address this problem.

RESPONSE: Paragraphs (e) and (f) of subdivision (5) of section 7706 of the Education Law provide limited statutory exemptions to licensure in the social work professions for certain employees performing clinical social work services on September 1, 2004. The Rules of the Board of Regents already define as unprofessional conduct the practice of a licensed profession beyond the scope of practice permitted by law (See, section 29.1[a][9] of the Regents Rules). A licensed master social worker unlawfully using the exemption to provide clinical social work services would be practicing beyond the scope of practice permitted by law. Therefore, the Regents Rules already address this issue, and it is unnecessary to make the suggested change.

COMMENT: We are concerned that licensed master social workers who are lawfully providing clinical social work services under supervision are failing to obtain the informed consent from patients advising them that the licensed master social worker may provide the clinical social work services only under supervision.

RESPONSE: Section 7701(1)(d) of the Education Law authorizes the licensed master social worker to provide clinical social work services under supervision, and section 74.6 of the Regulations of the Commissioner of Education establishes the qualifications for supervisors and the frequency of supervisory sessions. The statute does not require patients to be advised that the clinical social work services may only be provided by the licensed master social worker while under supervision, and the Department does not believe it necessary to impose this additional requirement.

COMMENT: We believe that section 29.15 should specifically set forth time frames and steps a mental health practitioner must take when seeking physician consultation for treating patients with serious mental illnesses, when a patient declines medical evaluation, and when a patient declines to follow suggestions for medical treatment. Failure to do so creates a potential for harm to patients.

RESPONSE: The State Education Department believes that section 29.15 is adequately prescriptive. It closely follows the requirements of section 8407 of the Education Department and adequately protects against harm to patients. The Department plans to issue guidelines to provide additional guidance to licensees for meeting the requirements of section 29.15.

COMMENT: We believe that regulation relating to physician consultation for patients with serious mental illnesses should be included as part of the regulations which govern licensing and practice rather than in the definitions of unprofessional conduct. This will make the requirements readily available to licensees who look to these regulations for guidance.

RESPONSE: The Department disagrees. The proposed regulation is appropriately located in definitions of unprofessional conduct in the licensed professions. It will be readily available to licensees in a section of Regents Rules, specifically entitled, "Special Provisions for the Professions of Creative Arts Therapy, Marriage and Family Therapy, Mental Health Counseling, and Psychoanalysis."

COMMENT: The regulation should require the licensed mental health practitioner who is treating a patient with a serious mental illness on a continuous and sustained basis to have a written consultation agreement with a physician that would specify procedures for treatment and that would be submitted to the Department for review and approval.

RESPONSE: Education Law section 8407 does not require the mental health practitioner who is treating a patient with a serious mental illness on a continuous and sustained basis to have a written consultation agreement with a physician. It requires the licensee to consult with the physician and the physician to complete a medical evaluation of the illness. The proposed regulation is consistent with this statutory requirement. The Department believes that requiring a written consultation agreement is overly prescriptive and beyond the requirements of section 8407 of the Education Law.

NOTICE OF ADOPTION

Certification and Scope of Practice Requirements for School Social Workers

I.D. No. EDU-09-05-00014-A

Filing No. 571

Filing date: May 24, 2005

Effective date: June 9, 2005

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

Action taken: Amendment of section 80-2.3(f) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 305(1)-(2) and (7); 3001(2); 3004(1); 3006(1)(b); 3009(1); 3010 (not subdivided); 7702(2)(a) and (3)(a); and 7706(5)(a)

Subject: Certification and scope of practice requirements for school social workers.

Purpose: To update references to the titles of the new licensed professions in social work in the requirements for permanent certification in school social work and clarify the scope of practice of certified school social workers in light of the new practice protected licensed professions in social work.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-09-05-00014-P, Issue of March 2, 2005.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

State Learning Standards for Mathematics

I.D. No. EDU-09-05-00015-A

Filing No. 572

Filing date: May 24, 2005

Effective date: June 9, 2005

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

Action taken: Amendment of section 100.1(t) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1) and (2), 308 (not subdivided), 309 (not subdivided) and 3204(3)

Subject: State learning standard for mathematics.

Purpose: To revise the definition of State learning standard for mathematics.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-09-05-00015-P, Issue of March 2, 2005.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Registration of Nonpublic Nursery Schools and Kindergartens

I.D. No. EDU-09-05-00016-A

Filing No. 575

Filing date: May 24, 2005

Effective date: June 9, 2005

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

Action taken: Amendment of section 125.1 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided) and 210 (not subdivided)

Subject: Registration of nonpublic nursery schools and kindergartens.

Purpose: To replace the existing requirement for annual visits of each registered nonpublic nursery school and kindergarten with a requirement that department staff conduct annual visits of only those schools in the following categories: schools with registration certificates that will expire during the year; schools operated by new applicants, including schools operated by new owners; schools located in newly constructed or renovated sites; and schools that require onsite technical assistance to alleviate regulatory non-compliance issues.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-09-05-00016-P, Issue of March 2, 2005.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Special Education Programs and Services

I.D. No. EDU-23-05-00018-P

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

Proposed action: Repeal of Part 101 and amendment of sections 100.2, 200.1-200.7, 200.14, 200.16, 201.2-201.5 and 201.7-201.11 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a(1-7) and 4410(13)

Subject: Special education programs and services.

Purpose: To conform commissioner's regulations to the Federal Individuals with Disabilities Education Act, as amended by Pub L. 108-446, relating to: the education of students with disabilities who are homeless youth; school district professional development plans; attendance, mandatory medication and new entrant screenings; definitions; board of education responsibilities; membership of the committee on special education, subcommittee and committee on preschool special education; procedures for referral, evaluation, IEP development, placement and review; due process procedures; continuum of services; students being educated in private schools and State-operated and State-supported schools; day treatment programs; educational programs for preschool students with disabilities; and due process procedures for students with disabilities subject to discipline removals.

Substance of proposed rule (Full text is posted at the following State website: www.vesid.nysed.gov/specialed/idea/home.html): The Commissioner of Education proposes to repeal Part 101 and amend sections 100.2(x), 100.2(dd), 200.1, 200.2, 200.3, 200.4, 200.5, 200.6, 200.7, 200.14, 200.16, 201.2, 201.3, 201.4, 201.5, 201.7, 201.8, 201.9, 201.10 and 201.11 of the Commissioner's Regulations, effective September 29, 2005, relating to the provision of special education programs and services to students with disabilities. The following is a summary of the substance of the proposed amendments.

Section 100.2(x), as amended, requires a school district to: coordinate the transmittal of records for a student with a disability who is a homeless youth; provide comparable special education services to a homeless youth with a disability who enrolls in a school district; ensure the local education agency liaison assists in the enrollment and educational placement through coordination with the Committee on Special Education (CSE) for a student with a disability who is a homeless youth; and coordinate the implementation of the homeless provisions with IDEA.

Section 100.2(dd), as amended, requires a school district to include, as part of its professional development plan, a description of the professional development activities provided to school personnel who work with students with disabilities.

Part 101, relating to exemptions from attendance, is repealed.

Section 200.1, as amended, conforms definitions of assistive technology service, impartial hearing officer, mediator, parent, related services, school health services, special education, learning disability, surrogate parent and transition services; adds definitions of homeless youth, limited English proficiency, universal design and ward of the State, consistent with the federal definitions of these terms; and makes technical amendments to the definitions of guardian ad litem, general curriculum and prior written notice.

Section 200.2, as amended, adds child find requirements for students with disabilities who are homeless or wards of the State; adds data requirements consistent with federal law; adds new responsibilities relating to child find, evaluation, data collection and data reporting for students with disabilities placed in private elementary and secondary schools by their parents; requires instructional materials to be in a format that meets the National Instructional Materials Accessibility Standard as published in the Federal Register; ensures that amendments to individualized education programs (IEPs) are disseminated consistent with Chapter 408 of the Laws of 2002 and recommendations made to IEPs without convening a meeting or by amending the IEP are provided to the board of education; repeals requirements for a comprehensive system of personnel development and requires schools to include personnel development activities for staff working with students with disabilities in the professional development plan pursuant to section 100.2 of the Commissioner's regulations; requires boards of education and boards of cooperative educational services (BOCES) to establish written policies that identify the measurable steps it will take to recruit, hire, train and retain highly qualified personnel; requires school districts to develop policies and procedures that describe the guidelines for the provision of appropriate accommodations in the administration of district-wide assessments; and requires a school district to identify how, to the extent feasible, it will use universal design principles in developing and administering any district-wide assessments.

Section 200.3, as amended, requires that not less than one regular education teacher and not less than one special education teacher or pro-

vider be members of the CSE, a subcommittee thereof, and the committee on preschool special education (CPSE); adds, consistent with amendments made to section 4402 of the Education Law by Chapter 194 of the Laws of 2004, that the additional parent member on the CSE may be a parent of a student who has been declassified or who has graduated within the past five years; and provides for the written agreement between parents and school districts that the attendance of a CSE member is not necessary and for written parental consent for the excusal of CSE, subcommittee and CPSE members.

Section 200.4, as amended, conforms State regulations to federal law requirements relating to parental consent, individual evaluations and reevaluations, evaluation procedures, eligibility determinations including determinations of learning disabilities, IEP contents including transition services to be in effect beginning with the school year when the student turns age 15, the right of the parent to agree to alternative means of participation for CSE, subcommittee or CPSE meetings, annual review requirements, changes to the IEP after the annual review, and provision of services and transfer of records for students who transfer school districts.

Section 200.5, as amended, conforms State due process requirements to federal law relating to prior written notice, consent, notice of meetings, parent participation in CSE meetings, procedural safeguards notice, mediation, due process hearing request notification requirements, resolution sessions, impartial hearings, appeals of the decision of the State review officer and surrogate parents.

Section 200.6, as amended, adds interim alternative educational settings to the required continuum of services for students with disabilities.

Section 200.7, as amended, conforms State requirements to federal law relating to CSE members and due process for student placements in State-operated and State-supported schools.

Section 200.14, as amended, conforms the requirements for IEP development for students in day treatment programs to the amended requirements in section 200.4.

Section 200.16, as amended, conforms State requirements to federal law relating to CPSE membership, individual evaluation, eligibility determinations, reevaluations, IEP development, annual reviews, changes to the IEP, procedural safeguards and due process procedures.

Section 201.2, as amended, conforms the definition of interim alternative education setting to federal law and adds a definition of serious bodily injury.

Section 201.3, as amended, conforms the CSE responsibilities for functional behavioral assessments and behavioral intervention plans to federal law.

Section 201.4, as amended, conforms State requirements to federal law relating to the establishment of a manifestation team and factors to determine if the behavior of a student was or was not a manifestation of the student's disability.

Section 201.5, as amended, revises the basis of knowledge as to whether a student is presumed to have a disability for discipline purposes to be consistent with federal law.

Section 201.7, as amended, makes technical changes relating to the manifestation team; adds serious bodily injury as a reason school personnel may change a student's placement to an interim alternative educational setting; and provides that school personnel may consider unique circumstances for students with disabilities relating to discipline decisions.

Section 201.8, as amended, establishes the authority of an impartial hearing officer to order a change of placement to an interim alternative educational setting, consistent with federal law.

Section 201.9, as amended, changes the coordination with a superintendent's hearing and other due process procedures applicable to all students to federal requirements.

Section 201.10, as amended, defines service a student with a disability must receive during suspensions of 10 school days or more and that the interim alternative educational setting shall be determined by the CSE.

Section 201.11, as amended, requires the pendency setting for students with disabilities during expedited impartial hearings to be the interim alternative educational setting or other disciplinary setting.

Technical amendments are also made to sections 200.1, 200.2, 200.3, 200.4, 200.5, 200.7, 200.14, 200.16 and Part 201.

Text of proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, 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: Rebecca H. Cort, Deputy Commissioner, Office of Vocational and Educational Services for Individuals with Disabilities, Education Department, One Commerce

Plaza, Rm. 1606, Albany, NY 12234, (518) 474-2714, e-mail: vesid-spe@mail.nysed.gov, subject: regulatory comments

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

Education Law section 3208(1-5) provides for the attendance and mental or physical examination requirements for students.

Education Law section 3209(7) authorizes the Commissioner to promulgate regulations regarding the education of homeless youth.

Education Law section 3214(3) establishes requirements for the discipline of students with disabilities and students presumed to have a disability.

Education Law section 3602-c(2) establishes school district responsibilities for the provision of special education services to students with disabilities enrolled by their parents in nonpublic elementary and secondary schools.

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

Education Law section 4002 establishes responsibilities for education of students in child care institutions.

Education Law sections 4308(3) and 4355(3) authorize the Commissioner to prescribe regulations relating to admission to, respectively, the State School for the Blind and State School for the Deaf.

Education Law section 4402 establishes duties of school districts for the education of students with disabilities.

Education Law section 4403 outlines responsibilities of the Department and school districts to provide special education programs and services to students with disabilities. Section 4403(3) authorizes the Department to formulate such rules and regulations pertaining to the physical and educational needs of such children as the Commissioner shall deem to be in their best interests.

Education Law section 4404 establishes appeal procedures for students with disabilities.

Education Law section 4404-a establishes mediation programs for students with disabilities.

Education Law section 4410 outlines the special education services and programs for preschool children with disabilities. Section 4410(13) authorizes the Commissioner to adopt regulations.

LEGISLATIVE OBJECTIVES:

The amendments carry out the legislative objectives set forth in the aforementioned statutes to ensure that students with disabilities are provided a free appropriate public education consistent with federal law and regulations.

NEEDS AND BENEFITS:

The amendments are necessary to conform the Commissioner's Regulations to the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*), as amended by Public Law 108-446. The amendments relate to the provision of services to homeless youth; professional development plan and special education personnel; attendance, prohibition on mandatory medication and screening of new entrants; definitions; child find for students who are homeless or ward of the State; school district requirements for child find, evaluation, data collection and reporting for students with disabilities placed by their parents in private elementary and secondary schools; repeal of the comprehensive system of personnel development; instructional materials in accessible formats; school district and boards of cooperative educational services (BOCES) policies and procedures relating to recruiting, hiring, training and retaining highly qualified personnel; policies and procedures relating to the administration of district-wide assessments to students with disabilities; individualized education program (IEP) development and revision; membership and meetings of committees on special education (CSE); parental consent for special education evaluations and services; eligibility determinations, including determinations of students with learning disabilities; IEP contents, including transition requirements; due process procedures, including mediation, due process hearing request notices, resolution sessions, impartial hearings and appeals; and the discipline of students with disabilities, including requirements for services during suspensions and removals, mani-

festation determinations, authority of school personnel, authority of impartial hearing officers, and pendency during expedited impartial hearings.

COSTS:

a. Costs to State government: None.

b. Costs to local governments: None.

c. Costs to regulated parties: None.

d. Costs to the State Education Department of implementation and continuing compliance: None.

The amendments conform the Commissioner's Regulations to recent changes in federal and State law relating to the education of students with disabilities and do not impose any additional costs beyond those imposed by such federal statutes and regulations and State statutes.

LOCAL GOVERNMENT MANDATES:

The amendments conform the Commissioner's Regulations to recent changes in federal and State law relating to the education of students with disabilities and do not impose any additional program, service, duty or responsibility upon local governments beyond those imposed by federal statutes and regulations and State statutes.

Section 100.2(x), as amended, requires a school district to: coordinate the transmittal of records for a student with a disability who is a homeless youth; provide comparable special education services to a homeless youth with a disability who enrolls in a school district; ensure the local education agency liaison assists in the enrollment and educational placement through coordination with the CSE for a student with a disability who is a homeless youth; and coordinate the implementation of the homeless provisions with IDEA.

Section 100.2(dd), as amended, requires a school district to include in its professional development plans a description of professional development activities provided to school personnel who work with students with disabilities.

Part 101, relating to exemptions from attendance, is repealed.

Section 200.1, as amended, revises the definitions of the terms assistive technology service, impartial hearing officer, mediator, parent, related services, school health services, special education, learning disability, surrogate parent and transition services; adds definitions of homeless youth, limited English proficiency, universal design and ward of the State, consistent with the federal definitions of these terms; and makes technical amendments to the definitions of guardian ad litem, general curriculum and prior written notice.

Section 200.2, as amended, adds child find requirements for students with disabilities who are homeless or wards of the State; adds data requirements consistent with federal law; adds new responsibilities relating to child find, evaluation, data collection and data reporting for students with disabilities placed in private elementary and secondary schools by their parents; requires instructional materials to be in a format that meets the National Instructional Materials Accessibility Standard; requires that amendments to IEPs are disseminated consistent with Chapter 408 of the Laws of 2002 and recommendations made to IEPs without convening a meeting or by amending the IEP are provided to the board of education; repeals requirements for a comprehensive system of personnel development and requires schools to include personnel development activities for staff working with students with disabilities in the professional development plan; requires a board of education and BOCES to establish written policies that identify the measurable steps it will take to recruit, hire, train and retain highly qualified personnel; requires school districts to develop policies and procedures that describe the guidelines for the provision of appropriate accommodations in the administration of district-wide assessments; and requires school districts to identify how, to the extent feasible, it will use universal design principles in developing and administering any district-wide assessments.

Section 200.3, as amended, requires that not less than one regular education teacher and not less than one special education teacher or provider be members of the CSE, a subcommittee thereof, and the committee on preschool special education (CPSE); allows the additional parent member on a CSE to be a parent of a child who has been declassified or has graduated within a five-year period; and provides for the written agreement between parents and school districts that the attendance of a CSE member is not necessary and for the consent of parents for the excusal of CSE, subcommittee and CPSE members.

Section 200.4, as amended, conforms State regulations to federal law requirements relating to: parental consent; individual evaluations and reevaluations; evaluation procedures; eligibility determinations including determinations of learning disabilities; IEP contents including transition requirements; the right of the parent to agree to alternative means of participation for CSE, subcommittee or CPSE meetings; annual review

requirements; changes to the IEP after the annual review; and students who transfer school districts.

Section 200.5, as amended, conforms State due process requirements to federal law relating to prior written notice, consent, notice of meetings, parent participation in CSE meetings, procedural safeguards notice, mediation, due process hearing request notification requirements, resolution sessions, impartial hearings, appeals of the decision of the State review officer and surrogate parents.

Section 200.6, as amended, adds interim alternative educational settings to the required continuum of services for students with disabilities.

Section 200.7, as amended, conforms State requirements to federal law relating to CSE members and due process for student placements in State-operated and State-supported schools.

Section 200.14, as amended, conforms the requirements for IEP development for students in day treatment programs to amended requirements in section 200.4.

Section 200.16, as amended, conforms State requirements to federal law relating to CPSE membership, individual evaluation, eligibility determinations, reevaluations, IEP development, annual reviews, changes to the IEP, procedural safeguards and due process procedures.

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Section 201.8, as amended, establishes the authority of an impartial hearing officer to order a change of placement to an interim alternative educational setting, consistent with federal law.

Section 201.9, as amended, changes the coordination with a superintendent's hearing and other due process procedures applicable to all students to conform to federal requirements.

Section 201.10, as amended, defines services a student with a disability must receive during suspensions of 10 school days or more and that the interim alternative educational setting shall be determined by the CSE.

Section 201.11, as amended, requires the pendency setting for students with disabilities during expedited impartial hearings to be the interim alternative educational setting.

PAPERWORK:

The requirements for a comprehensive system of personnel (CSPD) have been repealed and replaced with a requirement that a school district include information in its professional development plan on activities provided to school personnel who work with students with disabilities. Additionally, school districts and BOCES must identify the measurable steps taken to recruit, hire, train and retain highly qualified personnel.

Additional data collection and reporting requirements are added consistent with federal data collection including requirements relating to students placed by their parents in private elementary and secondary schools.

Changes to due process provisions require a school district to prepare a due process hearing request notice for a parent when the school is the party to request an impartial hearing. Districts would also be required to execute a legally binding written agreement when they resolve a due process complaint through a resolution session. The number of times a district must provide a parent with the procedural safeguards notice has been limited to once a year, with exceptions for certain circumstances.

DUPLICATION:

The amendments will not duplicate, overlap or conflict with any other State or federal statute or regulation, and are necessary to conform to recent changes in federal law relating to the education of students with disabilities.

ALTERNATIVES:

There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

The amendments do not exceed any minimum federal standards, and are necessary to conform to recent changes in federal and State law.

COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the amendments by their effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendments are necessary in order to ensure compliance with federal law and regulations and State law relating to the education of students with disabilities, ages 3-21, and do not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the rule that it does not affect small businesses, no affirmative steps are needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Local Governments:

EFFECT OF RULE:

The proposed amendments apply to all public school districts, boards of cooperative educational services (BOCES), State-operated and State-supported schools and approved private schools in the State.

COMPLIANCE REQUIREMENTS:

The proposed amendments conform the Commissioner's Regulations to recent changes in federal and State law relating to the education of students with disabilities and do not impose any additional compliance requirements upon local governments beyond those imposed by federal statutes and regulations and State statutes.

Section 100.2(x), as amended, requires a school district to: coordinate the transmittal of records for a student with a disability who is a homeless youth; provide comparable special education services to a homeless youth who is a student with a disability and who enrolls in a school district; ensure the local education agency liaison assists in the enrollment and educational placement through coordination with the committee on special education (CSE) for a student with a disability who is a homeless youth; and coordinate the implementation of the homeless provisions with IDEA.

Section 100.2(dd), as amended, requires school districts to include in their professional development plans a description of their professional development activities provided to school personnel who work with students with disabilities.

Section 200.1, as amended, revises the definitions of the terms assistive technology service, impartial hearing officer, mediator, parent, related services, school health services, special education, learning disability, surrogate parent and transition services; adds definitions of homeless youth, limited English proficiency, universal design and ward of the State, consistent with the federal definitions of these terms; and makes technical amendments to the definitions of guardian ad litem, general curriculum and prior written notice.

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Section 200.3, as amended, requires that not less than one regular education teacher and not less than one special education teacher or provider be members of the committee on special education (CSE), a subcommittee thereof, and the committee on preschool special education (CPSE); allows the additional parent member on a CSE to be a parent of a child who has been declassified or has graduated within a five-year period; and provides for the written agreement between parents and school districts

that the attendance of a CSE member is not necessary and for the consent of parents for the excusal of CSE, subcommittee and CPSE members.

Section 200.4, as amended, conforms State regulations to federal law requirements relating to: parental consent; individual evaluations and reevaluations; evaluation procedures; eligibility determinations including determinations of learning disabilities; IEP contents including transition requirements; the right of the parent to agree to alternative means of participation in CSE, subcommittee or CPSE meetings; annual review requirements; changes to the IEP after the annual review; and students who transfer school districts.

Section 200.5, as amended, conforms State due process requirements to federal law relating to prior written notice, consent, notice of meetings, parent participation in CSE meetings, procedural safeguards notice, mediation, due process hearing request notification requirements, resolution sessions, impartial hearings, appeals of the decision of the State review officer and surrogate parents.

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Section 201.10, as amended, defines services a student with a disability must receive during suspensions of 10 school days or more and that the interim alternative educational setting shall be determined by the CSE.

Section 201.11, as amended, requires the pendency setting for students with disabilities during expedited impartial hearings to be the interim alternative educational setting.

PROFESSIONAL SERVICES:

The proposed amendments are necessary to conform the Commissioner's Regulations to recent changes in federal and State law relating to the provision of education to students with disabilities and do not impose any additional professional service requirements on local governments, beyond those imposed by such federal statutes and regulations and State statutes.

COMPLIANCE COSTS:

The proposed amendments are necessary to conform the Commissioner's Regulations to the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*), as amended by Public Law 108-446 and to changes in State law. School districts and other local educational agencies (LEAs) are required to comply with IDEA as a condition to their receipt of federal funding. The proposed amendments do not impose any additional costs beyond those imposed by such federal statutes and regulations and State statutes.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendments do not impose any new technological requirements but merely conform the Commissioner's Regulations to recent changes in federal and State law. Economic feasibility is addressed above under compliance costs.

MINIMIZING ADVERSE IMPACT:

The proposed amendments are necessary to conform the Commissioner's Regulations to IDEA (20 U.S.C. 1400 *et seq.*), as amended by Public Law 108-446 and to changes in State law. School districts and other LEAs are required to comply with IDEA as a condition to their receipt of federal funding. The proposed amendments have been carefully drafted to meet federal and State statutory requirements and do not impose any additional costs or compliance requirements on these entities beyond those imposed by State and Federal law.

LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendments have been provided to District Superintendents with the request that they distribute it to school districts within their supervisory districts for review and comment. The State Education Department conducted public hearings on the proposed amendments on May 24, 25, 31 and June 8, 2005.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendments will apply to all public school districts, boards of cooperative educational services (BOCES), State-operated and State-supported schools and approved private schools 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 population density of 150 per square miles or less.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS AND PROFESSIONAL SERVICES:

The proposed amendments conform the Commissioner's Regulations to recent changes in federal and State law relating to the education of students with disabilities and do not impose any additional program, service, duty or responsibility upon local governments beyond those imposed by federal statutes and regulations and State statutes.

Section 100.2(x), as amended, requires a school district to: coordinate the transmittal of records for a student with a disability who is a homeless youth; provide comparable special education services to a homeless youth who is a student with a disability and who enrolls in a school district; ensure the local education agency liaison assists in the enrollment and educational placement through coordination with the committee on special education (CSE) for a student with a disability who is a homeless youth; and coordinate the implementation of the homeless provisions with IDEA.

Section 100.2(dd), as amended, requires school districts to include in their professional development plans a description of their professional development activities provided to school personnel who work with students with disabilities.

Section 200.1, as amended, revises the definitions of the terms assistive technology service, impartial hearing officer, mediator, parent, related services, school health services, special education, learning disability, surrogate parent and transition services; adds definitions of homeless youth, limited English proficiency, universal design and ward of the State, consistent with the federal definitions of these terms; and makes technical amendments to the definitions of guardian ad litem, general curriculum and prior written notice.

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identify how, to the extent feasible, it will use universal design principles in developing and administering any district-wide assessments.

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Section 200.5, as amended, conforms State due process requirements to federal law relating to prior written notice, consent, notice of meetings, parent participation in CSE meetings, procedural safeguards notice, mediation, due process hearing request notification requirements, resolution sessions, impartial hearings, appeals of the decision of the State review officer and surrogate parents.

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Section 201.10, as amended, defines services a student with a disability must receive during suspensions of 10 school days or more and that the interim alternative educational setting shall be determined by the CSE.

Section 201.11, as amended, requires the pendency setting for students with disabilities during expedited impartial hearings to be the interim alternative educational setting or other disciplinary setting.

The proposed amendments are necessary to conform the Commissioner's Regulations to recent changes in federal and State law relating to the provision of education to students with disabilities and do not impose any additional professional service requirements on local governments, beyond those imposed by such federal statutes and regulations and State statutes.

COSTS:

The proposed amendments are necessary to conform the Commissioner's Regulations to the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*), as amended by Public Law 108-446 and to changes in State law. School districts and other local educational agencies (LEAs) are required to comply with IDEA as a condition to their receipt of federal funding. The proposed amendments do not impose any additional costs beyond those imposed by such federal statutes and regulations and State statutes.

MINIMIZING ADVERSE IMPACT:

The proposed amendments are necessary to conform the Commissioner's Regulations to IDEA (20 U.S.C. 1400 *et seq.*), as amended by Public Law 108-446 and to changes in State law. School districts and other LEAs are required to comply with IDEA as a condition to their receipt of federal funding. The proposed amendments have been carefully drafted to meet federal and State statutory requirements and do not impose any additional costs or compliance requirements on these entities beyond those imposed by State and Federal law. Since these requirements apply to all school districts in the State, it is not possible to adopt different standards for school districts in rural areas.

RURAL AREA PARTICIPATION:

The proposed rule was submitted for discussion and comment to the Department's Rural Education Advisory Committee that includes representatives of school districts in rural areas. The State Education Department conducted public hearings on the proposed amendments on May 24, 25, 31 and June 8, 2005.

Job Impact Statement

The proposed amendments are necessary in order to ensure compliance with federal law and regulations and State law relating to the education of students with disabilities, ages 3-21, and will not have a substantial 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.

Department of Health

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Medicaid Utilization Thresholds

I.D. No. HLT-50-04-00001-C

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

The notice of proposed rule making, I.D. No. HLT-50-04-00001-P was published in the *State Register* on December 15, 2004.

Subject: Medicaid utilization thresholds.

Purpose: To more properly reflect the maximum number of physician, pharmacy mental health and laboratory services a recipient receives in a benefit year.

Substance of rule: This regulation change authorizes the Department to modify a system of utilization controls. Based on frequency distributions of historical Medicaid utilization patterns, this proposal adjusts the maximum number of physician, pharmacy, and laboratory services a recipient is allowed in a benefit year. These new limits will help ensure that only appropriate levels of care are permitted.

Changes to rule: No substantive changes.

Expiration date: December 15, 2005.

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

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

Division of Housing and Community Renewal

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Rent Stabilization Code

I.D. No. HCR-23-05-00005-P

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

Proposed action: Amendment of Parts 2520-2522, 2526, 2527 and 2529 of Title 9 NYCRR.

Statutory authority: Administrative Code of the City of New York, section 26-511(b)

Subject: Rent Stabilization Code (RSC).

Purpose: To conform the RSC to chapter 82 of the Laws of 2003, make non-substantial technical corrections, and provide for allocation of major capital improvement costs between commercial and residential tenants.

Public hearing(s) will be held at: 10:00 a.m. - 4:00 p.m., Aug. 9, 2005 at Fashion Institute of Technology, 27th St. and 7th Ave., Bldg. A, 8th Fl., Faculty Dining Rm., New York, NY.

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

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

Text of proposed rule: Subchapter B of Chapter VIII of Subtitle S of Title 9 NYCRR

The Rent Stabilization Code as amended and adopted pursuant to the powers granted to the Division of Housing and Community Renewal by section 26-511(b) of the Administrative Code of the City of New York, as recodified by Laws of 1985, Chap. 907, section 1 (formerly section YY51-6.0[b] as amended by Laws of 1985, Chap. 888, section 2), and section 26-518(a) of such Code, as recodified by Laws of 1985, Chap. 907, section 1 (formerly section YY51-6.1[a] as added by Laws of 1985, Chap. 888, section 8), is amended to read as follows:

PART 2520 SCOPE

Section 1

Section 2520.2 of this Part is amended to read as follows:

Sections 1 through 66, inclusive, of the Code of the Rent Stabilization Association of New York City, Inc., and sections 1 through 64, inclusive, of the Code of the Metropolitan Hotel Industry Stabilization Association, Inc., as last amended, are [hereby further amended by deleting such sections] *deleted* in their entirety, and sections 2520.1 through [2530.1] 2531.9 of this Subchapter, inclusive, are [hereby] adopted, and this Code [shall hereafter be] *is* known as the Rent Stabilization Code. Chapter VIII of this Subtitle is [hereby redesignated to be] known as Rent Stabilization Regulations, and divided into Subchapter A - Emergency Tenant Protection Regulations, consisting of [existing] Parts [2500-2510] 2500-2511; and Subchapter B - Rent Stabilization Code, consisting of [new] Parts [2520-2530] 2520-2531.

Section 2

Subdivision (g) of section 2520.5 of this Part is amended to read as follows:

(g) City Rent and Eviction Regulations. Regulations adopted and promulgated by the State Division of Housing and Community Renewal pursuant to the City Rent Law, Parts [2200-2210] 2200-2211 of Title 9 NYCRR, officially known as the Official Compilation of Codes, Rules and Regulations of the State of New York.

Section 3

The last undesignated paragraph of paragraph (4) of subdivision (r) of section 2520.6 of this Part is numbered subparagraph (xi).

PART 2521 LEGAL REGULATED RENTS

Section 1

Section 2521.2 of this Part is amended to read as follows:

(a) Where the [legal regulated rent is established and documented in a manner prescribed by the DHCR, and a rent lower than such rent is charged and paid by the tenant, such lower rent shall be a preferential rent,

which shall be subject to all adjustments provided by law and this Code. Upon vacancy of the tenant who pays a preferential rent, the legal regulated rent shall be the legal regulated rent previously established by record within four years prior thereto, plus all intervening guidelines increases, plus such other rent increases as are authorized by law and this Code.] *amount of rent charged to and paid by the tenant is less than the legal regulated rent for the housing accommodation, such rent shall be known as the "preferential rent." The amount of rent for such housing accommodation which may be charged upon renewal or vacancy thereof may, at the option of the owner, be based upon either such preferential rent or an amount not more than the previously established legal regulated rent, as adjusted by the most recent applicable guidelines increases and other increases authorized by law.*

(b) Such legal regulated rent shall be "previously established" where:

(1) the legal regulated rent is set forth in either the vacancy lease or renewal lease pursuant to which the preferential rent is charged; or

(2) for a vacancy lease or renewal lease which set forth a preferential rent and which was in effect on or before June 19, 2003, and the legal regulated rent was not set forth in either such vacancy lease or renewal lease, the legal regulated rent was set forth in an annual rent registration served upon the tenant in accordance with the applicable provisions of law, except that the rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint pursuant to section 2526.1 or 2522.3 of this Title shall not be examined.

(c) Where the amount of the legal regulated rent is set forth either in a vacancy lease or renewal lease where a preferential rent is charged, the amount of the legal regulated rent shall not be required to be set forth in any subsequent renewal of such lease, except that the rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint pursuant to section 2526.1 or 2522.3 of this Title shall not be examined.

PART 2522 RENT ADJUSTMENTS

Section 1

Paragraph (14) of subdivision (a) of section 2522.4 of this Part is amended to read as follows:

(14) In the case of an improvement constituting a moderate rehabilitation as defined in [subdivision 2.1(6) of the Rules and Regulations Governing Tax Exemption and Tax Abatement pursuant to Title 11 of the Administrative Code] *section 5-02 of Title 28 of the Rules of the City of New York*, an owner may elect the total cost for such improvement to be the amount certified by the [Tax Abatement/Tax Exemption Unit] *Office of Tax Incentive Programs* of HPD in the certificate of eligibility and *reasonable cost* issued by such office with respect to such improvement. Such election shall be binding on the DHCR and shall waive any claim for a rent increase by reason of any difference between the total cash paid by the owner and such lesser certified amount.

Section 2

Subdivision (a) of section 2522.4 of this Part is amended by adopting a new paragraph (16) to read as follows:

(16) *When determining the adjustment of legal regulated rents pursuant to paragraph (2) of this subdivision, where the subject building contains commercial rental space in addition to residential rental space, and the DHCR determines that such commercial space benefits from the improvement, DHCR shall allocate the approved costs between the commercial rental space and the residential rental space based upon the relative square feet of each rental area.*

PART 2526 ENFORCEMENT

Section 1

Subdivision (g) of section 2526.1 of this Part is amended to read as follows:

(g) *Except as otherwise provided in paragraph (2) of subdivision (a) of this section, [The] the provisions of this section shall not apply to a proceeding pursuant to section 2522.3 of this Title.*

PART 2527 PROCEEDINGS BEFORE THE DHCR

Section 1

Section 2527.6 of this Part is amended to read as follows:

The DHCR, on such terms and conditions as it shall determine, may:

(a) dismiss the application or complaint if it fails to substantially comply with the provisions of the RSL or this Code;

(b) grant or deny the application or complaint in whole or in part;

(c) issue an appropriate order in a proceeding instituted on DHCR's own initiative;

(d) issue conditional or provisional orders as may be deemed appropriate under the circumstances. A copy of any order issued shall be forwarded to all parties to the proceeding by the DHCR as the DHCR directs.

[Notwithstanding any other provision of this Code] *Any provision of this Code to the contrary notwithstanding*, no order shall be deemed final and binding for purposes of judicial review except in accordance with Part 2529 of this Title.

PART 2529 ADMINISTRATIVE REVIEW

Section 1

Subdivision (a) of section 2529.7 of this Part is amended to read as follows:

(a) Reject a [par] PAR which is timely filed if it is insufficient or defective, but may provide a specified time within which to perfect the PAR.

Text of proposed rule and any required statements and analyses may be obtained from: Maurice Jamison, Special Assistant to the Deputy Commissioner, Division of Housing and Community Renewal, Office of Rent Administration, 92-31 Union Hall St., Jamaica, NY 11433, (718) 262-4816

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

Public comment will be received until: five days after the last scheduled public hearing required by statute.

Regulatory Impact Statement

1. STATUTORY AUTHORITY

Section 26-511(b) of the Administrative Code of the City of New York, as recodified by the Laws of 1985, Chap. 907, section 1 (formerly section yy51-6.0[b]), as amended by Laws of 1985, Chap. 888, section 2) and section 26-518(a) of such Code, as recodified by the Laws of 1985, Chap. 907, section 1 (formerly section yy51-6.1[a] as added by the laws of 1985, Chap. 888, section 8) provides authority to the Division of Housing and Community Renewal (DHCR) to amend the Rent Stabilization Code (RSC) "from time to time."

2. LEGISLATIVE OBJECTIVES

The proposed rule making is necessary to implement Chapter 82 of the Laws of 2003. Moreover, the long-standing statutorily required Major Capital Improvement (MCI) program will be enhanced by creating a more workable methodology, thereby streamlining agency processing, resulting in a more equitable and logical allocation of MCI costs between commercial and residential units.

3. NEEDS AND BENEFITS

One purpose of the proposed rules is to implement changes mandated by enactment of Chapter 82 of the Laws of 2003.

Tenants benefit in that owners have an incentive to offer preferential rents as an inducement for tenants to enter into a leasehold agreement. Such incentive, where offered, would provide the affected tenant with potentially significant savings when compared to the legal regulated rent of the subject apartment.

Owners benefit in that they have a tool in which to rent apartments at an attractive amount, without being locked into such agreements for the life of the subject tenancy.

With regard to the proposed rule which includes a provision for the allocation of approved costs of MCI's between commercial and residential rental spaces in buildings containing both such spaces, the purpose is to bring agency practice into alignment with the standard practice of the real estate industry. Square footage is used as a common and objective measure to allocate costs, to determine comparable values, and to express purchase or rental amounts. As such, it is an industry standard, and this fact is reflected in other governmental programs, most particularly, the closely related Sections 11-243 (formerly J51-2.5) or 11-244 (formerly J51-5.0) of the Administrative Code of the City of New York, as amended, or Section 421-a of the Real Property Tax Law, as amended.

The remaining amendments are of a non-substantial, technical manner, correcting typographical errors, updating citation references and internal section references. Owners and tenants would both benefit from these corrections.

4. COSTS

With regard to preferential rents, the amendments are not expected to have any noticeable costs associated with them for the regulated parties, this agency, or State and local governments.

With regard to Major Capital Improvements, owners are allowed to recoup expenses from tenants pursuant to the rent regulatory laws based upon the cost of the work involved, amortized over an eighty-four month period, and limited to no more than a six percent increase per year. Should the parties choose to advance or challenge the square footage allocation of MCI costs, minimal cost of square footage determination by the parties might ensue. Square footage data, in many instances, may be available through public sources. In a limited sampling of prior and current MCI applications, where the method of cost allocation between commercial

space and residential space could have been (or can be) based upon the relative square feet of each rental area, the differentials in rent increases ranged from \$0.02 per room to \$5.87 per room.

5. LOCAL GOVERNMENT MANDATES

The proposed rule making will not impose any new program, service, duty, or responsibility upon any level of local government.

6. PAPERWORK

It is not anticipated that the proposed amendments will result in any increased paperwork. However, with regard to changing the methodology of apportioning MCI rent increases between residential and commercial spaces, existing forms will require amending.

7. DUPLICATION

The proposed amendments do not duplicate any known State or federal requirements

8. ALTERNATIVES

The proposed amendments implement recently enacted statutory provisions, correct errors, or provide the most logical method of streamlining the current allocation of MCI costs and the implementation of notice requirements for preferential rents and their establishment. Prior policies on preferential rent were confusing and changed by court decisions and legislative enactment. Thus, there were no significant viable alternatives to these proposed amendments.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any minimum federal standard.

10. COMPLIANCE SCHEDULE

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed rules. Should the DHCR determine that delayed implementation is appropriate, section 2527.11 of the RSC authorizes the agency to take such action.

Regulatory Flexibility Analysis

1. EFFECT OF RULE

The Rent Stabilization Code (RSC) applies only to rent stabilized housing units in New York City. The class of small businesses affected by these proposed amendments would be limited to small building owners, those who own limited numbers of rent stabilized units. The amended regulations are expected to have no burdensome impact on such small businesses.

These amendments to the RSC, which applies exclusively in New York City, are expected to have no impact on the local government thereof.

2. COMPLIANCE REQUIREMENTS

If charging a preferential rent, an owner must "previously establish" the higher legal regulated rent in order to begin charging that amount. This would require, where appropriate, providing a lease or annual rent registration which includes the legal regulated rent.

With regard to MCI rent increases allocated based upon square footage, it is expected that existing forms will be updated and amended to reflect such changes.

However, as such, the proposed amendments do not otherwise require regulated parties to perform any additional record keeping, reporting, or any other acts. There are no new compliance requirements placed on local governments.

3. PROFESSIONAL SERVICES

The proposed amendments do not require small businesses to obtain any new or additional professional services.

4. COMPLIANCE COSTS

It is not contemplated that this action will ultimately impose any significant costs upon small businesses. Additionally, there should be no costs imposed on local governments resulting from the proposed amendments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

Compliance is not anticipated to require any unusual new or burdensome technological applications.

6. MINIMIZING ADVERSE IMPACT

These proposed amendments do not impair the rights of small business owners, and therefore have no adverse economic impact on such parties or the local government. Consequently, it was not necessary to consider the approaches suggested in SAPA section 202-b(1).

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

To assure that regulated and other interested parties were given an opportunity to participate in the rule making process, the DHCR provided several parties and organizations with a demonstrated interest in rent regulation with the opportunity to make code amendment suggestions. The DHCR provided opportunity for comment to such organizations as London

Terrace Tenants Association, Community Housing Improvement Program, Inc., Legal Services for New York City, Apartment House Council of Nassau County, Inc., Legal Aid Society, Metropolitan Council on Housing, Associated Hotels and Motels of Greater New York, Building and Realty Institute of Westchester, and Manhattan East Realty LLC.

In addition, a Regulatory Agenda was published in the *State Register* on June 30, 2004, indicating that the DHCR was considering this proposed rule making, and all interested parties were given an opportunity to comment. All issues raised by concerned parties were carefully reviewed and considered by DHCR.

Finally, prior to adoption of the amendments, a public hearing will be held, as described in this issue of the *State Register*, at which all interested parties will have an opportunity to comment. Comments will be reviewed for possible inclusion where appropriate.

Rural Area Flexibility Analysis

The Rent Stabilization Code applies exclusively to New York City, and therefore, the proposed rules will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities located in any rural area pursuant to Subdivision 10 of SAPA Section 102.

Job Impact Statement

It is apparent from the text of the rule that there will be no adverse impacts on jobs and employment opportunities.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Emergency Tenant Protection Regulations

I.D. No. HCR-23-05-00006-P

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

Proposed action: Amendment of Parts 2501 and 2502 of Title 9 NYCRR.

Statutory authority: Emergency Tenant Protection Act, L. 1974, ch. 576, section 10

Subject: Emergency tenant protection regulations (TPR).

Purpose: To conform the TPR to chapter 82 of the Laws of 2003, to the Rent Regulation Reform Act of 1997, to the Year 2000 amendments to the Rent Stabilization Code. To make non-substantial technical corrections, and provide for allocation of Major Capital Improvement costs between commercial and residential tenants.

Public hearing(s) will be held at: 10:00 a.m. - 2:00 p.m., Aug. 9, 2005 at Westchester County Supreme Court, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, NY; and 10:00 - 2:00 p.m., Aug. 9, 2005 at Nassau County Legislative Bldg., One West St., Mineola, NY.

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

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

Substance of proposed rule (Full text is not posted on a State website): Substance of Proposed Rules: Substantive amendments and new provisions covered by the proposed rule are as follows:

PART 2501 - LEGAL REGULATED RENTS

Section 2501.2 Preferential rents

Where a preferential rent is charged, the legal regulated rent may be charged upon renewal or vacancy, at the option of the owner, provided it is previously established through a lease or annual rent registration.

PART 2502 - ADJUSTMENTS

Section 2502.3 Application for adjustment of initial legal regulated rent.

Fair Market Rent Appeal provisions are amended to reflect current agency practice and procedure, and to conform to the Rent Stabilization Code.

Section 2502.4 Adjustment of legal regulated rent.

Major Capital Improvement provisions are amended to reflect current agency practice and procedure, and to conform to the Rent Stabilization Code, as well as provide for the allocation of costs between commercial and residential tenants based upon the relative square feet of each rental area.

Text of proposed rule and any required statements and analyses may be obtained from: Maurice Jamison, Special Assistant to the Deputy Commissioner, Division of Housing and Community Renewal, Office of

Rent Administration, 92-31 Union Hall St., Jamaica, NY 11433, (718) 262-4816

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY

The Emergency Tenant Protection Act of 1974 (ETPA), Laws of 1974 Chap. 576, section 10a provides authority to the Division of Housing and Community Renewal (DHCR) to amend the Tenant Protection Regulations (TPR) from "time to time."

2. LEGISLATIVE OBJECTIVES

The proposed rule making is necessary to implement Chapter 82 of the Laws of 2003, to conform the TPR to the Rent Regulation Reform Act of 1997 (RRRA-97), to the amendments of 2000 to the Rent Stabilization Code (RSC), and to current agency practice with regard to Major Capital Improvements (MCI's).

Moreover, the long-standing statutorily required MCI program will be enhanced by creating a more workable methodology, thereby streamlining agency processing, resulting in a more equitable and logical allocation of MCI costs between commercial and residential units.

3. NEEDS AND BENEFITS

One purpose of the proposed rules is to implement changes with regard to preferential rents, as mandated by enactment of Chapter 82 of the Laws of 2003.

Tenants benefit in that owners have an incentive to offer preferential rents as an inducement for tenants to enter into a leasehold agreement. Such incentive, where offered, would provide the affected tenant with potentially significant savings when compared to the legal regulated rent of the subject apartment.

Owners benefit in that they have a tool in which to rent apartments at an attractive amount, without being locked into such agreements for the life of the subject tenancy.

Another purpose in conforming the TPR to RRRA-97, to the amendments of 2000 to the RSC, and current agency practice, is the codification of MCI useful life standards, MCI waiver provisions, a schedule of MCI's, and third party certification regarding MCI complaints.

Owners and tenants benefit because the codification of agency practice protects the due process rights of all parties because it provides them with sufficient notice of the agency's practices and procedures.

With regard to the proposed rule which includes a provision for the allocation of approved costs of MCI's between commercial and residential rental spaces in buildings containing both such spaces, the purpose is to bring agency practice into alignment with the standard practice of the real estate industry. Square footage is used as a common and objective measure to allocate costs, to determine comparable values, and to express purchase or rental amounts. As such, it is an industry standard, and this fact is reflected in other governmental programs, most particularly, the closely related Sections 11-243 (formerly J51-2.5) or 11-244 (formerly J51-5.0) of the Administrative Code of the City of New York, as amended, or Section 421-a of the Real Property Tax Law, as amended.

The remaining amendments are of a non-substantial, technical manner, correcting typographical errors, updating citation references and internal section references. Owners and tenants would both benefit from these corrections.

4. COSTS

With regard to preferential rents, the amendments are not expected to have any noticeable costs associated with them for the regulated parties, this agency, or State and local governments.

With regard to MCI's, owners are allowed to recoup expenses from tenants pursuant to the rent regulatory laws based upon the cost of the work involved, amortized over an eighty-four month period, and limited to no more than a six percent increase per year. Should the parties choose to advance or challenge the square footage allocation of MCI costs, minimal cost of square footage determination by the parties might ensue. Square footage data, in many instances, may be available through public sources. In a limited sampling of prior and current MCI applications, where the method of cost allocation between commercial space and residential space could have been (or can be) based upon the relative square feet of each rental area, the differentials in rent increases ranged from \$0.02 per room to \$5.87 per room.

5. LOCAL GOVERNMENT MANDATES

The proposed rule making will not impose any new program, service, duty, or responsibility upon any level of local government.

6. PAPERWORK

It is not anticipated that the proposed amendments will result in any increased paperwork. However, with regard to changing the methodology of apportioning MCI rent increases between residential and commercial spaces, existing forms will require amending.

7. DUPLICATION

The proposed amendments do not duplicate any known State or federal requirements

8. ALTERNATIVES

The proposed amendments implement recently enacted statutory provisions, correct errors, or provide the most logical method of streamlining the current allocation of MCI costs and the implementation of notice requirements for preferential rents and their establishment. Prior policies on preferential rent were confusing and changed by court decisions and legislative enactment. Thus, there were no significant viable alternatives to these proposed amendments.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any minimum federal standard.

10. COMPLIANCE SCHEDULE

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed rules. Should the DHCR determine that delayed implementation is appropriate, proposed section 2507.11 of these regulations would authorize the agency to take such action.

Regulatory Flexibility Analysis

1. EFFECT OF RULE

The Emergency Tenant Protection Regulations (TPR) apply only to rent stabilized housing units located in those communities in Westchester, Rockland and Nassau Counties that are subject to the Emergency Tenant Protection Act. The class of small businesses affected by these proposed amendments would be limited to small building owners, those who own small numbers of rent stabilized units. The amended regulations are expected to have no burdensome impact on such small businesses.

These amendments to the TPR apply only in the aforementioned communities, and are expected to have no impact on the local governments thereof.

2. COMPLIANCE REQUIREMENTS

If charging a preferential rent, an owner must "previously establish" the higher legal regulated rent in order to begin charging that amount. This would require, where appropriate, providing a lease or annual rent registration which includes the legal regulated rent.

With regard to MCI rent increases allocated based upon square footage, it is expected that existing forms will be updated and amended to reflect such changes.

However, as such, the proposed amendments do not otherwise require regulated parties to perform any additional recordkeeping, reporting, or any other acts. There are no new compliance requirements placed on local governments.

3. PROFESSIONAL SERVICES

The proposed amendments do not require small businesses to obtain any new or additional professional services.

4. COMPLIANCE COSTS

It is not contemplated that this action will ultimately impose any significant costs upon small businesses. Additionally, there should be no costs imposed on local governments resulting from the proposed amendments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

Compliance is not anticipated to require any unusual new or burdensome technological applications.

6. MINIMIZE ADVERSE IMPACT

These proposed amendments do not impair the rights of small business owners, and therefore have no adverse economic impact on such parties or local governments. Consequently, it was not necessary to consider the approaches suggested in SAPA Section 202-b(1).

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

To assure that regulated and other interested parties were given an opportunity to participate in the rule making process, the DHCR provided several parties and organizations with a demonstrated interest in rent regulation with the opportunity to make code amendment suggestions. The DHCR provided opportunity for comment to such organizations as London Terrace Tenants Association, Community Housing Improvement Program, Inc., Legal Services for New York City, Apartment House Council of Nassau County, Inc., Legal Aid Society, Metropolitan Council on Hous-

ing, Associated Hotels and Motels of Greater New York, Building and Realty Institute of Westchester, and Manhattan East Realty LLC.

In addition, a Regulatory Agenda was published in the *State Register* on June 30, 2004, indicating that the DHCR was considering this proposed rule making, and all interested parties were given an opportunity to comment. All issues raised by concerned parties were carefully reviewed and considered by DHCR.

Finally, prior to adoption of the amendments, a public hearing will be held, as described in this issue of the *State Register*, at which all interested parties will have an opportunity to comment. Comments will be reviewed for possible inclusion where appropriate.

Rural Area Flexibility Analysis

The proposed rules are not anticipated to impose any new adverse reporting, recordkeeping or other compliance requirements on public or private entities in any rural area that is subject to these regulations.

Job Impact Statement

It is apparent from the text of the rule, that there will be no adverse impacts on jobs and employment opportunities.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

City Rent and Eviction Regulations

I.D. No. HCR-23-05-00007-P

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

Proposed action: Amendment of Parts 2200 and 2202 of Title 9 NYCRR.

Statutory authority: Omnibus Housing Act, L. 1983, ch. 403, section 28 (not subdivided), and Administrative Code of the City of New York, section 26-405g(1)

Subject: City rent and eviction regulations (CRER).

Purpose: To conform the CRER with the Rent Stabilization Code (RSC) and agency practice regarding major capital improvements (MCI's), and provide for allocation of MCI costs between commercial and residential units; and conform the CRER to the Year 2000 amendments of the RSC and tenant protection regulations regarding adoption of a *de minimis* standard and surcharges for washing machines, dryers or dishwashers, and surcharges for submetered electricity or other utility services.

Public hearing(s) will be held at: 10:00 a.m. - 4:00 p.m., Aug. 9, 2005 at Fashion Institute of Technology, 27th St. and 7th Ave., Bldg. A, 8th Fl., Faculty Dining Rm., New York, NY.

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

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

Substance of proposed rule (Full text is not posted on a State website): Substance of Proposed Rules: Substantive amendments and new provisions covered by the proposed rule are as follows:

PART 2202 ADJUSTMENTS; DETERMINATION OF RENTS AND SERVICES

Section 2202.4 Increased services or facilities, substantial rehabilitation, major capital or other improvements.

Major Capital Improvement provisions are adopted to reflect current agency practice and procedure, and to conform to the Rent Stabilization Code, as well as provide for the allocation of costs between commercial and residential tenants based upon the relative square feet of each rental area.

Section 2202.16 Rent decrease for reduction of services, etc.

A *de minimis* standard is adopted, along with schedules of certain building and individual apartment conditions considered *de minimis*. The amendments reflect current agency practice and procedure.

Section 2202.26 Surcharge for the installation and use of washing machines, dryers and dishwashers.

DHCR will issue an Operational Bulletin authorizing the amount to be charged, which shall not become part of the maximum rent.

Section 2202.27 Surcharges for submetered electricity or other utility service.

A landlord may collect a surcharge for acting as a provider of a utility service (including, but not limited to electricity, gas, cable, or telecommunications), but it will not be subject to these provisions.

Text of proposed rule and any required statements and analyses may be obtained from: Maurice Jamison, Special Assistant to the Deputy Commissioner, Division of Housing and Community Renewal, Office of Rent Administration, 92-31 Union Hall St., Jamaica, NY 11433, (718) 262-4816

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY

The Omnibus Housing Act, Laws of 1983, Chap 403, section 28, (not subdivided), and section 26-405g(1) of the Administrative Code of the City of New York provide authority to the Division of Housing and Community Renewal (DHCR) to amend the City Rent and Eviction Regulations (CRER) from "time to time."

2. LEGISLATIVE OBJECTIVES

The proposed rule making will conform the CRER to the Rent Regulation Reform Act of 1997 (RRRA-97), as well as to the amendments of 2000 to the Rent Stabilization Code (RSC), and to current agency practice with regard to Major Capital Improvements (MCI's).

Moreover, the long-standing statutorily required MCI program will be enhanced by creating a more workable methodology, thereby streamlining agency processing, resulting in a more equitable and logical allocation of MCI costs between commercial and residential units.

3. NEEDS AND BENEFITS

The purpose of conforming the CRER to RRRA-97, to the amendments of 2000 to the RSC, and to current agency practice, is to codify MCI useful life standards, MCI waiver provisions, a schedule of MCI's, and third party certification regarding MCI complaints.

Owners and tenants benefit because the codification of agency practice protects the due process rights of all parties because it provides them with sufficient notice of the agency's practices and procedures.

With regard to the proposed rule which includes a provision for the allocation of approved costs of MCI's between commercial and residential rental spaces in buildings containing both such spaces, the purpose is to bring agency practice into alignment with the standard practice of the real estate industry. Square footage is used as a common and objective measure to allocate costs, to determine comparable values, and to express purchase or rental amounts. As such, it is an industry standard, and this fact is reflected in other governmental programs, most particularly, the closely related Sections 11-243 (formerly J51-2.5) or 11-244 (formerly J51-5.0) of the Administrative Code of the City of New York, as amended, or Section 421-a of the Real Property Tax Law, as amended.

The remaining amendment is of a non-substantial, technical manner, correcting a typographical error. Owners and tenants would both benefit from these corrections.

4. COSTS

With regard to MCI's, owners are allowed to recoup expenses from tenants pursuant to the rent regulatory laws based upon the cost of the work involved, amortized over an eighty-four month period, and limited to no more than a six percent increase per year. Should the parties choose to advance or challenge the square footage allocation of MCI costs, minimal cost of square footage determination by the parties might ensue. Square footage data, in many instances, may be available through public sources. In a limited sampling of prior and current MCI applications, where the method of cost allocation between commercial space and residential space could have been (or can be) based upon the relative square feet of each rental area, the differentials in rent increases ranged from \$0.02 per room to \$5.87 per room.

5. LOCAL GOVERNMENT MANDATES

The proposed rule making will not impose any new program, service, duty, or responsibility upon any level of local government.

6. PAPERWORK

It is not anticipated that the proposed amendments will result in any increased paperwork. However, with regard to changing the methodology of apportioning MCI rent increases between residential and commercial spaces, existing forms will require amending.

7. DUPLICATION

The proposed amendments do not duplicate any known State or federal requirements

8. ALTERNATIVES

The proposed amendments implement recently enacted statutory provisions, correct errors, or provide the most logical method of streamlining the current allocation of MCI costs. Thus, there were no significant viable alternatives to these proposed amendments.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any minimum federal standard.

10. COMPLIANCE SCHEDULE

It is not anticipated that regulated parties will require any significant time to comply with the proposed rules.

Regulatory Flexibility Analysis

1. EFFECT OF RULE

The City Rent and Eviction Regulations (CRER) apply only to housing units located in New York City that are subject to the City Rent and Rehabilitation Law. The small businesses that would be affected by these proposed amendments are the owners of small numbers of regulated housing units, at least one of which is rent controlled. The amended regulations are expected to have no burdensome impact on such small businesses.

These amendments to the CRER, which apply exclusively in New York City, are expected to have no impact on the local government thereof.

2. COMPLIANCE REQUIREMENTS

There are no new major compliance requirements in the proposed amendments. The proposed amendments do not otherwise require regulated parties to perform any additional record keeping, reporting, or any other acts. There are no new compliance requirements placed on local government.

3. PROFESSIONAL SERVICES

The proposed amendments do not require small businesses to obtain any new or additional professional services.

4. COMPLIANCE COSTS

It is not contemplated that this action will ultimately impose any significant costs upon small businesses. Additionally, there should be no costs imposed on local government resulting from the proposed amendments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

Compliance is not anticipated to require any unusual new or burdensome technological applications.

6. MINIMIZE ADVERSE IMPACT

These proposed amendments do not impair the rights of small business owners, and therefore have no adverse economic impact on such parties or local government. Consequently, it was not necessary to consider the approaches suggested in SAPA Section 202-b(1).

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

To assure that regulated and other interested parties were given an opportunity to participate in the rule making process, the DHCR provided several parties and organizations with a demonstrated interest in rent regulation with the opportunity to make code amendment suggestions. The DHCR provided opportunity for comment to such organizations as London Terrace Tenants Association, Community Housing Improvement Program, Inc., Legal Services for New York City, Legal Aid Society, Metropolitan Council on Housing, Associated Hotels and Motels of Greater New York, Rent Stabilization Association, and Real Estate Board of New York, Inc.

In addition, a Regulatory Agenda was published in the *State Register* on June 30, 2004, indicating that the DHCR was considering this proposed rule making, and all interested parties were given an opportunity to comment. All issues raised by concerned parties were carefully reviewed and considered by DHCR.

Finally, prior to adoption of the amendments, a public hearing will be held, as described in this issue of the *State Register*, at which all interested parties will have an opportunity to comment. Comments will be reviewed for possible inclusion where appropriate.

Rural Area Flexibility Analysis

The City Rent and Eviction Regulations apply exclusively to New York City, and therefore the proposed rule will not impose any reporting, record-keeping, or other compliance requirements on public or private entities located in any rural area pursuant to Subdivision 10 of SAPA Section 102.

Job Impact Statement

It is apparent from the text of the rule, that there will be no adverse impacts on jobs and employment opportunities.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

State Rent and Eviction Regulations

I.D. No. HCR-23-05-00008-P

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

Proposed action: Amendment of Part 2102 of Title 9 NYCRR.

Statutory authority: Emergency Housing Rent Control Law, L. 1946, ch. 274, subd. 4(a), as amended, as transferred to the DHCR by L. 1964, ch. 244

Subject: State rent and eviction regulations (SRER).

Purpose: To conform the SRER with the Rent Stabilization Code (RSC) and agency practice regarding major capital improvements (MCI's), and provide for allocation of MCI costs between commercial and residential units; and conform the SRER to the year 2000 amendments of the RSC and tenant protection regulations regarding adoption of a *de minimis* standard and surcharges for washing machines, dryers or dishwashers, and surcharges for submetered electricity or other utility services.

Public hearing(s) will be held at: 10:00 a.m. - 2:00 p.m., Aug. 9, 2005 at Westchester County Supreme Court, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, NY; and 10:00 a.m. - 2:00 p.m., Aug. 9, 2005 at Nassau County Legislative Bldg., One West St., Mineola, NY.

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

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

Substance of proposed rule (Full text is not posted on a State website):

Substance of Proposed Rules: Substantive amendments and new provisions covered by the proposed rule are as follows:

PART 2102 - ADJUSTMENTS

Section 2102.3 Grounds for increase of maximum rent

Major Capital Improvement provisions are adopted to reflect current agency practice and procedure, and to conform to the Rent Stabilization Code, as well as provide for the allocation of costs between commercial and residential tenants based upon the relative square feet of each rental area.

Section 2102.4 Grounds for decrease of maximum rent.

A *de minimis* standard is adopted, along with schedules of certain building and individual apartment conditions considered *de minimis*. The amendments reflect current agency practice and procedure.

Section 2102.9 Surcharge for the installation and use of washing machines, dryers and dishwashers.

DHCR will issue an Operational Bulletin authorizing the amount to be charged, which shall not become part of the maximum rent.

Section 2102.10 Surcharges for submetered electricity or other utility service.

A landlord may collect a surcharge for acting as a provider of a utility service (including, but not limited to electricity, gas, cable, or telecommunications), but it will not be subject to these provisions.

Text of proposed rule and any required statements and analyses may be obtained from: Maurice Jamison, Special Assistant to the Deputy Commissioner, Division of Housing and Community Renewal, Office of Rent Administration, 92-31 Union Hall St., Jamaica, NY 11433, (718) 262-4816

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY

The Emergency Housing Rent Control Law, Laws of 1946, Chap. 274, subdivision 4(a), as amended by the Laws of 1950, Chap. 250, as amended, as transferred to the Division of Housing and Community Renewal (DHCR) by the Laws of 1964, Chap. 244, provides authority to the DHCR to amend the State Rent and Eviction Regulations (SRER) from "time to time."

2. LEGISLATIVE OBJECTIVES

The proposed rule making will conform the SRER to the Rent Regulation Reform Act of 1997 (RRRA-97), as well as to the amendments of 2000 to the Rent Stabilization Code (RSC), and to current agency practice with regard to Major Capital Improvements (MCI's).

Moreover, the long-standing statutorily required MCI program will be enhanced by creating a more workable methodology, thereby streamlining agency processing, resulting in a more equitable and logical allocation of MCI costs between commercial and residential units.

3. NEEDS AND BENEFITS

The purpose of conforming the SRER to RRRA-97, to the amendments of 2000 to the RSC, and to current agency practice, is to codify MCI useful

life standards, MCI waiver provisions, a schedule of MCI's, and third party certification regarding MCI complaints.

Owners and tenants benefit because the codification of agency practice protects the due process rights of all parties because it provides them with sufficient notice of the agency's practices and procedures.

With regard to the proposed rule which includes a provision for the allocation of approved costs of MCI's between commercial and residential rental spaces in buildings containing both such spaces, the purpose is to bring agency practice into alignment with the standard practice of the real estate industry. Square footage is used as a common and objective measure to allocate costs, to determine comparable values, and to express purchase or rental amounts. As such, it is an industry standard, and this fact is reflected in other governmental programs, most particularly, the closely related Sections 11-243 (formerly J51-2.5) or 11-244 (formerly J51-5.0) of the Administrative Code of the City of New York, as amended, or Section 421-a of the Real Property Tax Law, as amended.

The remaining amendment is of a non-substantial, technical manner, correcting a typographical error. Owners and tenants would both benefit from these corrections.

4. COSTS

With regard to MCI's, owners are allowed to recoup expenses from tenants pursuant to the rent regulatory laws based upon the cost of the work involved, amortized over an eighty-four month period, and limited to no more than a six percent increase per year. Should the parties choose to advance or challenge the square footage allocation of MCI costs, minimal cost of square footage determination by the parties might ensue. Square footage data, in many instances, may be available through public sources. In a limited sampling of prior and current MCI applications, where the method of cost allocation between commercial space and residential space could have been (or can be) based upon the relative square feet of each rental area, the differentials in rent increases ranged from \$0.02 per room to \$5.87 per room.

5. LOCAL GOVERNMENT MANDATE

The proposed rule making will not impose any new program, service, duty, or responsibility upon any level of local government.

6. PAPERWORK

It is not anticipated that the proposed amendments will result in any increased paperwork. However, with regard to changing the methodology of apportioning MCI rent increases between residential and commercial spaces, existing forms will require amending.

7. DUPLICATION

The proposed amendments do not duplicate any known State or federal requirements

8. ALTERNATIVES

The proposed amendments implement recently enacted statutory provisions, correct errors, or provide the most logical method of streamlining the current allocation of MCI costs. Thus, there were no significant viable alternatives to these proposed amendments.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any minimum federal standard.

10. COMPLIANCE SCHEDULE

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed rules.

Regulatory Flexibility Analysis

1. EFFECT OF RULE

The State Rent and Eviction Regulations (SRER) apply only to housing units located in those communities outside New York City that are subject to the Emergency Housing Rent Control Law. The small businesses that would be affected by these proposed amendments are the owners of small numbers of regulated housing units, at least one of which is rent controlled.

The amended regulations are expected to have no burdensome impact on small businesses.

These amendments to the SRER, which apply exclusively in the aforementioned communities, are expected to have no impact on the local governments thereof.

2. COMPLIANCE REQUIREMENTS

There are no new major compliance requirements in the proposed amendments. The proposed amendments do not otherwise require regulated parties to perform any additional record keeping, reporting, or any other acts. There are no new compliance requirements placed on local government.

3. PROFESSIONAL SERVICES

The proposed amendments do not require small businesses to obtain any new or additional professional services.

4. COMPLIANCE COSTS

It is not contemplated that this action will ultimately impose any significant costs upon small businesses. Additionally, there should be no costs imposed on local government resulting from the proposed amendments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

Compliance is not anticipated to require any unusual new or burdensome technological applications.

6. MINIMIZE ADVERSE IMPACT

These proposed amendments do not impair the rights of small business owners, and therefore have no adverse impact on such parties or local governments. Consequently, it was not necessary to consider the approaches suggested in SAPA Section 202-b(1).

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

To assure that regulated and other interested parties were given an opportunity to participate in the rule making process, the DHCR provided several parties and organizations with a demonstrated interest in rent regulation with the opportunity to make code amendment suggestions. The DHCR provided opportunity for comment to such organizations as London Terrace Tenants Association, Community Housing Improvement Program, Inc., Legal Aid Society, Metropolitan Council on Housing, Associated Hotels and Motels of Greater New York, Rent Stabilization Association, and Real Estate Board of New York, Inc.

In addition, a Regulatory Agenda was published in the *State Register* on June 30, 2004, indicating that the DHCR was considering this proposed rule making, and all interested parties were given an opportunity to comment. All issues raised by concerned parties were carefully reviewed and considered by DHCR.

Finally, prior to adoption of the amendments, a public hearing will be held, as described in this issue of the *State Register*, at which all interested parties will have an opportunity to comment. Comments will be reviewed for possible inclusion where appropriate.

Rural Area Flexibility Analysis

The proposed rules are not anticipated to impose any new adverse reporting, recordkeeping or other compliance requirements on public or private entities in any rural area that is subject to these regulations.

Job Impact Statement

It is apparent from the text of the rule, that there will be no adverse impacts on jobs and employment opportunities.

..... X
 In the matter of the petition of: :
 (insert name of petitioner), :
 :
 Petitioner, :
 :
 To review under Section 101 of the Labor Law: :
 (state matter to be reviewed) :
 :
 -against- :
 :
 The Commissioner of Labor, :
 :
 Respondent. :
 X

(b) (1) state the *correct mailing address and telephone number* of each petitioner;

(2) state the location of the premises or establishment affected by the rule, regulation or order sought to be reviewed, if different from petitioner's address; and

(3) state the name and address of the representative, if any, of petitioner's employees, if the petition is for review of a decision issued under section 30 or of a notice of violation and order to comply issued under section 27-a.

(c) state the facts supporting the allegation that the petitioner is a person in interest, except in cases where the petitioner has been named in and served with a compliance order upon which the petition is predicated;

(d) annex a complete copy of the order, notice or decision in issue; if a rule or regulation is in issue, set it forth or identify it with particularity;

(e) state clearly and concisely the grounds on which the matter to be reviewed is alleged to be invalid or unreasonable, omitting conclusions of fact or law;

(f) state any other material or relevant facts;

(g) set forth with particularity the relief requested; and

(h) be signed by petitioner or authorized representative.

Text of proposed rule and any required statements and analyses may be obtained from: John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us

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

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

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

Consensus Rule Making Determination

Pursuant to the provisions of SAPA § 202(1)(b)(i), this proposed rule making is submitted as a consensus rule, inasmuch as the NYS Industrial Board of Appeals has determined that no person is likely to object to the rule as written.

The existing rule was last amended in 1982. The rule sets forth the form and contents of petitions filed with the board pursuant to Labor Law section 101, seeking a review of the validity or reasonableness of any rule, regulation or order made by the Commissioner of Labor. This amendment will add language requiring petitioners to provide the board with their correct mailing address and telephone number, as part of the petition itself, and will also standardize the form and content of the caption to a petition. The amendment will improve the board's ability to communicate with petitioners concerning their administrative appeal. The amendment does not change any part of the body of the rule, or make any change in the application of the rule.

It is the board's determination that amending this rule to require that petitioners provide the board with their correct mailing address and telephone number, without altering any of the basic requirements of the rule itself, will make the administrative process more efficient, and effective, and that no person is likely to object to this proposal.

Job Impact Statement

This proposed amendment will not have any impact on jobs and/or employment opportunities.

This finding is based on the fact that the proposed rule making merely updates the rule, by requiring that petitioners filing an appeal with the board provide the board with a correct mailing address and telephone number, and to standardize the form and content of the caption to a petition. It is apparent from the nature and purposes of the proposal that it will not have an impact on jobs and/or employment opportunities. Because this proposal merely updates the rule to require that petitioners provide

Industrial Board of Appeals

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Form and Content of Petition

I.D. No. IBA-23-05-00001-P

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

Proposed action: This is a consensus rule making to amend section 66.3 of Title 12 NYCRR.

Statutory authority: Labor Law, section 101

Subject: Form and content of petitions filed with the board in an appeal filed pursuant to Labor Law, section 101.

Purpose: To require petitioners to provide the board with their correct mailing address and telephone number, and standardize the form and content of the caption to the petition.

Text of proposed rule: 66.3 Form and content of petition.

The petition shall be filed by mailing or delivering the original and three conformed copies thereof to the board's Albany office. The petition shall:

(a) contain a caption in the following form:

STATE OF NEW YORK
 [DEPARTMENT OF LABOR]
 INDUSTRIAL BOARD OF APPEALS

their correct mailing address and telephone number to the board and standardize the form and content of the caption to a petition, it is reasonable to expect that the rule will not have a substantial adverse impact, if any, on jobs and employment opportunities.

Insurance Department

EMERGENCY RULE MAKING

Standards for the Use of Credit Information to Underwrite and Rate Personal Lines Insurance

I.D. No. INS-23-05-00009-E

Filing No. 565

Filing date: May 23, 2005

Effective date: May 23, 2005

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

Action taken: Addition of Part 221 (Regulation 182) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301 and art. 28

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

Specific reasons underlying the finding of necessity: Article 28 of the Insurance Law, which goes into effect on April 23, 2005, requires an insurer that uses credit information to underwrite or rate risks for personal lines insurance to comply with certain requirements and limitations. Chapter 215 of the Laws of 2004, which enacted Article 28, requires the Superintendent to promulgate regulations necessary to effectuate the provisions of Article 28.

It is essential that this regulation be promulgated on an emergency basis to assure that consumers are afforded certain protections with respect to the use of credit information by an insurer in connection with personal lines insurance. Therefore, it is essential that insurers be made aware of the limitations upon and requirements for the use of credit information in the underwriting and rating of personal lines insurance as soon as possible. Insurers that use such information are required to file scoring models (or other scoring processes) with the Superintendent. Insurers must be given sufficient time to review the requirements with respect to such filings prior to the date Article 28 becomes effective.

For the reasons cited above, this regulation is being promulgated on an emergency basis for the preservation of the general welfare.

Subject: Standards for the use of credit information to underwrite and rate personal lines insurance.

Purpose: To establish limitations upon, and requirements for, the permissible use of credit information by insurers to underwrite and rate risks for personal lines insurance business.

Substance of emergency rule: Section 221.0 provides that Chapter 215 of the Laws of 2004 added new Article 28 to the Insurance Law. Article 28 establishes limitations upon, and requirements for, the permissible use of credit information by insurers doing business in this State to underwrite or rate risks for personal lines insurance business.

Section 221.1 provides that this regulation applies to the use of credit information to underwrite and rate personal lines insurance policies applied for, or renewed, on or after April 23, 2005. It also provides that this regulation or Article 28 will not alter the requirements or limitations contained in the Insurance Law, Title 11 of the NYCRR, or the rules of the New York Automobile Insurance Plan or the New York Property Insurance Underwriting Association.

Section 221.2 provides definitions applicable to the regulation.

Section 221.3 provides prohibitions on the use of credit information and permissible use of credit information.

Section 221.4 provides the requirements for obtaining current credit information.

Section 221.5 provides standards for the disclosure of the use of credit information in the underwriting and rating of personal lines insurance policies.

Section 221.6 provides standards for notification when an insurer takes an adverse action based upon credit information.

Section 221.7 provides for dispute resolution and error correction if it is determined that the credit information used by an insurer to underwrite or rate a current insured was incorrect or incomplete.

Section 221.8 provides standards for the filing of credit scoring models (or other scoring processes) and revisions thereto, to the superintendent.

Section 221.9 provides standards for filings by the insurer.

Section 221.10 provides that an insurer that uses credit information in the underwriting and rating of personal lines insurance is required to complete and submit to the superintendent an Insurer Credit Information Compliance Certification. The Insurer Credit Information Compliance Certification shall be in a form prescribed by the superintendent.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 20, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Mike Barry, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: mbarry@ins.state.ny.us

Regulatory Impact Statement

1. Statutory authority: Sections 201 and 301 of the Insurance Law, and Article 28 of the Insurance Law, as enacted by Chapter 215 of the Laws of 2004. Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the Insurance Law as well as effectuating any power granted to the Superintendent under the Insurance Law and to prescribe forms or otherwise make regulations. Article 28, as enacted by Chapter 215 of the Laws of 2004, establishes limitations upon, and requirements for, the permissible use of credit information by insurers doing business in this State to underwrite and rate risks for personal lines insurance business. Further, the Superintendent is directed to provide, by regulation, rules governing the use of credit information.

2. Legislative objectives: The Legislature, in enacting Chapter 215 of the Laws of 2004, wanted to assure that consumers are afforded certain protections with respect to the use of credit information for personal lines insurance. The Superintendent was directed to promulgate a regulation to establish limitations on, and requirements for, the permissible use of credit information by insurers doing business in this State to underwrite and rate risks for personal lines insurance business.

3. Needs and benefits: Most insurers currently use credit information in the underwriting and initial tier placement of consumers for personal lines insurance. The purpose of this regulation is to establish rules to implement the provisions of Article 28. In accordance with Article 28, the regulation establishes and clarifies limitations upon, and requirements for, the permissible use of credit information by insurers doing business in New York State to assure that consumers are afforded certain protections when credit information is used to underwrite and rate risks for personal lines insurance business. The regulation clarifies prohibited and permitted uses of credit information in the underwriting and rating of personal lines insurance. The regulation sets forth whose credit information can be used, the form of the disclosure of the use of credit information and when the disclosure must be provided. The regulation sets forth standards for the notification when an insurer takes an adverse action based upon credit information. The regulation also requires an insurer to take corrective action within thirty days after it receives notice that the insured has obtained a determination pursuant to the process for dispute resolution and error correction under the federal Fair Credit Reporting Act that the credit information used by the insurer was incorrect or incomplete. The regulation also establishes rules for, and provides guidance to, insurers when filing their credit information requirements with the Superintendent.

4. Costs: This rule imposes no compliance costs on state or local governments. There will be no additional costs incurred by the Insurance Department. This rule does not impose additional costs upon insurers. If an insurance producer or other entity has been designated by the insurer to issue disclosure notices and adverse action notices, the insurance producer or other entity will incur additional costs in producing and mailing these documents. However, the designation of an insurance producer or other entity for this purpose is optional, not mandatory, on the part of the insurer and presumably such arrangements will be subject to a contractual agreement between an insurer and its insurance producer(s) or other entities and will be used when it has an overall cost benefit. The notification requirements and submission of filings are required by the statute and the regulation is only implementing the statutory requirement.

5. Local government mandates: None.

6. Paperwork: Paperwork associated with the submission of a filing by an insurer should already be in place. The insurer is required to complete an Insurer Credit Information Compliance Certification for the scoring

model (or other scoring processes) filing and any filing of revisions thereto. Also, the insurer is required to maintain records that the disclosures of the use of credit information and adverse action notifications have been provided to the consumer. Where an insurance producer or other entity has been designated by the insurer to issue disclosure notices and adverse action notices, the insurance producers or other entities will incur additional paperwork necessary to insure that the insurer is in compliance with the notice and record retention requirements.

7. Duplication: None.

8. Alternatives: There are several provisions of the rule for which alternatives were considered by the Department, as follows.

An insurer who chooses to consider, for any given program of insurance, an absence of credit information or an inability to calculate an insurance score to underwrite or rate risks must choose one of the three options specified in Section 2803(e) of the law to apply to all of the consumers in that program of insurance who have no credit information or whose insurance score cannot be calculated. The three options have been incorporated into the rule. The language used in Section 221.3(a)(5)(iii) of the rule clarifies the parameters of the third option which requires that a filing be made with, and be subject to the prior approval of, the Superintendent, with respect to an individual consumer. An alternative that has been suggested by some insurers is to permit such a filing to be made for a class of insureds. The Department considered this approach but rejected it because the law contemplates that such filing be made as to "the consumer" and not to a class of consumers. To further demonstrate the intention of the law not to treat all insureds who have no credit information or an insurance score as a class, Section 2802(d) prohibits an insurer from taking an adverse action against a consumer solely because he or she does not have a credit card account. Clearly, such insureds would fall into a "class" of insureds that could be defined as having an absence of credit information or an inability to calculate an insurance score but such a class would be violative of Section 2802(d) of the law.

Section 2802(g) of the law gives an insured, where an insurer has chosen to use credit information the right to request, not more often than once every 36 months, that the insurer re-underwrite and re-rate the policy based upon a current credit report or insurance score. Section 221.4(b)(1) of the rule requires that the insurer make any necessary adjustments effective as of the date of the updated report or score. An alternative that has been suggested by the industry is that the insurer be permitted to delay implementation of the re-underwriting and re-rating until the next policy renewal date. The Department considered this approach but rejected it because the law does not provide that re-underwriting and re-rating can be delayed until some future date. It is clear that the Legislative intent was that the remedy be implemented as soon as possible in order to immediately provide the insured with an opportunity to get a lower premium based on current credit information.

The rule requires the submission of an Insurer Credit Information Compliance Certification for the scoring model (or other scoring processes) filing and any filing of revisions thereto. This will facilitate the review of the filings and enhance compliance with the statute and rule. The alternative of not requiring an Insurer Credit Information Compliance Certification was considered and rejected because it would provide the Department less assurance that insurers are complying with the law and increase the time needed to review scoring model filings and might result in the need for more market conduct reviews.

9. Federal standards: The provisions of the federal Fair Credit Reporting Act referred to in Article 28 of the Insurance Law are also referred to in the regulation.

10. Compliance schedule: The effective date of the enabling legislation, Chapter 215 of the Laws of 2004, is April 23, 2005. Pursuant to the law, insurers are required to file their scoring models (or other scoring processes) with the Superintendent. The Regulation further provides that on or after August 15, 2005 insurers shall file their scoring models (or other scoring processes) at least 45 days prior to use.

Regulatory Flexibility Analysis

The Insurance Department finds that this rule would not impose reporting, recordkeeping or other requirements on small businesses. The basis for this finding is that this rule is directed to property/casualty insurance companies licensed to do business in New York State, none of which fall within the definition of "small business".

The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized property/casualty insurers and believes that none of them would fall within the definition of "small business" contained in section 102(8) of the State Administrative Procedure

Act, because there are none which are independently owned and have under 100 employees.

The Insurance Department finds that this rule will not impose reporting, recordkeeping or other compliance requirements on local governments. The basis for this finding is that this rule is directed at insurance companies, none of which are local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: This rule applies to property/casualty insurers licensed to do business in New York State. The insurers do business in every county in this state including rural areas as defined under State Administrative Procedure Act Section 102(13).

2. Reporting, recordkeeping and other compliance requirements, and professional services: There are requirements for the insurer under certain circumstances to provide written disclosure of the use of credit information and adverse action notifications when an adverse action has been taken. Also, the insurer is required to maintain records that the disclosures of the use of credit information and adverse action notifications have been provided to the consumer. Where an insurance producer or other entity has been designated by the insurer to issue disclosure notices and adverse action notices, the insurance producers or other entities will incur additional paperwork necessary to insure that the insurer is in compliance with the notice and record retention requirements.

3. Costs: Regulated persons under these regulations are insurers. Insurance producers or other entities may be designated by the insurer to issue disclosure notices and adverse notices, in which case the producer or other entity will incur costs in producing and mailing these documents. However, the designation of a producer or other entity for this purpose is optional, not mandatory, on the part of the insurer and presumably such arrangements will be subject to a contractual agreement and will be used when it has an overall cost benefit. The submission of filings and notification requirements are required by the statute and the regulation is only implementing the statutory requirement. This regulation has no impact unique to rural areas.

4. Minimizing adverse impact: This rule applies uniformly to regulated parties that do business in both rural and nonrural areas of New York State. This rule does not impose any additional burden on persons located in rural areas, and the Insurance Department does not believe that it will have an adverse impact on rural areas.

5. Rural area participation: This agency action appeared as a proposal in the Insurance Department's January 2005 Regulatory Agenda.

Job Impact Statement

This rule should not have any adverse impact on jobs and employment opportunities in this state since it merely implements the provisions of Article 28 of the Insurance Law. The rule sets forth standards that the insurers must follow when using credit information for underwriting and rating purposes. The rule also sets forth guidelines that insurers must follow when submitting filings to the Superintendent.

Office of Mental Health

NOTICE OF ADOPTION

Residential Treatment Facilities for Children and Youth

I.D. No. OMH-12-05-00002-A

Filing No. 569

Filing date: May 24, 2005

Effective date: June 8, 2005

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

Action taken: Amendment of section 584.5(e) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b), 31.04(a)(2) and 31.26(b)

Subject: Residential treatment facilities for children and youth.

Purpose: To continue the temporary increase in the capacity of certain RTF's to serve the needs of emotionally disturbed children and youth.

Text or summary was published in the notice of proposed rule making, I.D. No. OMH-12-05-00002-P, Issue of March 23, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Dan Odell, Bureau of Policy, Legislation and Regulation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 473-6945, e-mail: dodell@omh.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Request for Rehearing by New York State Gas & Electric Corporation

I.D. No. PSC-14-04-00011-A
Filing date: May 20, 2005
Effective date: May 20, 2005

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

Action taken: The commission, on May 18, 2005, adopted an order in Case 03-M-1150 granting in part New York State Electric & Gas Corporation's (NYSEG) petition for rehearing related to commission order issued Feb. 4, 2004.

Statutory authority: Public Service Law, sections 5(b), 65, 66 and 70

Subject: Petition for rehearing of the commission's Feb. 4, 2004 order.

Purpose: To modify the accounting and rate treatment concerning the sale of NYSEG's Court St. property.

Substance of final rule: The Commission granted in part a petition for rehearing of the Commission's February 4, 2004 Order filed by New York State Electric & Gas Corporation regarding the \$55,172 of acquisition adjustment (goodwill) attributed to the property located at 267 Court Street in the City of Binghamton and allowed the \$55,172 to continue to be amortized over forty years, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-M-1150SA2)

NOTICE OF ADOPTION

Submetering of Electricity by Brooklyn Law School

I.D. No. PSC-49-04-00002-A
Filing date: May 24, 2005
Effective date: May 24, 2005

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

Action taken: The commission, on May 18, 2005, adopted an order in Case 04-E-1344 allowing Brooklyn Law School to submeter electricity to residential tenants at a new residence hall located at 205 State St., New York, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (5), (12) and (14)

Subject: Request for the submetering of electricity.

Purpose: To submeter electricity at a new master-metered residential building.

Substance of final rule: The Commission approved a request by Brooklyn Law School to submeter electricity at a new Residence Hall consisting

of 240 units located at 205 State Street in New York City, located in the territory of Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-E-1344SA1)

NOTICE OF ADOPTION

Franchising Process by the Town of Haverstraw

I.D. No. PSC-05-05-00012-A
Filing date: May 20, 2005
Effective date: May 20, 2005

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

Action taken: The commission, on April 13, 2005, adopted an order in Case 05-V-0027 granting the Town of Haverstraw (Rockland County) a waiver of 9 NYCRR sections 594.1 through 594.4 pertaining to the franchising process.

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

Subject: Franchising procedures.

Purpose: To waive certain preliminary franchising procedures.

Substance of final rule: The Commission approved the request of the Town of Haverstraw (Rockland County) for a waiver of 9 NYCRR Part 594.1 through 594.4 to expedite the franchising process.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-V-0027SA1)

NOTICE OF ADOPTION

Franchising Procedures by the Village of Grand View-on-Hudson

I.D. No. PSC-06-05-00017-A
Filing date: May 20, 2005
Effective date: May 20, 2005

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

Action taken: The commission, on April 13, 2005, adopted an order in Case 05-V-0027 granting the Village of Grand View-on-Hudson (Rockland County) a waiver of 9 NYCRR sections 594.1 through 594.4 pertaining to the franchising process.

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

Subject: Franchising procedures.

Purpose: To waive certain preliminary franchising procedures.

Substance of final rule: The Commission approved a request by the Village of Grand View-on-Hudson (Rockland County) for a waiver of 9 NYCRR Part 594.1 through 594.4 to expedite the franchising process.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(05-V-0055SA1)

NOTICE OF ADOPTION

Franchising Procedures by the Village of South Nyack

I.D. No. PSC-06-05-00018-A

Filing date: May 20, 2005

Effective date: May 20, 2005

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

Action taken: The commission, on April 13, 2005, adopted an order in Case 05-V-0056 granting the Village of South Nyack (Rockland County) a waiver of 9 NYCRR sections 594.1 through 594.4 pertaining to the franchising process.

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

Subject: Franchising procedures.

Purpose: To waive certain preliminary franchising procedures.

Substance of final rule: The Commission approved a request by the Village of South Nyack (Rockland County) for a waiver of 9 NYCRR Part 594.1 through 594.4 to expedite the franchising process.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(05-V-0056SA1)

NOTICE OF ADOPTION

Franchising Procedures by the Village of Upper Nyack

I.D. No. PSC-06-05-00019-A

Filing date: May 20, 2005

Effective date: May 20, 2005

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

Action taken: The commission, on April 13, 2005, adopted an order in Case 05-V-0057 granting the Village of Upper Nyack (Rockland County) a waiver of 9 NYCRR sections 594.1 through 594.4 pertaining to the franchising process.

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

Subject: Franchising procedures.

Purpose: To waive certain preliminary franchising procedures.

Substance of final rule: The Commission approved a request by the Village of Upper Nyack (Rockland County) for a waiver of 9 NYCRR Part 594.1 through 594.4 to expedite the franchising process.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(05-V-0057SA1)

NOTICE OF ADOPTION

Franchising Procedures by the Village of Elmsford

I.D. No. PSC-06-05-00020-A

Filing date: May 20, 2005

Effective date: May 20, 2005

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

Action taken: The commission, on April 13, 2005, adopted an order in Case 05-V-0058 granting the Village of Elmsford (Westchester County) a waiver of 9 NYCRR sections 594.1 through 594.4 pertaining to the franchising process.

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

Subject: Franchising procedures.

Purpose: To allow the Village of Elmsford to waive certain preliminary franchising procedures.

Substance of final rule: The Commission approved a request by the Village of Elmsford (Westchester County) for a waiver of 9 NYCRR Part 594.1 through 594.4 to expedite the franchising process.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(05-V-0058SA1)

NOTICE OF ADOPTION

Franchising Procedures by the Town of Clarkstown

I.D. No. PSC-06-05-00021-A

Filing date: May 20, 2005

Effective date: May 20, 2005

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

Action taken: The commission, on April 13, 2005, adopted an order in Case 05-V-0059 granting the Town of Clarkstown (Rockland County) a waiver of 9 NYCRR sections 594.1 through 594.4 pertaining to the franchising process.

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

Subject: Franchising procedures.

Purpose: To waive certain preliminary franchising procedures.

Substance of final rule: The Commission approved the request of the Town of Clarkstown (Rockland County) for a waiver of 9 NYCRR Part 594.1 through 594.4 to expedite the franchising process.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(05-V-0059SA1)

NOTICE OF ADOPTION

Franchising Procedures by the Village of Irvington

I.D. No. PSC-06-05-00022-A

Filing date: May 20, 2005

Effective date: May 20, 2005

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

Action taken: The commission, on April 13, 2005, adopted an order in Case 05-V-0060 granting the Village of Irvington (Westchester County) a waiver of 9 NYCRR sections 594.1 through 594.4 pertaining to the franchising process.

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

Subject: Franchising procedures.

Purpose: To waive certain preliminary franchising procedures.

Substance of final rule: The Commission approved a request by the Village of Irvington (Westchester County) for a waiver of 9 NYCRR Part 594.1 through 594.4 to expedite the franchising process.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-V-0060SA1)

NOTICE OF ADOPTION

Merchant Function Backout Credit and Transition Balancing Account by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York

I.D. No. PSC-08-05-00005-A

Filing date: May 18, 2005

Effective date: May 18, 2005

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

Action taken: The commission, on May 18, 2005, adopted an order in Case 99-G-1469 authorizing the amendments to The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KEDNY) schedule for gas service—P.S.C. No. 12.

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

Subject: Merchant function backout credit and transition balancing account.

Purpose: To extend the merchant function backout credit and transition balancing account until Nov. 1, 2006.

Substance of final rule: The Commission approved a request by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York to extend its existing Merchant Function Backout Credit and Transition Balancing Account until November 1, 2006.

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. (99-G-1469SA9)

NOTICE OF ADOPTION

Merchant Function Backout Credit and Transition Balancing Account by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island

I.D. No. PSC-08-05-00006-A

Filing date: May 18, 2005

Effective date: May 18, 2005

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

Action taken: The commission, on May 18, 2005, adopted an order in Case 99-G-1469 authorizing the amendments to KeySpan Gas East Corpo-

ration d/b/a KeySpan Energy Delivery Long Island's (KEDLI) schedule for gas service—P.S.C. No. 1.

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

Subject: Merchant function backout credit and transition balancing account.

Purpose: To extend the merchant function backout credit and transition balancing account until Nov. 1, 2006.

Substance of final rule: The Commission approved a request by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island to extend its existing Merchant Function Backout Credit and Transition Balancing Account until November 1, 2006.

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. (99-G-1469SA10)

NOTICE OF ADOPTION

Purchase of ESCOs Accounts Receivables by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-10-05-00011-A

Filing date: May 19, 2005

Effective date: May 19, 2005

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

Action taken: The commission, on May 18, 2005, adopted an order in Case 03-G-1671 allowing Consolidated Edison Company of New York, Inc. (Con Edison) to revise its gas purchase of receivables program.

Statutory authority: Public Service Law, sections 2, 4, 5, 32, 65 and 66

Subject: Purchase of receivables program.

Purpose: To amend the gas purchase of receivables program.

Substance of final rule: The Commission approved a proposal by Consolidated Edison Company of New York, Inc. to amend certain terms of its gas purchase of receivables program, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-G-1671SA4)

NOTICE OF ADOPTION

Net Metering by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-11-05-00009-A

Filing date: May 20, 2005

Effective date: May 20, 2005

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

Action taken: The commission, on May 18, 2005, adopted an order in Case 04-E-0917 allowing Consolidated Edison Company of New York, Inc. (Con Edison) to amend its schedule for electric service—P.S.C. No. 9.

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

Subject: Compliance filing.

Purpose: To establish additional metering options for the net metering of time-of-use photovoltaic residential customers and time-of-use farm waste customers.

Substance of final rule: The Commission approved a compliance filing by Consolidated Edison Company of New York, Inc. (Con Edison) pursuant to the Commission's Order Adopting Net Metering Tariff Provisions and Requiring Additional Filings, issued December 15, 2004, provided Con Edison file further revisions, subject to the terms and conditions of the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-E-0917SA2)

NOTICE OF ADOPTION

Net Metering by New York State Gas & Electric Corporation

I.D. No. PSC-11-05-00010-A

Filing date: May 20, 2005

Effective date: May 20, 2005

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

Action taken: The commission, on May 18, 2005, adopted an order in Case 04-E-0917 allowing New York State Electric & Gas Corporation (NYSEG) to amend its schedule for electric service—P.S.C. No. 120.

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

Subject: Compliance filing.

Purpose: To implement additional metering options for the net metering of time-of-use photovoltaic residential customers and time-of-use farm waste customers.

Substance of final rule: The Commission approved a compliance filing by New York State Electric & Gas Corporation pursuant to the Commission's Order Adopting Net Metering Tariff Provisions and Requiring Additional Filings, issued December 15, 2004, subject to the terms and conditions of the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-E-0917SA3)

NOTICE OF ADOPTION

Net Metering by Niagara Mohawk Power Corporation

I.D. No. PSC-11-05-00011-A

Filing date: May 20, 2005

Effective date: May 20, 2005

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

Action taken: The commission, on May 18, 2005, adopted an order in Case 04-E-0917 allowing Niagara Mohawk Power Corporation (Niagara Mohawk) to amend its schedule for electric service—P.S.C. No. 207.

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

Subject: Compliance filing.

Purpose: To establish additional metering options for the net metering of time-of-use photovoltaic residential customers and time-of-use farm waste customers.

Substance of final rule: The Commission approved a compliance filing by Niagara Mohawk Power Corporation (Niagara Mohawk) pursuant to the Commission's Order Adopting Net Metering Tariff Provisions and Requiring Additional Filings, issued December 15, 2004, provided Niagara Mohawk file further revisions, subject to the terms and conditions of the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-E-0917SA4)

NOTICE OF ADOPTION

Net Metering by Orange and Rockland Utilities, Inc.

I.D. No. PSC-11-05-00012-A

Filing date: May 20, 2005

Effective date: May 20, 2005

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

Action taken: The commission, on May 18, 2005, adopted an order in Case 04-E-0917 allowing Orange and Rockland Utilities (O&R) to amend its schedule for electric service—P.S.C. No. 2.

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

Subject: Compliance filing.

Purpose: To establish additional metering options for the net metering of time-of-use photovoltaic residential customers and time-of-use farm waste customers.

Substance of final rule: The Commission approved a compliance filing by Orange and Rockland Utilities (O&R) pursuant to the Commission's Order Adopting Net Metering Tariff Provisions and Requiring Additional Filings, issued December 15, 2004, provided O&R file further revisions, subject to the terms and conditions of the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-E-0917SA5)

NOTICE OF ADOPTION

Net Metering by Rochester Gas and Electric Corporation

I.D. No. PSC-11-05-00013-A

Filing date: May 20, 2005

Effective date: May 20, 2005

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

Action taken: The commission, on May 18, 2005, adopted an order in Case 04-E-0917 allowing Rochester Gas & Electric Corporation (RG&E) to revise its schedule for electric service—P.S.C. No. 19.

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

Subject: Compliance filing.

Purpose: To implement additional metering options for the net metering of time-of-use photovoltaic residential customers and time-of-use farm waste customers.

Substance of final rule: The Commission approved a compliance filing by Rochester Gas & Electric Corporation pursuant to the Commission's Order Adopting Net Metering Tariff Provisions and Requiring Additional

Filings, issued December 15, 2004, subject to the terms and conditions of the Order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-E-0917SA6)

NOTICE OF ADOPTION

Photovoltaic and Wind Generation by Central Hudson Gas & Electric Corporation

I.D. No. PSC-11-05-00014-A
Filing date: May 18, 2005
Effective date: May 18, 2005

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

Action taken: The commission, on May 18, 2005, adopted an order in Case 05-E-0241 approving amendments to Central Hudson Gas & Electric Corporation’s (Central Hudson) tariff schedule, P.S.C. No. 15—Electricity.

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

Subject: Tariff filing.

Purpose: To clarify rules regarding photovoltaic and wind generation.

Substance of final rule: The Commission approved a request by Central Hudson Gas & Electric Corporation to clarify the definition of rated capacity of photovoltaic generation or wind generation required for eligibility under Special Provision 14.7 under Service Classification No. 14—Standby Service and to clarify the customers’ maximum demand requirements to qualify for service under Special Provision 14.7.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-E-0241SA1)

NOTICE OF ADOPTION

New Credit Facility by the New York Independent System Operator

I.D. No. PSC-12-05-00007-A
Filing date: May 18, 2005
Effective date: May 18, 2005

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

Action taken: The commission, on May 18, 2005, adopted an order in Case 05-E-0270 granting New York Independent System Operator, Inc. (NYSIO) authority to enter into indebtedness for the purchase and improvement of real property.

Statutory authority: Public Service Law, section 69

Subject: Approval of a new credit facility.

Purpose: To incur debt for the acquisition of property and for the refurbishment of a building.

Substance of final rule: The Commission approved with conditions New York Independent System Operator, Inc.’s request to incur a 20-year mortgage in the amount of \$15,000,000 for the purchase of land and a building and to incur short-term indebtedness in the amount of

\$10,000,000 for renovations and retrofitting, 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. (05-E-0270SA1)

NOTICE OF ADOPTION

Water Rates and Charges by the Hudson Valley Water Companies, Inc.

I.D. No. PSC-12-05-00015-A
Filing date: May 23, 2005
Effective date: May 23, 2005

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

Action taken: The commission, on May 18, 2005, adopted an order in Case 05-W-0262 allowing Hudson Valley Water Companies, Inc. (Hudson Valley) to amend its tariff schedule, P.S.C. No. 2—Water.

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

Subject: Minor rate filing by Hudson Valley.

Purpose: To increase restoration of service charges.

Substance of final rule: The Commission approved an increase in Hudson Valley Water Companies, Inc.’s (Hudson Valley) restoration of service charge from \$35 to \$75 during normal business hours (Monday through Friday, 8:00 am to 4:00 pm); from \$60 to \$100 outside of normal business hours (Monday through Friday) and from \$75 to \$150 on weekends and holidays, provided Hudson Valley file further revisions, 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. (05-W-0262SA1)

NOTICE OF ADOPTION

Rule 11—Service Lines by Niagara Mohawk Power Corporation

I.D. No. PSC-13-05-00011-A
Filing date: May 18, 2005
Effective date: May 18, 2005

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

Action taken: The commission, on May 18, 2005, adopted an order in Case 05-G-0292 allowing Niagara Mohawk Power Corporation (Niagara Mohawk) to revise its schedule for gas service—P.S.C. No. 219.

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

Subject: Tariff filing.

Purpose: To establish a new provision to Rule No. 11—service lines.

Substance of final rule: The Commission approved amendments to Niagara Mohawk Power Corporation’s Gas Schedule, P.S.C. No. 219 to add a new Rule No. 11—Service Line, that would allow a customer to construct that portion of a service line which exceeds the portion that is constructed by the company at no charge (referred to as “excess service line”).

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-G-0292SA1)

NOTICE OF ADOPTION

Issuance of Securities by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-13-05-00013-A

Filing date: May 18, 2005

Effective date: May 18, 2005

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

Action taken: The commission, on May 18, 2005, adopted an order in Case 05-M-0037 allowing Consolidated Edison Company of New York, Inc. (Con Edison) to enter into new revolving credit agreements.

Statutory authority: Public Service Law, section 69

Subject: Issuance of securities.

Purpose: To issue and sell unsecured debt obligations.

Substance of final rule: The Commission approved a request by Consolidated Edison Company of New York, Inc. to enter into new revolving credit agreements for up to \$1.5 billion, to issue up to \$4.4 billion of new unsecured debt for traditional utility purposes, and to refinance up to \$2.5 billion of existing debt or preferred equity, 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. (05-M-0037SA1)

NOTICE OF ADOPTION

Transfer of Certain Facilities between National Fuel Gas Distribution Corporation and HealthNow New York, Inc.

I.D. No. PSC-13-05-00014-A

Filing date: May 23, 2005

Effective date: May 23, 2005

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

Action taken: The commission, on May 18, 2005, adopted an order in Case 05-M-0212 approving a request by National Fuel Gas Distribution Corporation (National Fuel) to transfer certain property located at 249 W. Genesee St., Buffalo, NY.

Statutory authority: Public Service Law, section 70

Subject: Transfer of certain National Fuel facilities.

Purpose: To transfer certain property to HealthNow New York, Inc.

Substance of final rule: The Commission authorized the transfer of National Fuel Gas Distribution Corporation's underlying property formerly used as a manufactured gas plant site and as a service center, located at 249 West Genesee Street in Buffalo to HealthNow New York, Inc.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to

be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-M-0212SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Pole Attachment Application Fees by InSITE Solutions, LLC

I.D. No. PSC-23-05-00011-P

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

Proposed action: The commission is considering a complaint filed by InSITE Solutions, LLC against Orange & Rockland Utilities, Inc. and Frontier Communications of New York, Inc. regarding pole attachment application fees.

Statutory authority: Public Service Law, section 119-a

Subject: Pole attachment application fees.

Purpose: To consider a complaint by InSITE Solutions, LLC regarding application fees for pole attachment.

Substance of proposed rule: The Commission is considering a complaint filed by InSITE Solutions, LLC against Orange & Rockland Utilities, Inc. and Frontier Communications of New York, Inc. regarding pole attachment application fees.

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

Data, views or arguments may be submitted to: Jaclyn A. Brillong, 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-0207SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement between Neutral Tandem-New York, LLC and Time Warner Telecom-NY, L.P.

I.D. No. PSC-23-05-00012-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Neutral Tandem-New York, LLC and Time Warner Telecom-NY, L.P. for approval of a mutual traffic exchange agreement executed on April 29, 2005.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of networks for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Neutral Tandem-New York, LLC and Time Warner Telecom-NY, L.P. have reached a negotiated agreement whereby Neutral Tandem-New York, LLC and Time Warner Telecom-NY, L.P. will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

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

Data, views or arguments may be submitted to: Jaclyn A. Brillong, 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.

(05-C-0569SA1)

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

Interconnection Agreement between Warwick Valley Telephone Company and Cablevision Lightpath, Inc.

I.D. No. PSC-23-05-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Warwick Valley Telephone Company and Cablevision Lightpath, Inc. for approval of an interconnection agreement executed on May 16, 2005.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of networks for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Warwick Valley Telephone Company and Cablevision Lightpath, Inc. have reached a negotiated agreement whereby Warwick Valley Telephone Company and Cablevision Lightpath, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until May 16, 2007, or as extended.

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

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

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

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

(05-C-0600SA1)

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

Petition for Rehearing by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-23-05-00014-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 what action it should take with respect to a petition for rehearing filed by Consolidated Edison Company of New York, Inc. on May 16, 2005 concerning the commission's April 15, 2005 order adopting unbundled rates and backout credits.

Statutory authority: Public Service Law, sections 2, 4, 5, 65 and 66

Subject: To consider whether the company should be permitted to restrict the eligibility for metering credits to an all-or-nothing proposition and any related issues.

Purpose: To change some of the terms of the April 15, 2005 order adopting unbundled rates and backout credits that concern competitive meter services.

Substance of proposed rule: In an order issued April 15, 2005, the Public Service Commission adopted credits proposed by Consolidated Edison Company of New York, Inc. for customers who obtain competitive meter-

ing services. However, the Commission did not agree that meter ownership, meter services, and meter data services must all be taken from a competitive provider before being able to take advantage of any of the competitive metering credits. Consolidated Edison Company of New York, Inc. seeks rehearing, claiming the Commission committed an error of law by departing from previously established state-wide policy set forth in the Commission-approved Metering Manual that is an addendum to Consolidated Edison's electric tariff schedule, P.S.C. No. 9 - Electricity. Consolidated Edison asks that rehearing on this point be granted and that it be directed to reverse the tariff changes in its compliance filing that are inconsistent with existing policy for all electric utilities reflected in the above-referenced Metering Manual.

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

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

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

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

(04-E-0572SA4)

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

Initial Tariff Schedule by Four Corners Water Works Corporation

I.D. No. PSC-23-05-00015-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, Four Corners Water Works Corporation's initial tariff schedule, P.S.C. No. 1—Water, to become effective Sept. 15, 2005.

Statutory authority: Public Service Law, section 89-e(2)

Subject: Initial tariff schedule—electronic filing.

Purpose: To approve an initial tariff schedule.

Substance of proposed rule: On May 18, 2005, Four Corners Water Works Corporation (Four Corners or the company) filed an electronic initial tariff schedule, P.S.C. No. 1 - Water, to become effective September 15, 2005, which sets forth the rates, charges, rules and regulations under which the company will operate. Four Corners currently has no customers, but at full development will have 265 customers. The company is located in the Moore Property Subdivision, a/k/a Four Corners Subdivision, in the Town of East Fishkill, Dutchess County. Four Corners proposes a quarterly service charge of \$100 and a metered rate of \$4.90 per thousand gallons. The tariff defines when a bill will be considered delinquent and established a later payment charge of 1-1/2 percent per month, compounded monthly and a returned check charge equal to the bank charge plus a handling fee of \$5. The restoration of service charge is \$50 during normal business hours Monday through Friday, \$75 outside of normal business hours Monday through Friday, and \$100 on weekends and public holidays. The company also defines in its tariff the use and associated charges for fire lines, private fire hydrants and construction water. The company tariff is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) located under the File Room - Tariffs. The Commission may approve or reject, in whole or in part, or modify the company's request.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (05-W-0615SA1)

Racing and Wagering Board

EMERGENCY RULE MAKING

Proposition Wager

I.D. No. RWB-23-05-00002-E

Filing No. 559

Filing date: May 18, 2005

Effective date: May 18, 2005

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

Action taken: Amendment of sections 4011.25 and 4122.47 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 227, 301, 305 and 909

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

Specific reasons underlying the finding of necessity: New York State Racing and Pari-Mutuel Wagering and Breeding Law, section 909 is going into effect on Feb. 14, 2005. That statute permits a new type of wager, called the proposition wager, to be offered in pari-mutuel wagering. The statute directs the Board to promulgate rules and regulations that will provide guidelines and make determinations on items such as what classes of races the wager may be offered in.

Subject: A new type of pari-mutuel wager known as the proposition wager.

Purpose: To promulgate rules and regulations in accordance with the statutory directive to implement the statute set forth in Racing Wagering Pari-Mutuel and Breeding Law, section 909 which permits a proposition wager to be offered by racing associations or corporations on its own races and to approve proposition wagers.

Substance of emergency rule: 4011.25 – THOROUGHBRED

4011.25 (A)	Board may approve offer of proposition wager
4011.25 (B)	Defines proposition wager
4011.25 (C)	Sets forth proposition wager approval process as two weeks prior and content of request
4011.25 (D)	Sets forth manner in which odds should be completed and posted after close of wagering and close of event
4011.25 (E)	Sets forth types of proposition wagers that may be offered
4011.25 (E)(1)(a)	Head to head horse wager defined
4011.25 (E)(1)(b)	Track must identify betting interests offered to Board for approval twenty-four hours in advance; sets forth additional requirements for betting interests eligibility
4011.25 (E)(1)(c)	Sets forth pool closing time
4011.25 (E)(1)(d)	Sets forth manner in which head to head proposition wager pools are calculated and distributed
4011.25 (E)(1)(e)	Identifies status of wager in the event of a dead heat as cancelled and pool refunded
4011.25 (E)(1)(f)	Identified head to head wager status when scratch or non-starter as wager cancelled and pool refunded
4011.25 (E)(1)(g)	Head to head wager cancelled and pool refunded where both fail to finish
4011.25 (E)(1)(h)	Head to head wager cancelled and pool refunded if race is cancelled or deemed a "no contest"
4011.25 (E)(2)(a)	Head to head to head wager is defined as the interest out of three separate betting interests in a race that finishes first
4011.25 (E)(2)(b)	Prohibits proposition wager on coupled entries with exception
4011.25 (E)(2)(c)	Identifies close of pool time
4011.25 (E)(2)(d)	Sets forth manner in which head to head to head proposition wager pools are calculated and distributed
4011.25 (E)(2)(e)	Head to head to head wager cancelled and pool refunded in the event of a single dead heat of all three; identifies status of wager and pool where two out of three are dead heat

4011.25 (E)(2)(f)	Wager cancelled and pool refunded where all three fail to finish; where two out of three fail the interest that finished is considered the wager winner
4011.25 (E)(2)(g)	Where all three or two are scratched or deemed nonstarters, wager cancelled/pool refunded; where only one scratched or deemed nonstarter pool refunded to those with that interest and wager goes on contested
4011.25 (E)(2)(h)	Head-to-head-to-head is cancelled or no-contest the wager is cancelled and pool refunded
4011.25 (E)(3)	Permits the track to apply to Board to use different names for the wagers outlined in these regulations for marketing purposes
4122.47 – HARNESS	
4122.47 (A)	Board may approve offer of proposition wager
4122.47 (B)	Defines proposition wager
4122.47 (C)	Sets forth proposition wager approval process as two weeks prior and content of request
4122.47 (D)	Sets forth manner in which odds should be completed and posted after close of wagering and close of event
4122.47 (E)	Sets forth types of proposition wagers that may be offered
4122.47 (E)(1)(a)	Head to head horse wager defined
4122.47 (E)(1)(b)	Track must identify betting interests offered to Board for approval twenty-four hours in advance; sets forth additional requirements for betting interests eligibility
4122.47 (E)(1)(c)	Sets forth pool closing time
4122.47 (E)(1)(d)	Sets forth manner in which head to head proposition wager pools are calculated and distributed
4122.47 (E)(1)(e)	Identifies status of wager in the event of a dead heat as cancelled and pool refunded
4122.47 (E)(1)(f)	Identified head to head wager status when scratch or non-starter as wager cancelled and pool refunded
4122.47 (E)(1)(g)	Head to head wager cancelled and pool refunded where both fail to finish
4122.47 (E)(1)(h)	Head to head wager cancelled and pool refunded if race is cancelled or deemed a "no contest"
4122.47 (E)(2)(a)	Head to head to head wager is defined as the interest out of three separate betting interests in a race that finishes first
4122.47 (E)(2)(b)	Sets forth manner in which track must identify wager and get it approved and give public notice
4122.47 (E)(2)(c)	Identifies close of pool time
4122.47 (E)(2)(d)	Sets forth manner in which head to head to head proposition wager pools are calculated and distributed
4122.47 (E)(2)(e)	Head to head to head wager cancelled and pool refunded in the event of a single dead heat of all three; identifies status of wager and pool where two out of three are dead heat
4122.47 (E)(2)(f)	Wager cancelled and pool refunded where all three fail to finish; where two out of three fail the interest that finished is considered the wager winner
4122.47 (E)(2)(g)	Where all three or two are scratched or deemed nonstarters, wager cancelled/pool refunded; where only one scratched or deemed nonstarter pool refunded to those with that interest and wager goes on contested
4122.47 (E)(2)(h)	Determine when head to head to head wager is cancelled, declared no-contest or refunded
4122.47 (E)(3)	Permits the track to apply to Board to use different names for the wagers outlined in these regulations for marketing purposes

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 15, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Gail Pronti, Racing and Wagering Board, One Water-vliet Ave. Ext., Albany, NY 12206, (518) 457-8460, e-mail: gpronti@racing.state.ny.us

Regulatory Impact Statement

1. **Statutory Authority:** The New York State Racing and Wagering Board ("Board") is authorized to promulgate rules pursuant to Racing, Pari-Mutuel Wagering and Breeding Law ("RPMWBL") Sections 101, 227 and 909. Under Section 101(1), the Board has general jurisdiction over all horse racing activities and all pari-mutuel thoroughbred racing activities. Under Section 227(1) the Board is to make rules regulating the conduct of pari-mutuel wagering. Under Section 909(1)(a) [L. 2004, c.373, Section 2], the Board "shall promulgate rules and regulations to administer the conduct and offering of proposition wagers."

2. **Legislative Objectives:** This amendment advances the legislative objective of regulating the conduct of pari-mutuel wagering in a manner designed to maintain the integrity of racing while generating a reasonable revenue for the support of government.

3. **Needs and Benefits:** The purpose of this rule making is to promulgate new sections of Title 9 N.Y.C.R.R. 4122.47 (harness) and 4011.25 (thoroughbred) that will implement Section 909(1)(a). [Effective February 13, 2005. Expires and deemed repealed June 30, 2009, pursuant to L. 2004,

c. 373, Section 2]. This will be effectuated by inserting new text into sections 4011.25 and 4122.47 and renumbering the former text in those sections as sections 4011.26 and 4122.48.

On August 17, 2004, the Legislature passed RPMWBL Section 909 into law. The law became effective on February 14, 2005. Section 909 enables track operators to offer bettors a new type of wager – the proposition wager.

The object of a proposition wager is for the bettor to choose which horse, out of two or three, as designated by the track, will finish before the other horse, or horses no matter what the overall placing of any of the horses. The proposition wager will be offered either as a “head to head” or “head to head to head”. In the “head to head”, two horses are the subject of the proposition wager. The bettor bets which of the two horses will finish before the other. In the “head to head to head” offering, the bettor must choose which horse of three will finish before the others.

In devising the rules and regulations, RPMWBL Section 909(1)(a) instructs the Board to consider: “(i) the class of the race or races that are to be the subject of the wager; (ii) whether the rules governing the proposition wager are comprehensible to bettors; (iii) whether the outcome of the wager is subject to potential manipulation or abuse by third-parties or by licensees of the board; (iv) the length of time between the time that the bets are placed and the time that the outcome of the bets will be determined; and (v) whether authorization of the wager will enhance the best interests of New York racing, generally.”

The impetus for the enactment of RPMWBL Section 909 was the fact that in October 2005 the Breeders’ Cup is being hosted in New York. Proposition wagering has traditionally been a hallmark of the Breeders’ Cup, a World Class racing event in thoroughbred racing. It is beneficial for New York to offer proposition wager because it provides another interesting betting option for the betting public.

Prior to drafting a proposed set of rules, the Board sought comments from the industry, reviewed other states’ rules and had many internal discussions amongst staff. The Board concluded that the “class of race” on which a proposition wager may be offered should be limited to races with a minimum purse amount of two hundred fifty thousand dollars (\$250,000.00) or more. The comments received indicated that the track operators did not wish to offer proposition wagers on many race dates outside of Breeders’ Cup Day. On that day, the lowest purse amount is \$250,000.00. In addition, the caliber of participant at this level of racing is a sophisticated one. The proposition wager would be less subject to manipulation at this level. In view of this, the \$250,000.00 minimum purse race was established as the class.

The Board also decided to limit the subject of a proposition wager to horses, as there were underlying integrity concerns with respect to wagering on a jockey or trainer as the subjects of a proposition wager. Accordingly, the rules permit a proposition wager to only be made on two or three horses.

The proposed rules also set forth the methods by which a track operator must seek approval from the Board to offer the proposition wager; and how the wager should be advertised to the betting public. The proposed rules establish parameters for the manner in which the wager pool should be set up, calculated and distributed. For instance, the distribution issue is addressed in Sections 4011.25(E)(1)(d) and (E)(2)(d). Those sections refer back to RPMWBL Section 909(b) because the statute allows the take out rate to be lowered from the standard fifteen percent to between seven to fifteen percent upon request by the track operator to the Board.

The rule making also sets forth the manner in which the odds pertaining to the wager must be posted. It establishes the length of time during which the outcome of the proposition wager will be determined. It also outlines when refunds of the wager are given, such as in instances where a horse is scratched or a race is deemed a no contest or cancelled.

In devising these rules, the Board has reviewed the proposition wager rules of other racing jurisdictions. These jurisdictions include Connecticut, Illinois, Texas, as well as the model rule of the Association of Racing Commissioners International. Text of the proposed rule was circulated for comment to racing officials, industry members and people with regulatory backgrounds.

Title 9E N.Y.C.R.R. Sections 4011.25 (thoroughbred) and 4122.47 (harness) are needed to enable the Board to carry out its existing supervisory and regulatory responsibilities with respect to the offering of the proposition wager. They are beneficial because the Board has complied with the legislative directive by ensuring the rules are comprehensible to the betting public.

4. Costs: (a) Costs to regulated parties for the implementation of and continuing compliance with the rule: It is anticipated that minimal costs

will be incurred by the regulated entities. Offering a new type of wager is something that the track’s totalizator systems can already accommodate. Processing this type of wager could be handled by current tote equipment and staff.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: See (d) below.

(d) There will be no costs to the agency, as it is a matter of the track operator implementing minor adjustments, via their totalizator system operator, to an existing totalizator system.

5. Local Government Mandates: None. See above.

6. Paperwork: None. See above.

7. Duplication: None.

8. Alternatives: The other alternative would be to disregard the legislature’s directive and not promulgate anything. This is not in compliance with the statutory mandate. It would also be contrary to the trends in horse racing, where the betting public is looking for new types of wagering opportunities.

9. Federal Standards: None.

10. Compliance Schedule: This rule will be effective immediately upon filing.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment merely enables the Board to describe the regulatory and technical requirements that must be met if a track operator chooses to offer a proposition wager in accordance with the newly enacted § 909 of the New York Racing Wagering Pari-Mutuel and Breeding Law. Consequently, as is apparent from the nature of the rule, the rule neither affects small business, local governments, jobs nor rural areas. The rule proposal pertains to defining the class of race a proposition wager may be offered in, delineates the type of interest upon which the wager may be placed and addresses other housekeeping issues with respect to offering this type of new wager. Prescribing regulatory requirements associated with a new type of wager does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8). Nor does it affect employment. The proposal will not impose an adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above.

NOTICE OF ADOPTION

Bingo Rules and Regulations

I.D. No. RWB-10-05-00003-A

Filing No. 558

Filing date: May 18, 2005

Effective date: June 8, 2005

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

Action taken: Amendment of section 5800.1(q) of Title 9 NYCRR.

Statutory authority: Executive Law, art. 19-b, section 435

Subject: Definition of “occasion” under the board’s bingo rules and regulations.

Purpose: To establish a minimum number of games offered during a single bingo occasion; establish a clear definition of a single occasion only, and thereby preserve certain tradition social elements of bingo; ensure ample bingo card sales to support single-occasion jackpots, and allow enough time for supervision by inspectors over the conduct of bingo; allow more flexibility for second and third occasions to allow an organization to formulate a prize scheme that appeals to a broad spectrum of players; and require an organization to have a minimum of 10 games for at least one of the multiple bingo occasions, and allow the organization to offer fewer games with higher prize amounts at the other successive occasion or occasions.

Text or summary was published in the notice of proposed rule making, I.D. No. RWB-10-05-00003-P, Issue of March 9, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Mark A. Stuart, Assistant Counsel, Racing and Wagering

Board, One Watervliet Ave. Ext., Albany, NY 12206, (518) 453-8460, e-mail: Mstuart@racing.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Public Inspection of Records

I.D. No. RWB-10-05-00004-A

Filing No. 560

Filing date: May 18, 2005

Effective date: June 8, 2005

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

Action taken: Repeal of section 5400.1(i) and renumbering of section 5400.1(j) to 5400.1(i) of Title 9 NYCRR.

Statutory authority: Public Officers Law, § 87(1)(b)

Subject: Public inspection of records.

Purpose: To eliminate the requirement that the board afford reporting parties the opportunity to protest a FOIL request for records that are required to be submitted to the board.

Text or summary was published in the notice of proposed rule making, I.D. No. RWB-10-05-00004-P, Issue of March 9, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Mark A. Stuart, Assistant Counsel, Racing and Wagering Board, One Watervliet Ave. Ext., Albany, NY 12206, (518) 453-8460, e-mail: Mstuart@racing.state.ny.us

Assessment of Public Comment

The agency received no public comment.

<i>I. HISTORY OF ALARM SYSTEMS - LICENSE LAW</i>	<i>.5 HOURS</i>
<i>II. MOTION DETECTION</i>	<i>8 HOURS</i>
<i>III. PERIMETER SYSTEMS</i>	<i>2.5 HOURS</i>
<i>IV. SPECIALTY SYSTEMS</i>	<i>.5 HOUR</i>
<i>V. CCTV SYSTEMS</i>	<i>1 HOUR</i>
<i>VI. ACCESS CONTROL</i>	<i>1.75 HOURS</i>
<i>VII. FALSE ALARM PREVENTION</i>	<i>.75 HOUR</i>
	<i>TOTAL 15 HOURS</i>

FINAL EXAMINATION

MODULE #4 FIRE TECHNOLOGY

Subject Matter

<i>I. FIRE DETECTION AND DETECTOR APPLICATION</i>	<i>1 HOUR</i>
<i>II. FIRE ALARM SYSTEMS</i>	<i>13.5 HOURS</i>
<i>III. JOB SAFETY</i>	<i>.5 HOUR</i>
	<i>TOTAL 15 HOURS</i>

FINAL EXAMINATION

Text of proposed rule and any required statements and analyses may be obtained from: Bruce Stuart, Department of State, Division of Licensing Services, 84 Holland Ave., Albany, NY 12208, (518) 473-2728

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

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

Regulatory Impact Statement

1. Statutory Authority:

Section 69-o(1)(b) of the General Business Law provides that an applicant for an alarm installer's license must provide evidence of education that is satisfactory to the Secretary of State. Accordingly, the Secretary of State must prescribe by rule and regulation the minimum education that will be satisfactory. Section 69-n(5) of the General Business Law provides that the Secretary of State shall have the authority to adopt such rules and regulations as may be incidental or appropriate to the secretary's powers and duties as prescribed by Article 6-D of the General Business Law. The Secretary of State is further authorized to amend or repeal those rules and regulation. This proposal amends the existing education qualification for applicants, and, therefore, is expressly authorized by § 69-n(5).

2. Legislative Objectives:

By enacting Article 6-D of the General Business Law, the Legislature sought to insure that alarm installers would be qualified by character, education and knowledge. The qualification for character requires a criminal history background check. The qualification for education requires completion of an educational curriculum satisfactory to the Secretary of State. And, the qualification for knowledge requires that the applicant pass an examination prepared by the Secretary of State. This proposal revises the existing, detailed educational-curriculum to make it less rigid and less detailed so that schools will have the flexibility to teach new developments and current practices within broad subject areas. Accordingly, this proposal advances the public policy objectives of Article 6-D of the General Business Law.

3. Needs and Benefits:

Instructional content must stay current with new standards and new technologies recognized by the NYS Fire Prevention and Building Code. The standards and codes referenced in the NYS Fire Prevention and Building Code are modified nationally on a three year cycle. New York State in turn changes the Fire Prevention and Building Code on a similar though less structured cycle. Licensing education and examination questions should follow the current requirements of the Fire Prevention and Building Code. The current licensing curriculum was adopted in 1992. Since that time there have been revisions to Fire Prevention and Building Code, as well as revisions to the standards and codes referenced therein. This proposal will permit schools to update their curricula to conform to the revisions as long as the curricula conforms, in addition, to the broad subject areas set forth in this proposal.

The benefit of the proposal is an ongoing improvement in the quality of instruction offered to students who are studying to become alarm installers. For the schools, the proposal will permit the schools to tailor their courses to keep up with changing technology.

4. Costs:

a. Costs to regulated parties.

The Department does not anticipate that the revisions to the curriculum will impose any new or additional costs on the schools or students because the schools are currently teaching many of the new standards and technologies in addition to the required curriculum. The Department solicited comments from the schools and alarm associations, State and national, and asked whether the proposal would impose a new or additional costs on the

Department of State

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

Education Curriculum for Security and Fire Alarm Installers

I.D. No. DOS-23-05-00010-P

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

Proposed action: Repeal of section 196.8(b) and addition of new section 196.8(b) to Title 19 NYCRR.

Statutory authority: General Business Law, section 69-n(5)

Subject: Education curriculum for security and fire alarm installers.

Purpose: To make the education curriculum less rigid and less detailed.

Text of proposed rule: Subdivision (b) of 19 NYCRR § 196.8 is REPEALED, and a new subdivision (b) is added to read as follows:

(b) *The following are the required subjects and hours to be included courses of study:*

MODULE #1 INSTALLATIONS: STANDARDS, CODES AND TECHNIQUES

<i>Subject Matter</i>	<i>Time</i>
<i>I. STANDARDS AND CODES</i>	<i>1 HOUR</i>
<i>II. NATIONAL ELECTRICAL CODE (NEC) - NFPA 70</i>	<i>4 HOURS</i>
<i>III. BASIC ELECTRICITY</i>	<i>10 HOURS</i>
	<i>TOTAL 15 HOURS</i>

FINAL EXAMINATION

MODULE #2 CONTROL PANELS AND ALARM TRANSMISSIONS

<i>Subject Matter</i>	<i>Time</i>
<i>I. CONTROL DEVICES</i>	<i>6 HOURS</i>
<i>II. JOB PLANNING AND RECORD KEEPING</i>	<i>1 HOUR</i>
<i>III. ALARM TRANSMISSIONS</i>	<i>8 HOURS</i>
	<i>TOTAL 15 HOURS</i>

FINAL EXAMINATION

MODULE #3 SECURITY SYSTEMS

<i>Subject Matter</i>	<i>Time</i>
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schools or their students. None of the responses indicated that the proposal would impose any new or additional costs.

b. Costs to the agency.

The proposed revisions will not impose any new costs on the Department of State. The Department of State currently reviews and approves curricula proposed by the schools. This proposal will not add any new costs to that process.

The proposal does not affect other State agencies or local governments.

c. Cost information.

The Department solicited comments from the schools and alarm associations asking whether the proposal would impose any new costs or compliance burdens on the schools or their students. None of the responses indicated that the proposal would impose any new or additional costs.

5. Local Government Mandates:

The proposed revisions do not affect local governments.

6. Paperwork:

Schools will have to submit new courses with their new curricula to the Department of State for approval. The burden on the schools should be minimal because schools are familiar with the process and because they are currently required to submit their courses for approval on an annual basis or as changes are made to previously approved courses.

7. Duplication:

The proposed revisions do not duplicate, overlap, or conflict any other federal, state local rule or statute.

8. Alternatives:

For the reasons discussed above, the Department considered but rejected the option of trying to revise and up-date the current rule, which details the specifics of the entire 60-hour curriculum.

9. Federal Standards:

There are no federal standards specifying educational qualifications for fire and security alarm installers.

10. Compliance Schedule:

Schools should be able to comply with the revised curriculum immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

The Department of State has licensed 2,592 security and fire alarm installers. Most of those licensees are small business. However, the proposed revisions to the qualifying curriculum will affect only new applicants. Three schools have been approved to provide courses on a state-wide basis. Two of the schools are small businesses. Approximately 552 students took the qualifying course last year.

The proposed revisions do not affect local governments.

2. Compliance requirements:

Schools will have to submit new courses with the new curriculum to the Department of State for approval. The burden on the schools should be minimal because schools are familiar with the process since they are currently required to submit their courses for approval on an annual basis. Students will take the new course rather than the out-of-date course.

The proposed revisions do not affect local governments.

3. Professional services:

Professional services are not required to comply with the proposed revisions.

The proposed revisions do not affect local governments.

4. Compliance costs:

The Department does not anticipate that the revisions to the curriculum will impose any significant costs on the schools. The Department solicited comments from the schools and asked whether the proposal would impose any significant new costs on the schools or their students. None of the responses indicated that there would be no new or additional costs for their school or for their students.

The proposed revisions do not affect local governments.

5. Economic and technological feasibility:

Compliance with the proposed revisions will be economically and technologically feasible.

The proposed revisions do not affect local governments.

6. Minimizing adverse impact:

The proposed revisions will not have any adverse impact on schools or students.

7. Small business and local government participation:

The Department of State solicited comments from the three schools that offer security and fire alarm installation courses, as well as national and state associations of alarm installers. All were in favor of the proposed change. The proposed revisions were recommended to the Department of State by the Department's Security and Fire Alarm Installers Advisory

Committee. The Committee is comprised of five members from the industry. The Committee members represent small businesses, and four of the members teach qualifying courses at the approved schools.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed revisions will apply uniformly throughout the State.

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

The proposed revisions do not impose any reporting, recordkeeping or other affirmative acts on new applicants or the schools or their students.

Professional services are not required to comply with the proposed revisions.

3. Costs:

The Department does not anticipate that the revisions to the curriculum will impose any new or additional costs on the schools. The Department does not anticipate that the revisions to the curriculum will result in any increase in the cost of courses for students. The costs are more fully discussed in section 4 of the regulatory impact statement.

4. Minimizing adverse impact:

The proposed revisions will not have any adverse impact on licensees in rural areas.

5. Rural area participation:

The proposed revisions have been recommended to the Department of State by the Department's Security and Fire Alarm Installers Advisory Committee, several members of which represent small businesses in rural areas.

Job Impact Statement

The proposed changes simply revises the existing curriculum. The total number of hours remains unchanged at 60 hours. The Department of State does not anticipate any added costs for students or schools. Accordingly, the proposed changes will not have any adverse impact on jobs or employment opportunities for students or the schools.

Department of Taxation and Finance

NOTICE OF ADOPTION

Signature Requirements Applicable to Tax Return Preparers

I.D. No. TAF-14-05-00002-A

Filing No. 568

Filing date: May 24, 2005

Effective date: June 8, 2005

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

Action taken: Amendment of sections 153.6 and 158.12 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 658(g) and 697(a)

Subject: Signature requirements applicable to tax return preparers.

Purpose: To remove the manual signature requirement for tax return preparers from the personal income tax regulations.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-14-05-00002-P, Issue of April 6, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Diane M. Ohanian, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fuel Use Tax

I.D. No. TAF-23-05-00016-P

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

Proposed action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.
Statutory authority: Tax Law, sections 171, subd. First; 301-h(c); 509(7); 523(b); and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel.

Purpose: To set the sales tax component and the composite rate per gallon of the fuel use tax on motor fuel and diesel motor fuel for the calendar quarter beginning July 1, 2005, and ending Sept. 30, 2005, and reflect the aggregate rate per gallon on such fuels for such calendar quarter for purposes of the joint administration of the fuel use tax and the art. 13-A carrier tax.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (xxxix) to read as follows:

Sales Tax Component	Motor Fuel		Sales Tax Component	Diesel Motor Fuel	
	Composite Rate	Aggregate Rate		Composite Rate	Aggregate Rate
12.1	20.1	35.3	13.9	21.9	35.35
	(xxxviii) April - June 2005				
	(xxxix) July - September 2005				
14.6	22.6	37.8	15.8	23.8	37.25

Text of proposed rule and any required statements and analyses may be obtained from: Diane M. Ohanian, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254

Data, views or arguments may be submitted to: Marilyn Kaltenborn, Director, Taxpayer Services Division, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-1153

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 rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

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

Special Requirements for Parking Facility Operators in New York County (Manhattan)

I.D. No. TAF-23-05-00017-P

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

Proposed action: This is a consensus rule making to amend section 538.2(a) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 1142, subd. (1) and (8); 1142-A, subd. (a); 1250 (not subdivided); and L. 2005, ch. 61, part R

Subject: Special requirements for vendors making sales of the services of parking, garaging or storing motor vehicles in New York County (Manhattan).

Purpose: To make permanent the special requirements concerning Manhattan parking facility operators.

Text of proposed rule: Section 1. Subdivision (a) of section 538.2 of the regulations is amended to read as follows:

(a) "Applicability." Parking facility operators which provide parking services in New York County (Manhattan) are subject to the special requirements imposed by section 1142-A of the Tax Law and this Part [for the period beginning December 1, 1992, and ending November 30, 2004].

Text of proposed rule and any required statements and analyses may be obtained from: Diane M. Ohanian, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254

Data, views or arguments may be submitted to: Marilyn Kaltenborn, Director, Taxpayer Services Division, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-1153

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

Consensus Rule Making Determination

The Department of Taxation and Finance has determined that no person is likely to object to the adoption of this rule as written because it merely implements a non-discretionary statutory provision enacted on April 12, 2005, that makes permanent the longstanding enforcement provisions set forth in section 1142-A of the Tax Law with respect to certain parking facility operators that provide parking services in New York County (Manhattan). The provisions include the directive to promulgate regulations to impose certain special requirements concerning such parking facility operators. The provisions originally became effective on December 1, 1992, and were to sunset first in 1995 and then again in 1999 and in 2004; however, they were extended in 1995 and 1999 and it was a reasonable expectation that they would again be extended or eventually made permanent.

Subdivision (a) of section 1142-A of the Tax Law, as amended by Part R of Chapter 61 of the Laws of 2005, reads as follows:

Every person required to collect the taxes described in paragraph six of subdivision (c) of section eleven hundred five, subdivision (c) of section eleven hundred seven and paragraph one of subdivision (a) of section twelve hundred twelve-A of this chapter, in a county with a population density in excess of fifty thousand persons per square mile in any city in this state having a population of one million or more, shall be subject to the requirements set forth in this section, except as otherwise provided herein.

Pursuant to the legislative directive, this rule simply amends section 538.2(a) of the Department's Sales and Use Taxes regulations, Applicability, to make permanent the longstanding special requirements set forth in Part 538 of such regulations with respect to certain parking facility operators that provide parking services in New York County (Manhattan).

Job Impact Statement

As a result of the enactment of Chapter 61 of the Laws of 2005, this rule is being proposed to make permanent the longstanding special requirements prescribed in Part 538 of the Sales and Use Taxes Regulations with respect to certain parking facility operators that provide parking services in New York County (Manhattan). Part R of Chapter 61 made permanent the longstanding enforcement provisions, including the directive to promulgate the special requirements of Part 538, that are set forth in section 1142-A of the Tax Law with respect to such parking facility operators. These provisions originally became effective on December 1, 1992, and were to sunset first in 1995 and then again in 1999 and in 2004; however, they were extended in 1995 and 1999 and were made permanent by Chapter 61 when it was signed by the Governor on April 12, 2005.

Since these provisions and special requirements have been consistently extended to ensure proper compliance with the collection of sales tax on parking services in Manhattan and prevent noncompliant parking facility operators from gaining competitive advantages over compliant ones, it was a reasonable expectation that they would again be extended or eventually made permanent. The purpose of this rule is merely to implement Part R of Chapter 61 and reflect such permanence. Therefore, a Job Impact Statement is not being submitted with the rule because it is evident that the rule itself will have no impact on jobs and employment opportunities other than that which has existed for all of the years that the special requirements have been in effect.