

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Credit Unions

I.D. No. BNK-09-05-00002-P

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

Proposed action: Amendment of sections 96.3 and 97.5; repeal of sections 95.2, 96.1 and Part 113; and addition of new section 96.1 and Parts 326 and 327 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 14(1), 453(5), 454, 458(9) and 458-a

Subject: Changes in the regulations governing credit unions.

Purpose: To provide New York chartered credit unions with powers comparable to, and competitive with, federally chartered credit unions and provide for prior notice of the proposed exercise of new credit union investment powers.

Text of proposed rule: Section 95.2 is REPEALED.

Section 96.1 is REPEALED.

A new Section 96.1 is added to read:

96.1 Definitions

For purposes of this Part:

(a) *The term net worth shall have the same meaning as set forth in Section 702.2 of Part 702 of the Regulations of the National Credit Union Administration.*

(b) *The term loan shall mean any loan made to or guaranteed or endorsed by a member of a credit union.*

Section 96.3 is amended to read:

96.3 Fully secured loans.

A credit union may make loans to a member which are secured by the borrower's unencumbered shares or by shares pledged by another member or members subject to the limitations contained in sections [453(5)] 454(6) and [454(2)] 456(2) of the Banking Law.

Section 97.5 is amended to read:

97.5 Aggregate limitation

The aggregate amount of a credit union's investment in the stock, capital notes and debentures of credit union organizations, together with the aggregate amount of loans to such organizations, shall not exceed [one] three percent of the amount due to the members of the credit union on shares and deposits. For the purposes of this section, a loan shall include any loan or advance made directly or indirectly to a credit union organization (excluding accounts payable incurred in the ordinary course of business and paid within 60 days).

Part 113 is REPEALED.

A new Part 326 is added to read:

PART 326

MAINTENANCE OF RESERVES BY CREDIT UNIONS

(Statutory Authority: Banking Law Section 458-a)

326.1 Applicability.

The provisions of this Part shall apply to all net worth reserve accounts required to be established and maintained by credit unions.

326.2 Reserve Accounts.

Credit unions shall establish and maintain such net worth reserve accounts as are required for Federally chartered credit unions pursuant to Title 12 U.S.C.1790d and any regulations promulgated thereunder by the National Credit Union Administration.

326.3 Definition.

(a) *The term net worth shall mean the retained earnings balance of the credit union at the end of a quarterly period as determined under generally accepted accounting principles. Retained earnings consists of undivided earnings, regular reserves, and any other appropriations designated by the management of a credit union or regulatory authorities. Only undivided earnings and appropriations of undivided earnings shall be included in net worth. Net Worth shall not include the allowance for loan and lease losses account. In the case of a credit union that qualifies to be designated as a low income credit union, net worth shall also include secondary capital accounts that are uninsured and subordinate to all other claims of creditors, shareholders and the National Credit Union Share Insurance Fund.*

(b) *In the event that a different definition of net worth is contained in 12 CFR 702.2, this section shall be deemed to define net worth as set forth in such section.*

A new Part 327 is added to the Superintendent's Regulations to read:

PART 327

INVESTMENTS BY CREDIT UNIONS IN THE SHARES OF CORPORATE CREDIT UNIONS LOCATED IN THIS STATE

(Statutory authority: Banking Law Sections 454, 454(14))

Any credit union that seeks to invest in the shares of a state or Federal corporate credit union located in this state in an amount that exceeds fifty percent of its total capital or the insured limit, whichever is greater, shall

give the Superintendent prior written notice of its intent to make such investment. If the Superintendent shall find that the proposed investment is consistent with the declaration of policy set forth in Section 10 of the Banking Law, he or she shall, within thirty days after receipt of such notice, notify the credit union in writing that such investment may be made or that an additional period of time, not to exceed sixty days, is required to properly make a determination.

Text of proposed 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

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:

Banking Law Section 14(1) gives the Banking Board the power "to make, alter and amend rules and regulations not inconsistent with law." Section 454 of the Banking Law states that the powers of a credit union specified therein shall be subject to any regulations promulgated by the Superintendent or, in certain specified cases, to regulations promulgated by the Banking Board. Section 454(6) of the Banking Law authorizes a credit union to lend money to its members, subject to such regulations and restrictions as the banking board finds necessary and proper. Section 454(9) of the Banking Law authorizes a credit union, subject to such regulations and restrictions as the Banking Board finds necessary and proper, to borrow money from any source in an aggregate amount not exceeding fifty percent of assets without the written approval of the Superintendent. Section 454(14) of the Banking Law permits a credit union to hold shares in and make loans to other credit unions, whether state or federally chartered, subject to the limitations contained in Section 456(7) of the Banking Law. Section 454(19) of the Banking Law provides that investments in and loans to a credit union organization by a credit union shall be subject to regulations and restrictions of the Banking Board. Section 458(9) of the Banking Law gives the Superintendent the power to promulgate regulations or take other measures necessary to provide for and implement the repeal of Section 458. Section 458-a of the Banking law gives the Superintendent the power to prescribe by regulation the net worth reserve categories which a credit union shall contribute to and maintain.

2. Legislative objectives:

As more fully described in response to Item 3, "Needs and benefits" below, the proposed repeal of Section 95.2 of the General Regulations of the Banking Board ("General Regulations"), the proposed amendment to Section 96.1 of the General Regulations, the proposed amendment to Section 96.3 of the General Regulations, the proposed amendment to Section 97.5 of the General Regulations, the proposed adoption of new Superintendent's Regulation Part 326 and the proposed repeal of Part 113 of the General Regulations all implement, or conform the regulations of the Banking Department to, specific changes made by the Legislature in the Banking Law, and thereby presumably accord with the public policy objectives of the Legislature in making such changes. As also more fully described in response to Item 3 below, the proposed adoption of new Superintendent's Regulation 327 addresses safety and soundness concerns which may arise from the repeal of Part 113 of the General Regulations, and thereby accords with the public policy objectives set forth in Section 10 of the Banking Law that the business of all banking organizations be regulated in such a manner as to ensure, among other things, the safe and sound conduct of such business.

3. Needs and benefits:

Chapter 679 of the Laws of 2003, which was approved on October 15, 2003, amended the Banking Law in relation to the powers, limitations and operations of credit unions. The purpose of the legislation was to provide state-chartered credit unions with powers comparable to and competitive with federally-chartered credit unions.

The proposed changes all implement, or conform the regulations of the Banking Department to, specific changes made by the Legislature in Chapter 679, except for the proposed adoption of new Superintendent's Regulation Part 327, which addresses safety and soundness concerns which may arise from the repeal of Part 113 of the General Regulations of the Banking Board. Specifically:

The repeal of Section 95.2 of the General Regulations of the Banking Board will conform the regulation to a change in the law by removing an obsolete limitation contained in the regulation requiring a credit union to obtain the approval of the Superintendent to borrow more than 15 but less than 50 percent of its assets. New Section 454(9) of the Banking Law

permits a credit union to borrow up to 50 percent of its assets without the approval of the Superintendent.

The amendment to Section 96.1 of the General Regulations of the Banking Board will implement a change in the law by eliminating references in the regulation to the surplus of a credit union and conforming the definition of "net worth" to the regulations of the National Credit Union Administration. Section 458 of the Banking Law, requiring credit unions to maintain surplus accounts, will be repealed effective October, 2004.

The amendment to Section 96.3 of the General Regulations of the Banking Board modifies the statutory references in the regulation to reflect changes made in Article XI of the Banking Law.

The amendment to Section 97.5 of the General Regulations of the Banking Board conforms the regulation to amended Section 454(19) of the Banking Law, which increases the limit on investments by a credit union in a credit union organization from one percent to three percent of the total sum due to members on shares and deposits.

New Superintendent's Regulation Part 326 implements new Section 458-a of the Banking Law. Section 458-a requires a credit union to maintain such net worth reserves as the Superintendent by regulation shall prescribe and mandates that the regulations prescribe a system of maintaining net worth reserves comparable to that promulgated by the National Credit Union Administration, except as otherwise deemed necessary by the Superintendent.

The repeal of Part 113 of the General Regulations of the Banking Board conforms the regulations to the investment powers of credit unions under Section 454(14) of the Banking Law. Part 113 limits a credit union to investing no more than 50 percent of its capital in shares of a central (*i.e.*, corporate) credit union located in this state. However, Banking Law Section 454(4) authorizes credit unions to hold shares of other credit unions, subject to the limitations in Banking Law Section 456(7). The latter section specifically excludes from its investment limitations investments in state or federal corporate credit unions.

New Superintendent's Regulation Part 327 addresses any possible safety and soundness concerns arising from the repeal of Part 113 by requiring that a credit union which intends to invest in the shares of a state or federal corporate credit union located in this state in an amount that exceeds 50% of its total capital or its insured limit, whichever is greater, give the Superintendent prior written notice of its intent. The regulation gives the Superintendent an opportunity to determine whether the proposed investment is consistent with the policy set forth in Section 10 of the Banking Law, which includes safety and soundness considerations.

4. Costs:

The repeal of Section 95.2 of the General Regulations of the Banking Board is not projected to impose any costs on regulated persons or the state government.

The amendment to Section 96.1 of the General Regulations of the Banking Board will conform the definition of net worth in state's credit union regulations to that of the federal regulator of credit unions, and is not therefore projected to impose any additional costs on regulated persons or the state government.

The amendment to Section 96.3 of the General Regulations of the Banking Board will conform statutory cross-references in the regulation to changes in the Banking Law and is not projected to impose any costs on regulated persons or the state government.

The amendment to Section 97.5 of the General Regulations of the Banking Board raises a limit on certain investments, in accordance with recent legislation, and therefore is not projected to impose any additional costs on regulated persons or the state government.

New Superintendent's Regulation Part 326 implements a statutory mandate that the Superintendent prescribe a system of maintaining net worth reserves comparable to that promulgated by the National Credit Union Administration. The amendment will conform the state's regulation to that of the federal government and therefore is not projected to impose any costs on regulated persons or the state government.

The repeal of Part 113 of the General Regulations of the Banking Board is not projected to impose any costs on regulated persons or the state government.

New Superintendent's Regulation Part 327 requires a credit union provide prior notice to the Superintendent if it seeks to invest more than 50% of its capital or its insured limit, whichever is greater, in a state or federal corporate credit union located in New York, and requires the Superintendent to ascertain whether such notice is consistent with the declared policies of the Banking Law. Prior to the repeal of Part 113 and the adoption of Part 327, credit unions were prohibited from making investments in excess of the 50% notice threshold. An institution need only

give the notice if it chooses to exercise the excess investment authority. The cost to institutions of giving the required notice, for which no particular form is prescribed, and the cost to the Department of reviewing such notices is expected to be minimal and is deemed necessary to ensure that the new investment powers are exercised in a safe and sound manner.

5. Local government mandates:

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

6. Paperwork:

The repeal of Section 95.2 of the General Regulations of the Banking Board will not require any new reporting or other paperwork.

The amendment to Section 96.1 of the General Regulations of the Banking Board will reduce reporting burdens on institutions by eliminating the reference to surplus and conforming the definition of net worth to that of the National Credit Union Administration.

The amendment to Section 96.3 of the General Regulations of the Banking Board updating statutory cross-references will not require any new reporting or other paperwork.

The amendment to Section 97.5 of the General Regulations of the Banking Board raising certain investment limits will not require any new reporting or other paperwork.

New Superintendent's Regulation Part 326 will reduce the reporting burden on institutions. This part replaces the current requirement that credit unions maintain a surplus account with a requirement that credit unions maintain a net worth reserve account in the same form as is required by the federal regulator of credit unions.

The repeal of Part 113 of the General Regulations of the Banking Board will not require any new reporting or other paperwork.

New Superintendent's Regulation Part 327 will require institutions seeking to make certain investments to provide the Department with prior notice. Prior to the repeal of Part 113 and the adoption of Part 327, credit unions were prohibited from making investments in the shares of corporate credit unions in excess of the 50% notice threshold. An institution need only give the notice if it chooses to exercise the new investment powers. The paperwork burden of giving the notice is expected to be modest. While the notice is required to be in writing, no particular form of notice is prescribed. The Department believes that the notice requirement is necessary to ensure that the new investment powers are exercised in a safe and sound manner.

7. Duplication:

The repeal of Section 95.2 of the General Regulations of the Banking Board will not result in duplication, overlap or conflict with any rules or other legal requirements of the state and federal governments.

The amendment to Section 96.1 of the General Regulations of the Banking Board will reduce duplication, overlap and conflict with the rules of the federal government by conforming the definition of net worth in the Banking Department's regulations to that in the regulations of the National Credit Union Administration.

The amendment to Section 96.3 of the General Regulations of the Banking Board updating certain statutory cross-references will not result in duplication, overlap or conflict with any rules or other legal requirements of the state and federal governments.

The amendment to Section 97.5 of the General Regulations of the Banking Board raising certain investment limits will not result in duplication, overlap or conflict with any rules or other legal requirements of the state or federal governments.

New Superintendent's Regulation Part 326 will reduce duplication, overlap and conflict with the rules of the federal government by requiring credit unions to maintain the same reserve accounts as are required by the National Credit Union Administration.

The repeal of Part 113 of the General Regulations of the Banking Board will not result in duplication, overlap or conflict with any rules or other legal requirements of the state and federal governments.

New Superintendent's Regulation Part 327, requiring institutions seeking to make certain investments to provide the Department with prior notice, will not result in duplication, overlap or conflict with any rules or other legal requirements of the state and federal governments.

8. Alternative approaches:

As discussed in detail below, the changes in the regulations are necessary to conform the regulations to changes in the Banking Law. Although, in general, these changes are the result of changes in the law, the Banking Department did communicate its plans to the credit union industry, which is supportive of the changes.

The repeal of Section 95.2 of the General Regulations of the Banking Board will conform the regulation to new Section 454(9) of the Banking Law. One alternative would be to take no action; however not conforming the regulation to the statute was not considered to be a viable alternative.

The amendment to Section 96.1 of the General Regulations of the Banking Board implements the repeal of Section 458 of the Banking Law. One alternative would be to take no action; however not conforming the regulation to the statute was not considered to be a viable alternative.

The amendment to Section 96.3 of the General Regulations of the Banking Board updates certain statutory cross-references. One alternative would be to take no action; however failing to provide the proper statutory cross-references was not considered to be a viable alternative.

The amendment to Section 97.5 of the General Regulations of the Banking Board will conform the regulation to amended Section 454(19) of the Banking Law. One alternative would be to take no action; however not conforming the regulation to the statute was not considered to be a viable alternative.

New Superintendent's Regulation Part 326 implements new Section 458-a of the Banking Law. One alternative would be to take no action; however not conforming the regulation to the statute was not considered to be a viable alternative.

The repeal of Part 113 of the General Regulations of the Banking Board conforms the regulations to Section 454(4) and 456(7) of the Banking Law. One alternative would be to take no action; however not conforming the regulation to the statute was not considered to be a viable alternative.

New Superintendent's Regulation Part 327 essentially replaces repealed Part 113. Consideration was given to simply repealing Part 113, thus permitting credit unions to invest in the shares of federal or state corporate credit unions without limitation. However, in light of concerns expressed about potential safety and soundness issues if such a course were followed, it was determined to adopt Part 327.

9. Federal standards:

No minimum standards of the federal government for the same or similar subject areas will be exceeded by the repeal of Section 95.2 of the General Regulations of the Banking Board.

The amendment to Section 96.1 of the General Regulations of the Banking Board will conform the definition of "net worth" to the regulations of the National Credit Union Administration.

No minimum standards of the federal government for the same or similar subject areas will be exceeded by the amendment of Section 96.3 of the General Regulations of the Banking Board updating certain statutory cross-references.

No minimum standards of the federal government for the same or similar subject areas will be exceeded by the amendment to Section 97.5 of the General Regulations of the Banking Board. The National Credit Union Administration regulations applicable to federal credit union investments in credit union service organizations impose more restrictive investment limits.

New Superintendent's Regulation Part 326 requires credit unions to maintain the same reserve accounts as are required by the National Credit Union Administration.

No minimum standards of the federal government for the same or similar subject areas will be exceeded by the repeal of Part 113 of the General Regulations of the Banking Board.

New Superintendent's Regulation Part 327 exceeds minimum standards of the federal government for the same subject area insofar as it imposes a prior notice requirement for certain investments by credit unions whereas no notice or approval requirement for such investments is imposed by federal law or regulations. Part 327 addresses any possible safety and soundness concerns arising from the repeal of Part 113 by requiring that a credit union which intends to invest in the shares of a state or federal corporate credit union located in this state in an amount that exceeds 50% of its total capital or the insured limit, whichever is greater, give the Superintendent prior written notice of its intent. The regulation gives the Superintendent an opportunity to determine whether the proposed investment is consistent with the policy set forth in Section 10 of the Banking Law, which includes safety and soundness considerations.

10. Compliance schedule:

The proposed amendments reflect changes to the Banking Law effected by Chapter 679 of the Laws of 2003. Credit unions are currently required to comply with the statutory changes, most of which have already come into effect.

Moreover, changes in the regulations essentially identical to those here proposed were adopted by the Banking Department on an emergency basis

on April 27, 2004. Consequently, affected institutions are currently in compliance with these regulations. In addition:

No time will be necessary to enable regulated persons to achieve compliance with the repeal of Section 95.2 of the General Regulations of the Banking Board, which removes a limitation on borrowing by credit unions.

The amendment to Section 96.1 of the General Regulations of the Banking Board adopts the definition of "net worth" used in the regulations of the National Credit Union Administration (NCUA). Since credit unions are federally insured they are already subject to this NCUA regulation and will not require any time to achieve compliance with this amendment.

No time will be necessary to enable regulated persons to achieve compliance with the amendment to Section 96.3 of the General Regulations of the Banking Board, which updates certain statutory cross-references.

No time will be necessary to enable regulated persons to achieve compliance with the amendment to Section 97.5 of the General Regulations of the Banking Board, which increases the existing limits on credit union investments.

New Superintendent's Regulation Part 326 requires credit unions to maintain the reserve accounts required by the regulations of the National Credit Union Administration (NCUA). Since credit unions are federally insured they are already subject to this NCUA regulation and will not require any time to achieve compliance with this amendment.

No time will be necessary to enable regulated persons to achieve compliance with the repeal of Part 113 of the General Regulations of the Banking Board, which removes a limitation on investments by credit unions.

No time will be necessary to enable regulated persons to achieve compliance with new Superintendent's Regulation Part 327, since it requires that credit unions give prior notice of investments which were previously prohibited.

Regulatory Flexibility Analysis

The amendments to Part 95, Part 96 and Part 97, and the repeal of Part 113, will not impose any adverse economic or technological impact upon small business beyond any such effects that may be caused by changes in the Banking Law, to which the amendments conform the regulations. These amendments will not impose any adverse economic or technological impact upon local governments. These amendments will impose no adverse reporting, recordkeeping or compliance requirements on small businesses or local governments.

New Superintendent's Regulation Part 326 implements a new statutory requirement that the Superintendent promulgate regulations prescribing a system of maintaining credit union net worth reserves comparable to that promulgated by the National Credit Union Administration. Credit unions are federally insured and thus already subject to the relevant NCUA regulations. Thus, Part 326 will impose no adverse economic or technological impact upon small business or local governments and will impose no new reporting, recordkeeping or compliance requirements on small businesses or local governments.

New Superintendent's Regulation Part 327 requires a credit union which intends to invest in the shares of a state or federal corporate credit union in an amount that exceeds specified limits to provide prior written notice to the Superintendent. Such investments were previously prohibited. Thus, the new regulation will not impose any adverse economic or technological impact upon small business or local governments. While Part 327 will impose new reporting and compliance requirements upon all credit unions, large or small, seeking to make certain investments, the Department believes that the requirements are modest and constitute appropriate prudential measures. Part 327 does not impose any reporting, recordkeeping or compliance requirements on local governments.

Rural Area Flexibility Analysis

The amendments to Part 95, Part 96 and Part 97, and repeal of Part 113, do not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

New Superintendent's Regulation Part 326 implements a new statutory requirement that the Superintendent promulgate regulations prescribing a system of maintaining credit union net worth reserves comparable to that promulgated by the National Credit Union Administration. Credit unions are federally insured and thus already subject to the relevant NCUA regulations. Thus, Part 326 will not have any adverse impact on credit unions located in rural areas.

New Superintendent's Regulation Part 327 requires a credit union which intends to invest in the shares of a state or federal corporate credit union in an amount that exceeds specified limits to provide prior written

notice to the Superintendent. Such investments were previously prohibited. While Part 327 will impose new reporting and compliance requirements upon all credit unions, including credit unions located in rural areas, seeking to make certain investments, the Department believes that the requirements are modest and constitute appropriate prudential measures.

Parts 326 and 327 do not impose any reporting, recordkeeping or compliance requirements on public entities in rural areas.

Job Impact Statement

A Job Impact Statement is not attached because the amendments to Part 95, 96 and 97, the repeal of Part 113, and the adoption of Parts 326 and 327 will not have any appreciable and/or substantial adverse impact on jobs and employment opportunities.

Office of Children and Family Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Approval or Certification of a Foster Home on an Emergency Basis

I.D. No. CFS-09-05-00010-P

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

Proposed action: Amendment of sections 443.1 and 443.7 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 378(5)

Subject: Approval or certification of a foster home on an emergency basis.

Purpose: To expand the circumstances in which an authorized agency may approve or certify a foster home on an emergency basis. Currently, foster homes may only be approved or certified on an emergency basis if a child is being removed from the child's home of origin as a result of abuse or neglect. These regulations would allow authorized agencies to certify and approve foster homes on an emergency basis if a child needs to be placed voluntarily by his/her family or origin or as a result of a person in need of supervision (PINS) or juvenile delinquency proceeding. The regulations would also allow for a local social services district to move a foster child to a foster home approved or certified on an emergency basis, in exceptional circumstances when there is a compelling reason.

Text of proposed rule: Subdivisions (g) and (h) of section 443.1 are amended to read as follows:

(g) Approved emergency relative foster home. An approved emergency relative foster home is a home in which foster care is provided to a child placed with an authorized agency [pursuant to the provisions of article 10 of the Family Court Act and] who is cared for 24 hours-a-day in a family home with a foster parent who is a relative within the second or third degree to the parent(s) or stepparent(s) of the child and which is duly approved by an authorized agency in accordance with section 443.7 of this Part.

(h) Certified emergency foster home. A certified emergency foster home is a home in which foster care is provided to a child placed with an authorized agency [pursuant to the provisions of Article 10 of the Family Court Act and] who is cared for 24 hours-a-day in a family home with a foster parent who is either a relative other than one who is within the second or third degree to the parent(s) or stepparent(s) of the child or is a nonrelative with a significant prior relationship with the child's family and which is duly certified by an authorized agency in accordance with section 443.7 of this Part.

Subdivision (a) of section 443.7 is amended to read as follows:

443.7 Agency procedures for certifying or approving potential emergency foster homes and emergency relative foster homes.

(a) A potential foster home or the home of a relative of a foster child may be certified or approved as an emergency foster home under the following allowable circumstances:

(1) Allowable circumstances.

(i) a child is removed from his or her own home pursuant to section 1021, 1022 or 1024 of the Family Court Act or a child is [remanded to] removed and placed into foster care pursuant to article 3, 7 or 10 of the Family Court Act or section 384-a of the Social Services Law; or

(ii) a child currently placed in a foster care setting needs to be placed in a foster home and the social services district documents within the uniform case record a compelling reason why such home needs to be certified or approved on an emergency basis; and

(2) an eligible relative or non-relative, identified in subdivisions (g) and (h) of section 443.1 of this Part, is [acknowledged] identified by the child, child's parent(s) or stepparent(s), the court, a representative of the local district or other interested party, as potentially appropriate to provide foster care to the child or such person or relative volunteers to provide foster care to the child. For the purposes of this section, an eligible non-relative may include, but is not limited to, a child's godparent, neighbor, [or] family friend, or an adult with a positive relationship with the child.

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

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:

These proposed regulatory amendments are promulgated pursuant to the authority of Sections 20(3)(d), 34(3)(f) and 378(5) of the Social Services Law (SSL). Section 20(3)(d) of the SSL authorizes the New York State Office of Children and Services (OCFS), as successor agency to the former New York State Department of Social Services, to establish rules, regulations and policies to carry out its powers and duties under the SSL. Section 34(3)(f) of the SSL requires the Commissioner of OCFS to establish regulations for the administration of public assistance and care. Section 378(5) of the SSL requires OCFS to develop and amend regulations governing the certifying of foster boarding homes.

2. Legislative Objectives:

The proposed regulation would carry out the intent of Section 378(5) of the SSL, which authorizes OCFS to amend the regulations governing the boarding of foster children in certified homes on an as needed basis.

3. Needs and Benefits:

These regulations would expand the circumstances in which an authorized agency may approve or certify a foster home on an emergency basis. This proposal is a response to recent requests by some local districts for greater flexibility in the use of emergency approval/certification of foster homes. Currently, foster homes may only be approved or certified on an emergency basis if a child is being removed from the child's home of origin as a result of abuse or neglect. The benefit of being able to approve or certify a home on an emergency basis is that it allows for near immediate foster care placement in a home where the child is familiar with some or all the family members living in the home. This is likely to lessen the traumatic experience of being placed away from one's parents, home, and, on occasion, neighborhood, and sometimes prevent the need for the child to experience multiple placements.

These regulations would allow authorized agencies to certify and approve foster homes on an emergency basis if a child needs to be placed voluntarily by his/her family of origin or as a result of a person in need of supervision (PINS) or juvenile delinquency proceeding. The regulations would also allow for a local social services district to move a foster child to a foster home approved or certified on an emergency basis, in exceptional circumstances when there is a compelling reason.

Most children in foster care are placed as a result of child abuse or neglect. Approximately 15 years ago, a process was developed to approve relatives as foster parents on an emergency basis when an abused or neglected child needed to be placed in foster care, and there was a relative within the third degree of the child's parent or step-parent who was assessed to be an appropriate resource for such child. This process was expanded in 2000 to include non-relatives who had an existing relationship with the child or the child's family of origin. However, this expansion was still limited only to abused and neglected foster children.

In the last few years, several local social services districts have sought to approve or certify foster parents on an emergency basis in other than abuse/neglect cases, but OCFS has been unable to allow this due to the current regulatory limitations. There is no inherent rationale for limiting the emergency approval/certification process to abused and neglected children, who usually are younger than other foster children. Recently, there

has been increased State and local attention toward facilitating lasting connections between older foster children with caring, responsible adults, especially for those youngsters who are unlikely to return to their families of origin. These regulations will respond to both local districts' request for increased flexibility as well as to recent programmatic initiatives aimed at older foster children.

These proposed regulations have been reviewed by Lawyers for Children and The Legal Aid Society, from whom comment and participation was sought. This proposal has the full support of both organizations.

4. Costs:

Assuming continued capped State reimbursement for foster care, the regulations will have no State fiscal impact. The regulations are permissive in nature, not mandatory. A foster child in an emergency certified or approved home is not eligible for Title IV-E reimbursement while the home is in emergency status. However, if the child were otherwise eligible for Title IV-E, the child would be eligible for Title IV-E reimbursement once the home is finally certified/approved. When an otherwise Title IV-E eligible child is placed in an emergency certified or approved home, the child may possibly be eligible for federal reimbursement under the Temporary Assistance to Needy Families Block Grant (TANF) for the period of time the home is in emergency status.

5. Local Government Mandates:

There would be no additional mandates imposed on local governments as a result of these regulations. Local social services districts could choose to utilize the emergency approval/certification process based on particular case circumstances and local district preferences.

6. Paperwork:

No new forms or other paperwork would be required by these regulations, except for the uniform case record documentation of compelling need required in the exceptional circumstances described in amended section 443.7(a)(1)(ii), which involves moving a child who is already in foster care to an emergency-approved or certified home.

7. Duplication:

These regulations do not duplicate other state or federal requirements. These regulations provide authorized agencies with the flexibility of using the emergency approval/certification process where such agencies deem it programmatically advisable.

8. Alternate Approaches:

Alternatives to the approach taken by these regulations could include no expansion of the circumstances under which the emergency approval/certification process could be used, or more limited expansion than what is contained in the regulations. In addition, an early draft of the proposed change included a requirement for prior State approval of an emergency approval/certification. Based upon feedback from stakeholders that it would measurably slow the emergency procedure, that requirement was deleted. Given the permissive nature of these regulations, more limited expansion was not seriously considered.

9. Federal Standards:

The proposed regulations are permissible under existing federal regulations. Nevertheless, during the period that a home is approved or certified on an emergency basis (a maximum of 90 days), Title IV-E federal foster care reimbursement would not be available. Once the home is finally approved or certified, Title IV-E may legitimately be claimed. During the interim period, other federal reimbursement may be available to the local district.

10. Compliance Schedule:

The provisions contained in these regulations could be utilized by an authorized agency on the effective date of the regulations.

Regulatory Flexibility Analysis

1. Effect on Small Businesses and Local Governments:

Social services districts, and voluntary authorized agencies contracting with social districts to provide foster care to children, will or may be affected by these regulations. There are 58 social services districts and approximately 160 voluntary authorized agencies. The regulation is permissive, not mandatory, and thus will not affect those who choose not to utilize the new provisions.

2. Compliance Requirements:

There are no additional mandates imposed by these regulations. The regulations allow for expansion of the circumstances in which a foster home may be approved or certified on an emergency basis. The regulations do not, however, require any social services district or voluntary authorized agency to take advantage of the added flexibility to use the emergency approval or certification process.

3. Professional Services:

The regulations do not create the need for additional professional services, regardless of whether a social services district or voluntary authorized agency takes advantage of the increased circumstances in which to approve or certify a foster home on an emergency basis.

4. Compliance Costs:

In that the regulations create no new requirements, there are no new compliance costs, except for documenting the compelling reason underlying the use of an emergency certification or approval in the narrow case where a child already in foster care must be moved to another foster placement.

5. Economic and Technological Feasibility:

Social services districts and voluntary authorized agencies that choose to take advantage of the expansion in circumstances in which the emergency approval/certification process is used have the economic and technological ability to comply with the regulations.

6. Minimizing Adverse Impact:

These regulations will not result in any adverse impact on the affected small businesses or social services districts.

7. Small Business and Local Government Participation:

Several local social services districts, particularly the Administration for Children's Services (ACS), have requested increased flexibility in relation to the circumstances in which the emergency approval/certification process may be used. Input was sought and received from The Legal Aid Society and Lawyers for Children. Draft materials were shared, and recommended changes were incorporated into this proposal. Specific consultation has not occurred with voluntary authorized agencies; however such agencies would only be affected to the extent that a social services district chooses to use the increased flexibility and contracts with the authorized voluntary agency to conduct the emergency approval/certification process.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed regulations will or may affect the 44 social services districts that are in rural areas, along with the approximately 100 voluntary agencies contracting with the districts.

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

The regulations will not create any new reporting or other compliance requirements except for the need to document, in the uniform case record, a compelling reason for utilizing an emergency certification or approval of a foster home where the child is already in foster care. The regulations allow for expansion of the circumstances in which a foster home may be approved or certified on an emergency basis. It does not, however, require any social services district or other authorized agency to take advantage of this added flexibility to use the emergency approval or certification process.

3. Costs:

Assuming continued capped State reimbursement for foster care, the regulations will have no State fiscal impact. The regulations are permissive in nature, not mandated. A foster child in emergency certified or approved homes is not eligible for federal Title IV-E reimbursement while the home is in emergency status. However, if the child were otherwise eligible for Title IV-E, the child would be eligible for Title IV-E reimbursement once the home is finally certified/approved. When an otherwise Title IV-E eligible child is placed in an emergency certified or approved home, the child may possibly be eligible for federal reimbursement under the Temporary Assistance to Needy Families Block Grant (TANF) for the period of time the home is in emergency status.

4. Minimizing adverse impact:

These regulations will not result in any adverse impact upon small businesses or social services districts in rural areas.

5. Rural area participation:

At least two rural social services districts have requested expansion of the circumstances in which the emergency approval/certification process may be used.

Job Impact Statement

A full job impact statement has not been prepared for the proposed regulation. The proposed regulation would not result in the loss of any jobs. It is apparent from the nature and purpose of the rule that it will not have a substantially adverse impact on jobs and employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Uniform Case Records in Child Welfare Cases

I.D. No. CFS-09-05-00011-P

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

Proposed action: Amendment of sections 404.1(d)(2), 432.2(b)(3), 441.7, 465.1, 466.4 and Part 428 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 153-k, 409-f(1), 427(1) and 446

Subject: Uniform case records in child welfare cases.

Purpose: To promote better child welfare practices directed toward child safety and expediting permanency outcomes in New York State, and support the uniform case record (UCR) component of CONNECTIONS, New York's statewide automated child welfare information system (SACWIS).

Substance of proposed rule (Full text is posted at the following State website: www.ocfs.state.ny.us): Section 404.1 (Redeterminations of financial eligibility)

The amendment changes the time period of the financial redetermination for a child in receipt of foster care maintenance payments from every six months to every 12 months.

Part 428 (Standards for Uniform Case Records)

The amendment simplifies and streamlines recording standards for children in foster care, families receiving preventive services and families in indicated reports of child abuse/maltreatment.

The amendment establishes a new provision to provide standards regarding access to foster care records by adults who were former foster children.

The amendment provides for the waiver of authority granted pursuant to Social Services Law section 153-k to allow a more flexible approach for documenting preventive service cases purchased from a public agency or a private voluntary agency, using an alternative evidence-based model of practice, so long as the substitution contains legally required data and OCFS grants approval.

The amendment defines "community optional preventive services" and exempts such services from uniform case recording requirements if a waiver is requested and granted by OCFS.

Section 432.2 (Responsibilities of the Child Protective Service)

The amendment clarifies that identifying information regarding the reporter and/or source of a report of suspected child abuse or maltreatment must only be documented in progress notes maintained by the child protective service.

Section 441.7 (Records and Reports)

The amendment conforms retention standards for foster care cases, inspection of records and reports, and access to foster care records by former foster children with standards currently established in Part 428.

The amendment establishes procedures for the transference, notification and plan requirements concerning foster care case records when a voluntary agency ceases operation.

Section 465.1 (Child Care Review Service)

The amendment conforms standards for retention and expungement of records with standards currently established in Part 428.

Section 466.4 (Confidentiality)

The amendment amends confidentiality standards to include access to foster care records in accordance with Part 428.

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

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 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules and regulations to carry out its duties pursuant to the provisions of the SSL.

Section 153-k of the SSL sets out the standards for the funding of children and family services, including foster care, preventive services and child protective services. The statute also authorizes waivers of statutory

and regulatory requirements, including those related to the Uniform Case Record (UCR).

Section 409-f(1) of the SSL authorizes OCFS to specify in regulation the format and contents of the UCR.

Section 427(1) of the SSL authorizes the Commissioner of OCFS to adopt regulations necessary to implement the child protective program.

Section 446 of the SSL requires OCFS to establish a statewide child welfare information system that is designed to enter, provide access to and maintain required documentation for child welfare cases. The statute requires OCFS to promulgate regulations for the timely submission in the system of required child welfare data elements.

2. Legislative objectives:

Chapter 7 of the Laws of 1999 was the State's legislative response to Public Law 105-89, which is better known as the federal Adoption and Safe Families Act of 1997 (ASFA). ASFA's overarching intent is to promote child safety and earlier permanency decisions for children coming to the attention of states' child welfare programs. Chapter 7 and subsequent amendments to State law, mirror ASFA's requirements and also expand on some of ASFA's provisions in areas where states were granted discretion.

OCFS has already promulgated several sets of regulations aimed at implementing the provisions of ASFA and corresponding State law. These proposed regulations continue to implement provisions of ASFA and corresponding State law, sometimes expanding upon the aforementioned regulations, and in some instances utilizing the discretion that ASFA affords states to promote better child welfare practices directed toward child safety and expediting permanency outcomes. In addition, design work on the UCR component of New York State's SACWIS system (CONNECTIONS) has been completed and the proposed regulations seeks to support such design. After much consultation with child welfare providers during ASFA implementation and again during CONNECTIONS design, the UCR was amended in a number of areas. These include but are not limited to: a new safety assessment at key points in the casework process; a new research based risk assessment; additional questions pertaining to children in foster care designed to expedite an alternative permanent discharge outcome if a child cannot return to his or her family of origin; and questions to document that a petition for termination of parental rights has been filed for a child in care for 15 of the most recent 22 months, or, alternatively, that the petition should not be filed because it would be contrary to the best interests of the child.

Section 153-k of the SSL was enacted in 2002 and significantly changed how child welfare programs are financed in New York. This legislation promotes a reduction in foster care placements by instituting a foster care block grant, capping State reimbursement to social services districts for foster care services, and creating an uncapped reimbursement system at a 65% State, 35% local split for non foster care child welfare services (after applying federal reimbursement). The UCR is designed to focus assessments to enable clear decision making about services that will allow a child to remain safely at home, return home sooner, and avoid replacement in foster care after discharge. Furthermore, once a child is placed in foster care, the UCR is designed to focus on providing a permanent placement for each child.

In addition, the waiver authority in section 153-k of the SSL has led to a more flexible approach regarding preventive services purchased from a public agency or a private voluntary agency that uses an alternative evidence based model of practice approach, so long as the substitution contains the listed essential data and OCFS grants its approval.

3. Needs and benefits:

The proposed regulations are necessary to better meet two basic needs of children who receive services from child welfare agencies in the State. First, whether at home, in foster care, or at an alternative placement, such children should, to the extent possible, be free from abuse, maltreatment or other forms of harm. Secondly, children placed out of the home are deserving of safe permanent homes, without undue delay, preferably returning to their families of origin. When that is not possible an alternative permanent living arrangement must be sought, and as encouraged by ASFA, such planning may be made concurrently with diligent efforts to return children to their family of origin. In the past, failure to explore alternative considerations until the permanency planning goal is changed has frequently contributed to significant delays in the child being placed in a permanent home. The uncapped funding for non-foster care child welfare services provided by Section 153-k of the SSL supports the necessary focus on services designed to prevent and reduce foster care placements.

The proposed regulations also streamline the UCR requirements so that only key components are specified. Reference to the form and manner of

the actual forms or computer application will continue to guide workers through decision-making and documentation requirements.

The proposed regulations establish a process for access to foster care information by adults who formerly were foster children.

4. Costs:

The proposed revisions are not projected to have any fiscal impact on OCFS or local social service districts. The activities required (and those streamlined) are not anticipated to increase or decrease overtime costs or other staffing costs of the local social service districts. Social services districts are already required to participate in CONNECTIONS by State statute and other OCFS regulations.

5. Local government mandates:

The proposed regulations do alter documentation requirements upon local social services districts; however, as discussed above, most of the new requirements derive directly from federal or State statutory requirements. Where the regulatory requirements go beyond the statutes' specific requirements, they are in keeping with the intent and spirit of the laws—that children served by the child welfare system are in settings where they are as safe as possible, and that such children reside in permanent homes as soon as reasonably can be accomplished.

6. Paperwork:

There is a small amount of new paperwork requirements imposed on local social services districts and voluntary authorized agencies and preventive services agencies in that several new questions have been added to the UCR. The additions do not appreciably add to caseworkers' paperwork requirements, are warranted by federal and State laws, and, in some instances, ask for documentation through a specific question, rather than having it be subsumed in a more general question.

7. Duplication:

The proposed regulations do not duplicate other State requirements.

8. Alternatives:

The proposed regulations are necessary to carry out the specific requirements and intent of ASFA and implementing State law, child welfare financing legislation and SACWIS system development. A major portion of the proposed regulations codifies changes that are being made to the UCR as part of CONNECTIONS. Initial and subsequent drafts of the proposed changes to the UCR were circulated to and discussed with local child welfare staff on numerous occasions. The final amended UCR forms and CONNECTIONS SACWIS design reflect alternatives proposed by local staff.

9. Federal standards:

The proposed regulations do not exceed the intent of federal standards, particularly as they are reflected in ASFA. Where specific proposed regulatory requirements exceed any specific federal requirements, they are necessary to adhere to State statutory requirements or to meet the child safety and expedited permanency objectives contained in federal laws/standards.

10. Compliance schedule:

Compliance with the proposed regulations will begin upon adoption.

Regulatory Flexibility Analysis

1. Effect of Rule:

Social services districts will be affected by the proposed regulation. There are 58 social services districts. Most voluntary foster care and preventive services agencies also will be affected by portions of the proposed regulation. There are approximately 250 of such agencies.

2. Compliance Requirements:

These proposed regulations implement provisions of the federal Adoption and Safe Families Act (ASFA) and Chapter 7 of the Laws of 1999 and subsequent amendments to State law. These laws create new requirements. The requirements in the proposed regulation mostly derive directly from statutory provisions. The Office of Children and Family Services (OCFS) has already promulgated several sets of regulations aimed at implementing the provisions of ASFA and corresponding State law. These proposed regulations continue to implement provisions of ASFA and corresponding State law, sometimes expanding upon the aforementioned regulations, and in some instances utilizing the discretion that ASFA affords states to promote better child welfare practices directed toward child safety and expediting permanency outcomes. In addition, design work on the UCR component of New York State's SACWIS system (CONNECTIONS) has been completed and the proposed regulations seeks to support such design. After much consultation with child welfare providers during ASFA implementation and again during CONNECTIONS design, the UCR was amended in a number of areas. These include but are not limited to: a new safety assessment at key points in the casework process; a new research based risk assessment; additional questions pertaining to children in foster

care designed to expedite an alternative permanent discharge outcome if a child cannot return to his or her family of origin; and questions to document that a petition for termination of parental rights has been filed for a child in care for 15 of the most recent 22 months, or, alternatively, that the petition should not be filed because it would be contrary to the best interests of the child.

Section 153-k of the SSL was enacted in 2002 and significantly changed how child welfare programs are financed in New York. This legislation promotes a reduction in foster care placements by instituting a foster care block grant, capping State reimbursement to social services districts for foster care services, and creating an uncapped reimbursement system at a 65% State, 35% local split for non-foster care child welfare services (after applying federal reimbursement). The UCR is designed to focus assessments to enable clear decision making about services that will allow a child to remain safely at home, return home sooner, and avoid replacement in foster care after discharge. Furthermore, once a child is placed in foster care, the UCR is designed to focus on providing a permanent placement for each child.

In addition, the waiver authority in section 153-k of the SSL has led to a more flexible approach regarding preventive services purchased from a public agency or a private voluntary agency that uses an alternative evidence based model of practice approach, so long as the substitution contains the listed essential data and OCFS grants its approval.

3. Professional Requirements:

No need for additional staff is anticipated. Existing staff will be comprehensively trained, as part of comprehensive CONNECTIONS training. In addition, current training programs will be enhanced to emphasize the casework support that these amendments bring.

4. Compliance Costs:

The proposed revisions to sections 404.1, 441.7 and 465.1 and Part 428 of 18 NYCRR are not projected to have any fiscal impact on OCFS, local social service districts or child welfare services providers. The activities required (and those streamlined) are not anticipated to increase or decrease overtime costs or other staffing costs of the local social service districts or child welfare services providers. Social services districts and child welfare services providers are already required to participate in CONNECTIONS by State statute and other OCFS regulations.

5. Economic and Technological Feasibility:

The proposed regulation will not impose additional economic or technological burdens on social services districts or child welfare services providers beyond those currently required to implement the CONNECTIONS system.

6. Minimizing Adverse Impact:

Most of the new requirements were necessitated by ASFA, Chapter 7, and subsequent amendments, and by changes to Section 153-k of the SSL enacted in 2002 and were therefore unavoidable. They were also necessitated by SACWIS system development.

7. Small Business and Local Government Participation:

The OCFS actively sought and obtained the input of users as these requirements were developed. There was an ad hoc committee of local social services district staff whose comments were directly solicited as ASFA related UCR changes were developed. In relation to the child welfare services agencies, draft material concerning the proposed UCR changes were made available to the Council of Family and Child Caring Agencies, which is an umbrella group for many of the voluntary child welfare agencies. Additionally, intense involvement of the user community, including both local districts and voluntary agencies, took place during CONNECTIONS design meetings. The UCR will become a part of the CONNECTIONS case management application.

Rural Area Flexibility Analysis

1. Effect on Rural Areas:

The proposed regulations will affect the 44 social services districts that are in rural areas. Those voluntary agencies in rural areas contracting with social services districts to provide foster care, adoption and preventive services also will be affected by the proposed regulations. Currently, there are approximately 100 such agencies.

2. Compliance Requirements:

These proposed regulations implement provisions of the Adoption and Safe Families Act (ASFA) and Chapter 7 of the Laws of 1999 and subsequent amendments to State law. These laws create new requirements. The proposed regulation and the requirements mostly derive directly from statutory provisions. The Office of Children and Family Services (OCFS) has already promulgated several sets of regulations aimed at implementing

the provisions of ASFA and corresponding State law. These proposed regulations continue to implement provisions of ASFA and corresponding State law, sometimes expanding upon the aforementioned regulations, and, in some instances, utilizing the discretion that ASFA affords states to promote better child welfare practices directed toward child safety and expediting permanency outcomes. In addition, design work on the UCR component of New York State's SACWIS system (CONNECTIONS) has been completed and the proposed regulations seeks to support such design. After much consultation with child welfare providers during ASFA implementation and again during CONNECTIONS design, the UCR was amended in a number of areas. These include but are not limited to: a new safety assessment at key points in the casework process; a new research based risk assessment; additional questions pertaining to children in foster care designed to expedite an alternative permanent discharge outcome if a child cannot return to his or her family of origin; and questions to document that a petition for termination of parental rights has been filed for a child in care for 15 of the most recent 22 months, or, alternatively, that the petition should not be filed because it would be contrary to the best interests of the child.

Section 153-k of the SSL was enacted in 2002 and significantly changed how child welfare programs are financed in New York. This legislation promotes a reduction in foster care placements by instituting a foster care block grant, capping State reimbursement to social services districts for foster care services, and creating an uncapped reimbursement system at a 65% State, 35% local split for non foster care child welfare services (after applying federal reimbursement). The UCR is designed to focus assessments to enable clear decision making about services that will allow a child to remain safely at home, return home sooner and avoid replacement in foster care after discharge. Furthermore, once a child is placed in foster care, the UCR is designed to focus on providing a permanent placement for each child.

In addition, the waiver authority in section 153-k of the SSL has led to a more flexible approach regarding preventive services purchased from a public agency or a private voluntary agency that uses an alternative evidence based model of practice approach, so long as the substitution contains the listed essential data and OCFS grants its approval.

3. Professional Services:

The proposed regulations would not require voluntary agencies to hire additional staff in order to implement them. Existing staff will be comprehensively trained, as part of comprehensive CONNECTIONS training. In addition, current training programs will be enhanced to emphasize the casework support that these amendments bring.

4. Compliance Costs:

The proposed revisions are not projected to have any fiscal impact on OCFS, local social service districts or child welfare services providers. The activities required (and those streamlined) are not anticipated to increase or decrease overtime costs or other staffing costs of the local social service districts or child welfare services providers. Social services districts and child welfare services providers are already required to participate in CONNECTIONS by State statute and other OCFS regulations.

5. Minimizing Adverse Impact:

Most of the new requirements were necessitated by ASFA, Chapter 7, and subsequent amendments, and by changes to Section 153-k of the SSL enacted in 2002 and were, therefore, unavoidable. They were also necessitated by SACWIS system development.

6. Small Business Participation:

The OCFS actively sought and obtained the input of users as these requirements were developed. In relation to the voluntary agencies, draft material concerning the proposed UCR changes were made available to the Council of Family and Child Caring Agencies, which is an umbrella group for many of the voluntary child welfare agencies. Additionally, intense involvement of the user community, including voluntary agencies, took place during CONNECTIONS design meetings. The UCR will become a part of the CONNECTIONS application.

Job Impact Statement

A full job statement has not been prepared for the proposed regulation implementing portions of the federal Adoption and Safe Families Act, Chapter 7 of the Laws of 1999 and subsequent amendments, and amendments to section 153-k of the Social Services Law enacted in 2002. The proposed regulations improve, simplify and streamline existing child welfare documentation requirements for social services districts and child welfare services providers. As such, they are not anticipated to result in the loss of any jobs.

Education Department

NOTICE OF ADOPTION

Authorization of Degrees

I.D. No. EDU-47-04-00010-A

Filing No. 145

Filing date: Feb. 11, 2005

Effective date: March 3, 2005

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

Action taken: Amendment of sections 3.47(d)(2) and 3.50(b)(17) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 210 (not subdivided), 218(1) and 224(4)

Subject: Authorization of degrees.

Purpose: To authorize the conferral in New York State of the degree, Doctor of Nursing Practice (D.N.P.), for completion of a practice oriented doctoral program in nursing.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-47-04-00010-P, Issue of November 24, 2004.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Unprofessional Conduct in the Social Work and Mental Health Practitioner Professions

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

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

Proposed action: Amendment of 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: Definitions of 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, creative arts therapy, marriage and family therapy, mental health counseling, and psychoanalysis.

Text of proposed rule: 1. Section 29.2 of the Rules of the Board of Regents is amended, effective June 9, 2005, as follows:

29.2 General provisions for health professions.

(a) Unprofessional conduct shall also include, in the professions of:

- acupuncture
- athletic training
- audiology
- certified dental assisting
- chiropractic
- creative arts therapy
- dental hygiene
- dentistry
- dietetics/nutrition
- licensed practical nursing
- marriage and family therapy
- massage therapy
- medicine
- mental health counseling
- midwifery
- occupational therapy
- occupational therapy assistant

- ophthalmic dispensing
- optometry
- pharmacy
- physical therapist assistant
- physical therapy
- physician assistant
- podiatry
- psychoanalysis
- psychology
- registered professional nursing
- respiratory therapy
- respiratory therapy technician
- social work
- specialist assistant
- speech-language pathology

[Except] (*except* for cases involving those professions licensed, certified or registered pursuant to the provisions of article 131 or 131-B of the Education Law in which a statement of charges of professional misconduct was not served on or before July 26, 1991, the effective date of chapter 606 of the Laws of 1991):

- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .
- (5) . . .
- (6) . . .
- (7) . . .
- (8) . . .
- (9) . . .
- (10) . . .
- (11) . . .
- (12) . . .
- (13) . . .

(b) Unprofessional conduct shall also include, in those professions specified in section 18 of the Public Health Law and in the professions of acupuncture [and massage], *creative arts therapy, marriage and family therapy, massage therapy, mental health counseling, and psychoanalysis*, failing to provide access by qualified persons to patient information in accordance with the standards set forth in section 18 of the Public Health Law. In the professions of acupuncture [and massage], *creative arts therapy, marriage and family therapy, massage therapy, mental health counseling, and psychoanalysis*, qualified persons may appeal the denial of access to patient information in the manner set forth in section 18 of the Public Health Law to a record access committee appointed by the executive secretary of the appropriate State Board. Such record access review committees shall consist of not less than three, nor more than five members of the appropriate State Board.

2. Section 29.15 of the Rules of the Board of Regents is added, effective June 9, 2005, as follows:

29.15 *Special provisions for the professions of creative arts therapy, marriage and family therapy, mental health counseling, and psychoanalysis.*

Unprofessional conduct in the practice of creative arts therapy, marriage and family therapy, mental health counseling and psychoanalysis shall include conduct prohibited by sections 29.1 and 29.2 of this Part and, in accordance with section 8407 of the Education Law, shall also include:

(a) *in the case of treatment of schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder, attention-deficit hyperactivity disorder and autism, providing any mental health service for such illness on a continuous and sustained basis without a medical evaluation of the illness by, and consultation with, a physician regarding such illness. Such medical evaluation and consultation shall be to determine and advise whether any medical care is indicated for such illness;*

(b) *prescribing or administering drugs as a treatment, therapy, or professional service in the practice of his or her profession; or*

(c) *using invasive procedures as a treatment, therapy, or professional service in the practice of his or her profession. For purposes of this subdivision, invasive procedure means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or other means. Invasive procedure includes, but is not limited to, surgery, lasers, ionizing radiation, therapeutic ultrasound, or electroconvulsive therapy.*

3. Section 29.16 of the Rules of the Board of Regents is added, effective June 9, 2005, as follows:

29.16 *Special provisions for the social work professions.*

Unprofessional conduct in the practice of licensed master social work and licensed clinical social work shall include conduct prohibited by sections 29.1 and 29.2 of this Part and, in accordance with section 7708 of the Education Law, shall also include:

(a) *prescribing or administering drugs as a treatment, therapy, or professional service in the practice of his or her profession; or*

(b) *using invasive procedures as a treatment, therapy, or professional service in the practice of his or her profession. For purposes of this subdivision, invasive procedure means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or other means. Invasive procedure includes, but is not limited to, surgery, lasers, ionizing radiation, therapeutic ultrasound, or electroconvulsive therapy.*

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

Subdivision (1) of section 6506 of the Education Law authorizes the Board of Regents to promulgate rules in the supervision of the practice of the professions.

Subdivision (9) of section 6509 of the Education Law authorizes the Board of Regents to define in its rules unprofessional conduct subject to professional discipline.

Subdivision (1) of section of 7701 defines the practice of licensed master social work.

Subdivision (2) of section 7701 defines the practice of licensed clinical social work.

Subdivision (1) of section 7702 of the Education Law further defines the practice of licensed master social work and licensed clinical social work.

Subdivisions (1) and (2) of section 7708 of the Education Law establishes activities that are prohibited or outside the boundaries of the practice of licensed master social work and licensed clinical social work.

Subdivision (1) of section 8402 of the Education Law defines the practice of mental health counseling.

Subdivision (1) of section 8403 of the Education Law defines the practice of marriage and family therapy.

Subdivision (1) of section 8404 of the Education Law defines the practice of marriage and family therapy.

Subdivision (1) of section 8405 of the Education Law defines the practice of psychoanalysis.

Subdivisions (1) and (2) of section 8407 of the Education Law establishes activities that are prohibited or outside the boundaries of the practice of creative arts therapy, marriage and family therapy, mental health counseling, and psychoanalysis.

2. LEGISLATIVE OBJECTIVES:

The proposed regulation carries out the intent of the aforementioned statutes in that the Board of Regents shall regulate the practice of the professions and define unprofessional conduct in the professions subject to professional discipline. The amendment carries out the intent of sections 7708 and 8407 of the Education Law by defining activities specified in these sections as unprofessional conduct in the practice of the professions therein prescribed.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is 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. Licensees found guilty of unprofessional conduct, as defined, would be subject to professional discipline by the State Education Department.

Article 163 of the Education Law, effective January 1, 2005, establishes four new professions for mental health practitioners: creative arts

therapy, marriage and family therapy, mental health counseling, and psychoanalysis. The amendment makes the definitions of unprofessional conduct established for the other health professions applicable to the new professions. Section 8407 of the Education Law sets forth specific activities that are prohibited or outside the boundaries of the practice of the new mental health practitioner professions. The amendment is needed to implement this provision by defining these activities as unprofessional conduct in the practice of the new professions.

Article 154 of the Education Law, effective September 1, 2004, establishes the professions of licensed master social work and licensed clinical social work as practice protected professions, meaning only individuals licensed or exempt from licensure under Article 154 may practice these professions. Section 7708 of the Education Law sets forth specific activities that are prohibited or outside the boundaries of the practice of licensed master social work and licensed clinical social work. The amendment is needed to implement this provision by defining these activities as unprofessional conduct in the practice of licensed master social work and licensed clinical social work.

4. COSTS:

(a) Costs to State government. The amendment concerns the definition of unprofessional conduct in the practice of the professions. It will not impose any additional costs on the State Education Department or any other State agency.

(b) Costs to local government. None.

(c) Costs to private regulated parties. The proposed regulation does not impose additional costs on the licensed professionals to whom the definitions of unprofessional conduct would apply, or any other private regulated parties.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment concerns the definitions on unprofessional conduct in the practice of the licensed professions and does not impose any program, service, duty, or responsibly upon local governments.

6. PAPERWORK:

The amendment makes it unprofessional conduct for an individual licensed in one of the new mental health practitioner professions to fail to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient and establishes retention periods for patient records. It also makes applicable to the new mental health practitioner professions the requirements of Public Health Law section 18, concerning access to patient records by the patient and other qualified individuals. The amendment does not impose any additional recordkeeping requirements or any reporting requirements on regulated parties.

7. DUPLICATION:

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

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

There are no Federal standards defining unprofessional conduct in the social work or mental health practitioner professions, the subject of the proposed amendment.

10. COMPLIANCE SCHEDULE:

The proposed regulation is immediately effective. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendment establishes definitions of unprofessional conduct in the practice of licensed master social work, licensed clinical social work, creative arts therapy, marriage and family therapy, mental health counseling, and psychoanalysis. The amendment is applicable to individuals who are licensed in these fields. Licensees found guilty of unprofessional conduct, as defined, are subject to professional discipline by the State Education Department.

The amendment does not impose any adverse economic impact, reporting, recordkeeping, or other compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

The amendment will affect all licensed master social workers and licensed clinical social workers in New York State. Currently, there are 25,535 licensed master social workers and 16,012 licensed clinical social workers registered to practice in New York State, of whom 6,450 and 3,630, respectively, report their address of record to be in a rural area of New York State.

The amendment will also affect all individuals licensed in the four new mental health practitioner professions of creative arts therapy, marriage and family therapy, mental health counseling, and psychoanalysis, including those living in 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment establishes 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. Individuals found guilty of unprofessional conduct, as defined, would be subject to professional discipline by the State Education Department.

Article 163 of the Education Law, effective January 1, 2005, establishes four new professions for mental health practitioners: creative arts therapy, marriage and family therapy, mental health counseling, and psychoanalysis. The amendment makes the definitions of unprofessional conduct established for the other health professions applicable to the new professions. Section 8407 of the Education Law sets forth specific activities that are prohibited or outside the boundaries of the practice of the new mental health practitioner professions. The amendment implements this provision by defining these activities as unprofessional conduct in the practice of the new professions.

Article 154 of the Education Law, effective September 1, 2004, establishes the professions of licensed master social work and licensed clinical social work as practice protected professions, meaning only individuals licensed or exempt from licensure under Article 154 may practice these professions. Section 7708 of the Education Law sets forth specific activities that are prohibited or outside the boundaries of the practice of licensed master social work and licensed clinical social work. The amendment implements this provision by defining these activities as unprofessional conduct in the practice of licensed master social work and licensed clinical social work.

The amendment makes it unprofessional conduct for an individual licensed in one of the new mental health practitioner professions to fail to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient and establishes retention periods for patient records. It also makes applicable to the new mental health practitioner professions the requirements of Public Health Law section 18, concerning access to patient records by the patient and other qualified individuals. The amendment does not impose any additional recordkeeping requirements or any reporting requirements on regulated parties. The amendment does not require regulated parties to hire professional services in order to comply.

3. COSTS:

The proposed regulation does not impose additional costs on licensees or any other regulated parties.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment establishes standards of conduct in the practice of the social work and mental health practitioner professions. The rule makes no exception for licensees who live or work in rural areas of the State. The Department has determined that such standards should apply to licensees practicing these professions regardless of their geographic location to help ensure a high standard of conduct in all parts of the State. Because of the nature of the proposed amendment, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the amendment were solicited from statewide organizations representing all parties having an interest in the practice of the social work and mental health practitioner professions. Included in this group were the State Board for Social Work, the State Board for Mental Health Practitioners, and professional associations representing these and other professions. These groups have members who live or work in rural areas of New York State. In addition, the State Education Department solicited comments about the amendment from educational institutions and govern-

ment agencies and employers, including those located in rural areas of the State.

Job Impact Statement

The proposed amendment establishes definitions of unprofessional conduct in the practice of licensed master social work, licensed clinical social work, creative arts therapy, marriage and family therapy, mental health counseling, and psychoanalysis. Licensees found guilty of unprofessional conduct, as defined, would be subject to professional discipline by the State Education Department.

Defining unprofessional conduct in these licensed professions will have no effect on demand for professionals in these fields or any other field. Because it is evident from the nature of the proposed amendment that it would have no impact on jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

Examination and Residency Program Requirements for Dental Licensure

I.D. No. EDU-09-05-00013-P

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

Proposed action: Amendment of sections 61.2 and 61.18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6506(1), 6507(2)(a), 6601 (not subdivided), and 6604(3) and (4); L. 2004, ch. 76, section (3)

Subject: Examination and residency program requirements for dental licensure.

Purpose: To require applicants for dental licensure to complete an accredited dental residency program and eliminate the option of their completing a clinical examination in dentistry instead of a residency program, effective Jan. 1, 2007, and establish a definition for an acceptable national accrediting body for dental residency programs.

Text of proposed rule: 1. Section 61.2 of the Regulations of the Commissioner of Education is amended, effective June 9, 2005, as follows:

61.2 Licensing examination.

(a) Individuals, who on or before December 31, 2006 have completed all the education requirements for licensure and by that date have submitted an application for licensure and the required application fee, shall meet the examination requirements of this subdivision. Individuals who do not meet these conditions shall meet the examination requirements of subdivision (b) of this section.

[(a)] (1) Content. The examination shall consist of three parts:

[(1)] (i) . . .

[(2)] (ii) . . .

[(b)] (2) . . .

[(c)] (3) . . .

[(d)] (4) Special examination conditions.

[(1)] (i) . . .

[(2)] (ii) . . .

[(e)] (5) . . .

[(f)] (6) . . .

[(g)] (7) . . .

[(h)] (8) . . .

[(i)] (9) In accordance with section 6604(4) of the Education Law, [applicants who are issued by the department a license to practice dentistry between May 22, 2003 and December 31, 2005.] *individuals, who on or before December 31, 2006 have completed all the education requirements for licensure and by that date have submitted an application for licensure and the required application fee, may substitute successful completion of a residency program that meets the requirements of section 61.18 of this Part in lieu of successful completion of Part III, the examination in clinical dentistry.*

(b) Individuals who do not meet the conditions prescribed in the opening paragraph of subdivision (a) of this section shall meet the examination requirements of this subdivision.

(1) Content. The examination shall consist of two parts designed to sample the knowledge from all areas related to dentistry.

(2) The department may accept grades acceptable to the State Board for Dentistry on an examination of the National Board Dental Examina-

tions as meeting the requirements of Parts I and II of the licensing examination.

(3) *Special examination conditions.*

(i) *An applicant who has completed not less than two academic years in a program of dental education registered by the department, or accredited by an accrediting organization acceptable to the department may be admitted to Part I of the examination. Such applicant shall meet all requirements for admission to the licensing examination, except for the completion of professional education.*

(ii) *An applicant attending a program of dental education registered by the department, or accredited by an accrediting organization acceptable to the department, may be admitted to Part II during the last year of study.*

(4) *Passing score. The passing score in each subject of each part shall be 75.0, as determined by the State Board for Dentistry.*

2. Section 61.18, of the Regulations of the Commissioner of Education is amended, effective June 9, 2005, as follows:

61.18 Residency [option pathway] program requirement for dental licensure.

(a) Definitions. As used in this section: [(1) . . .]

(1) *Acceptable national accrediting body means until December 31, 2006 the Commission on Dental Accreditation of the American Dental Association, and thereafter it means an organization accepted by the department as a reliable authority for the purpose of accreditation of dental residency programs, applying its criteria for granting accreditation in a fair, consistent, and nondiscriminatory manner, such as the Commission on Dental Accreditation of the American Dental Association, its successors, or an equivalent organization as determined by the department.*

(2) . . .

(3) . . .

(b) *Residency program. [In accordance with section 6604(4) of the Education Law, applicants who are issued by the department a license to practice dentistry between May 22, 2003 and December 31, 2005 may substitute successful completion of a residency program that meets the requirements of this section in lieu of successful completion of the examination in clinical dentistry (Part III of the dental licensing examination), prescribed in section 61.2 of this Part. In addition to meeting other requirements of this section, such residency program shall meet the following requirements:] To be acceptable to the department for purposes of licensure under section 6604 of the Education Law, a residency program shall meet the requirements of this section.*

(1) *The residency program shall be a postdoctoral clinical dental residency program in either general dentistry, or a specialty of dentistry as defined in paragraph (2) of this subdivision, of at least one year's duration in a hospital or dental facility accredited for teaching purposes by [the CDA] an acceptable national accrediting body, which is completed successfully by the applicant prior to the submission to the department of the application for licensure.*

(2) *The accredited residency program in a specialty of dentistry shall be in the specialty of endodontics, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, prosthodontics, or another specialty of dentistry, as determined by the department, for which at least 50 percent of the [CDA] accredited residency program consists of clinical training in one or more of the following areas: general dentistry, endodontics, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, and prosthodontics.*

(3) *The accredited residency program shall include a formal written outcome assessment which is acceptable to the department.*

(i) *For [a CDA] an accredited residency program in general dentistry, the formal written outcome assessment used by the residency program shall be acceptable to the department if it includes:*

(a) *an acceptable notarized written statement by the residency program director attesting that the applicant has completed successfully the [CDA] accredited residency program and is in the director's judgment competent to practice dentistry; and*

(b) *acceptable notarized written statement(s) by the residency program director who supervised the dental procedures performed by the applicant, and/or the attending dentist(s) who supervised the dental procedures performed by the applicant if different from the residency program director, attesting that the applicant completed independently, and to generally accepted professional standards for dentistry, two full crowns, two endodontically treated teeth, four restorations (two anterior, two posterior) and one periodontal case during the accredited residency program.*

(ii) *For [a CDA] an accredited residency program in a specialty of dentistry, as defined on paragraph (2) of this subdivision, the formal written outcome assessment used by the residency program shall be acceptable to the department if it includes an acceptable notarized written statement by the residency program director attesting that the applicant has successfully completed the [CDA] accredited residency program in a specialty of dentistry, as defined in paragraph (2) of this subdivision, and is in the director's judgment competent to practice dentistry.*

(c) . . .

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

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

Section 6601 of the Education Law defines the practice of dentistry.

Subdivision (3) of section 6604 of the Education Law, as amended by Chapters 76 and 726 of the Laws of 2004, defines the experience requirement for dental licensure, including as of January 1, 2007, the completion of an accredited dental residency program acceptable to the department.

Subdivision (4) of section 6604 of the Education Law, as amended by Chapter 76 of the Laws of 2004, requires the applicant for licensure in dentistry to meet an examination requirement acceptable to the State Board for Dentistry and in accordance with Commissioner's regulations, and specifies that effective January 1, 2007 this examination shall be a written examination.

Section (3) of Chapter 76 of the Laws of 2004 authorizes the State Education Department to promulgate regulations to implement this chapter law.

2. LEGISLATIVE OBJECTIVES:

The proposed regulation carries out the intent of the aforementioned statutes in that it will establish examination and experience requirements for dental licensure, consistent with Education Law section 6604(3) and (4), as amended by Chapters 76 and 726 of the Laws of 2004.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to implement the requirements of Education Law section 6604(3) and (4) by requiring applicants for dental licensure to complete an accredited dental residency program and eliminating the option of their completing a clinical examination in dentistry instead of the residency program, effective January 1, 2007, and to establish a definition for an acceptable national accrediting body for dental residency programs.

At present, the examination for dental licensure consists of three parts, two parts are written examinations, and the third part is an examination in clinical dentistry. As directed in current Education Law, the existing regulation permits the applicant for dental licensure to complete an acceptable dental residency program in lieu of the examination in clinical dentistry. A change in the Education Law, effective January 1, 2007, eliminates the clinical examination in dentistry and requires the applicant to complete an accredited dental residency program acceptable to the State Education Department. The amendment is needed to implement this new requirement.

The amendment establishes in regulation a definition for an "acceptable national accrediting body" for dental residency programs. The amendment does not change the existing requirements that accredited dental residency programs must meet in order for them to be acceptable for purposes of dental licensure.

4. COSTS:

(a) Costs to State Government: The amendment will not impose any additional costs on State government. The State Education Department will review the applicant's documentation relating to the residency program as part of the regular licensure application review process. Existing staff and resources of the State Education Department will be used for this task.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None. The amendment will not impose any additional costs on applicants for licensure in dentistry. The amendment will not result in additional fees to applicants for dental licensure by the State Education Department beyond the regular fees for licensure. The amendment does not change the existing requirements that accredited dental residency programs must meet in order for them to be acceptable for purposes of dental licensure, and, therefore, will not result in additional costs to dental residency programs.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed regulation establishes requirements for dental licensure. It does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The amendment does not impose any new paperwork requirements. The applicant for dental licensure will submit documentation relating to completion of the accredited residency program as part of the regular licensure application review process. The proposed amendment does not change current reporting requirements for dental residency programs.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no viable alternatives to the proposed regulation and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards for dental licensure.

10. COMPLIANCE SCHEDULE:

Consistent with the effective date established in statute for the new licensure requirements, applicants who on or before December 31, 2006 have completed all the education requirements for licensure and submitted an application for licensure and the required application fee will be permitted to complete either the clinical examination in dentistry or an accredited dental residency program acceptable to the State Education Department. Applicants who do not meet these conditions will be required to complete the accredited dental residency program, and the clinical examination will not be a requirement for licensure. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendment concerns requirements that individuals must meet in order to be licensed as a dentist in New York State. The amendment will not affect small businesses or local governments in New York State. The measure will not impose any adverse economic, reporting, recordkeeping, or any other compliance requirements on small businesses or local governments. Because it is evident from the nature of the rule that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The rule will apply to applicants for dental licensure and accredited dental residency programs that meet the requirements of the proposed amendment, including those that are 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 the present time, there are about 125 residency programs that are accredited by the in New York State that may potentially meet the requirements of the proposed amendment. Of these, one is located in a rural county of the State, a program at St. Clare's Hospital, Schenectady County. The State Education Department estimates that each year, about 70 applicants for dental licensure come from rural counties of New York State.

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

In accordance with requirements in the Education Law, the amendment requires applicants for dental licensure to complete an accredited dental

residency program and eliminates the clinical examination in dentistry, effective January 1, 2007. At present, the examination for dental licensure consists of three parts, two parts are written examinations, and the third part is an examination in clinical dentistry. As authorized by Education Law, the existing regulation permits the applicant for dental licensure to complete an acceptable dental residency program in lieu of the examination in clinical dentistry. The change in the Education Law, effective January 1, 2007, eliminates the clinical examination in dentistry and requires the applicant to complete an accredited residency program acceptable to the State Education Department. The amendment implements this new requirement.

The amendment establishes in regulation a definition for an "acceptable national accrediting body" for dental residency programs. The amendment does not change the existing requirements that accredited dental residency programs must meet in order for them to be acceptable for purposes of dental licensure.

The amendment does not impose any additional reporting or record-keeping requirements on applicants for licensure in dentistry or accredited dental residency programs. In addition, the amendment does not require regulated parties to hire professional services in order to comply.

3. COSTS:

The proposed amendment does not impose additional costs on applicants for licensure in dentistry or dental residency programs.

4. MINIMIZING ADVERSE IMPACT:

The amendment implements statutory requirements for licensure in dentistry, which are applicable to all applicants for licensure in dentistry regardless of their geographic location. Because of the nature of the proposed amendment, establishing different requirements for regulated parties who reside in rural areas is unwarranted.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from statewide organizations representing all parties having an interest in the practice of dentistry. Included in the group were the American Dental Association, the State Board for Dentistry, and the New York State Dental Association, which represent among others individuals who live or work in rural areas. In addition, comments were solicited from all residency programs approved by the Commission on Dental Accreditation of the American Dental Association and all dental schools in the United States.

Job Impact Statement

The proposed amendment implements the requirements of Education Law section 6604(3) and (4) by requiring applicants for dental licensure to complete an accredited dental residency program and eliminating the option of passing a clinical examination instead of the residency program, effective January 1, 2007. Because the amendment's purpose is to implement statutory requirements, the amendment itself will have no impact on jobs or employment opportunities. Any impact on jobs or employment opportunities would result from the statute not the regulation.

In any event, the amendment concerns changes in requirements for dental licensure. Such changes will have no impact on labor market demand for dentists. They will not affect the number of jobs or employment opportunities in the field of dentistry.

Because it is evident from the nature of the proposed amendment, that the proposed amendment will have no impact on jobs or employment opportunities in the field of dentistry or any other field, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Certification and Scope of Practice Requirements for School Social Workers

I.D. No. EDU-09-05-00014-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 80-2.3 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; 7702(2)(a), (3)(a); 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 of proposed rule: Subdivision (f) of section 80-2.3 of the Regulations of the Commissioner of Education is amended, effective June 9, 2005, as follows:

(f) School social worker.

(1) . . .

(2) Permanent certificate. The candidate shall have completed two years of school experience in the field of pupil personnel services, hold the degree of master of social work or an equivalent degree as determined by the department, and be licensed and registered [as a certified social worker] by the department as a licensed master social worker or a licensed clinical social worker.

(3) Scope of practice. The provisional or permanent certificate in school social work shall authorize the holder of the certificate to practice licensed master social work, as defined in sections 7701(1) and 7702 of the Education Law, in public schools of New York State or any other school for which the law requires certification as a school social worker pursuant to Part 80 of this Title. For such individual to practice licensed clinical social work, as defined in section 7701(2) of the Education Law, in the public schools or any other location in New York State, the individual must be licensed and registered by the department as a licensed clinical social worker when performing such services, unless such individual is exempt from licensure in licensed clinical social work pursuant to section 7706 or other provision of Article 154 of the Education Law.

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Subdivision (1) of section 305 of the Education Law authorizes the Commissioner of Education to enforce all laws relating to the educational system of the State and execute all educational policies determined by the Board of Regents.

Subdivision (2) of section 305 of the Education Law provides that the Commissioner of Education shall have general supervision over all schools and shall advise and guide school officers of all districts in relation to their duties and the general management of schools under their control.

Subdivision (7) of section 305 of the Education Law authorizes the Commissioner of Education to annul upon cause shown to his satisfaction any certificate of qualification to teach in a public school within New York State.

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

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

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

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

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

Paragraph (a) of subdivision (2) of section 7702 of the Education Law provides that only a person licensed or exempt from licensure pursuant to Article 154 of the Education Law may practice licensed master social work.

Paragraph (a) of subdivision (3) of section 7702 of the Education Law provides that only a person licensed or exempt from licensure pursuant to Article 154 of the Education Law may engage in the practice licensed clinical social work.

Paragraph (a) of subdivision (5) of section 7706 of the Education Law provides that an individual who is credentialed under any law whose scope of practice includes the scope of practice of licensed master social workers or licensed clinical social worker shall not be prevented from performing work authorized by the Education Law and the Mental Hygiene Law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above-referenced statutes by modifying the requirements in the Regulations of the Commissioner of Education for the certification of school social workers to work in the public schools of New York State and to clarify the scope of practice for these individuals.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is 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.

The existing requirement for permanent certification for school social workers provides that candidates must be registered as "certified social workers" pursuant to Article 154 of the Education Law. Effective September 1, 2004, the titles changed for individuals licensed in social work under Article 154 of the Education Law. The amendment updates these titles and requires the candidate for permanent certification to be licensed and registered by the State Education Department as a licensed master social worker or licensed clinical social worker.

The amendment also clarifies the scope of practice for holders of provisional or permanent certificates in school social work. Effective September 1, 2004, social work became a practice protected profession under Article 154 of the Education Law, meaning that only individuals who are licensed pursuant to Article 154 may practice the professions of licensed master social or licensed clinical social work, unless they fall within an exemption enumerated in law. Education Law section 7706(5)(a) provides the exemption for individuals certified by the State Education Department under teacher certification requirements. The amendment clarifies that the holder of the provisional or permanent certificate in school social work may practice licensed master social work under this exemption. To practice licensed clinical social work, such individual must be licensed and registered by the Department as a licensed clinical social worker when performing the services, unless such individual is exempt from licensure in licensed clinical social work pursuant to another provision of Article 154 of the Education Law.

4. COSTS:

(a) Costs to State government: It is not expected that the proposed amendment will impose any additional costs on State government.

(b) Costs to local government: The proposed amendment will not impose any additional costs on local school districts or BOCES, or any other government unit. The Department believes that typical duties of school social workers are encompassed within the definition of the practice of licensed master social work, as prescribed in sections 7701(1) and 7702 of the Education Law. As stated above, holders of the provisional or permanent certificate in school social work may practice licensed master social work. Public schools will have to ensure that such individuals providing psychotherapy and other services in the practice of licensed clinical social workers are licensed in licensed clinical social work, unless they are otherwise exempt from licensure. Any additional cost imposed by this requirement is attributable to Article 154 of the Education Law, which makes licensed clinical social work a practice protected profession, not the proposed amendment.

(c) Costs to private regulated parties. The amendment will not impose any costs on candidates for provisional or permanent certification in school social work or any other private parties.

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

5. LOCAL GOVERNMENT MANDATES:

The amendment will not impose additional mandates on school districts or BOCES or any other local government unit. The amendment updates references to the titles of the new licensed professions in social work in the requirements for permanent certification in school social work. In addition, the amendment clarifies the scope of practice of holders of the provisional or permanent certificate in school social work in light of the

new practice protected licensed professions in social work. Public schools will have to ensure that such individuals providing psychotherapy and other services in the practice of licensed clinical social work are licensed in licensed clinical social work, unless they are otherwise exempt from licensure. This requirement is imposed by Article 154 of the Education Law, which makes licensed clinical social work a practice protected profession, not the proposed amendment.

6. PAPERWORK:

The proposed amendment does not impose any additional recordkeeping or reporting requirements on candidates for certification as school social workers, school districts, BOCES or any other regulated parties or entities.

7. DUPLICATION:

The proposed amendment does not duplicate existing State or Federal requirements. The amendment clarifies the scope of practice of school social workers in light of the new practice protected professions of licensed master social work and licensed clinical social work.

8. ALTERNATIVES:

The Department considered requiring candidates for the provisional certificate in school social work to hold a Master of Social Work degree. After consultation with the State Professional Standards and Practices Board for Teaching, the Department decided not to change the existing education requirement for the provisional certificate, which requires the candidate to hold a baccalaureate degree and complete 30 graduate semester hours including an internship. The Department plans to engage in further consultation with interested parties on this issue. No additional viable alternatives were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that deal with certification of school social workers for service in the public schools of New York State.

10. COMPLIANCE STANDARDS:

The proposed amendment will be effective immediately. No additional period of time is needed to enable regulated parties to meet the requirements.

Regulatory Flexibility Analysis

(a) SMALL BUSINESSES:

The proposed amendment establishes requirements for certificates that would qualify an individual to provide school social work services in the public schools of New York State, and clarifies the scope of practice of holders of such certificates. The amendment does not impose any reporting, recordkeeping, or compliance requirements and will not have an economic impact on small businesses. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken.

(b) LOCAL GOVERNMENTS:

1. Effect of the rule:

The proposed amendment affects all school districts and Boards of Cooperative Educational Services (BOCES) in the State that employ school social workers. In 2003-2004, 732 school districts and 36 BOCES in New York State employed school social workers.

2. Compliance requirements:

The amendment clarifies the scope of practice for certified school social workers. Effective September 1, 2004, social work became a practice protected licensed profession under Article 154 of the Education Law, meaning that only individuals who are licensed pursuant to Title VIII may practice the professions of licensed master social or licensed clinical social work, unless they fall within an exemption enumerated in law. Education Law section 7706(5)(a) provides the exemption for individuals certified by the State Education Department under teacher certification requirements. The amendment clarifies that the holder of the provisional or permanent certificate in school social work may practice licensed master social work under this exemption. To practice licensed clinical social work, such individual must be licensed and registered by the Department as a licensed clinical social worker when performing the services, unless such individual is exempt from licensure in licensed clinical social work pursuant to another provision of Article 154 of the Education Law.

3. Professional services:

The proposed amendment does not mandate school districts or BOCES to contract for additional professional services to comply. As stated above, the amendment clarifies the scope of practice of holders of the provisional or permanent certificate in school social work. Public schools will have to ensure that such individuals providing psychotherapy and other services in the practice of licensed clinical social workers are licensed in licensed clinical social work, unless they are otherwise exempt from licensure. This requirement is imposed by Article 154 of the Education Law, which makes

licensed clinical social work a practice protected profession, not the proposed amendment.

4. Compliance costs:

There are no compliance costs for school districts or BOCES to comply with the proposed amendment. The Department believes that the typical duties of school social workers are encompassed within the practice of licensed master social workers, as defined in sections 7701(1) and 7702 of the Education Law. Holders of the provisional or permanent certificate in school social work may practice licensed master social work. Public schools will have to ensure that such individuals providing psychotherapy and other services in the practice of licensed clinical social workers are licensed in licensed clinical social work, unless they are otherwise exempt from licensure. Any additional cost imposed by this requirement is attributable to Article 154 of the Education Law, which makes licensed clinical social work a practice protected profession, not the proposed amendment.

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

The amendment update references to the titles of the new licensed professions in social work and clarifies the scope of practice of certified school social workers in light of the new practice protected licensed professions in social work. The amendment implements statutory requirements and does not adversely impact school districts or BOCES.

7. Local government participation:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES. Comments were also solicited from State's District Superintendents, representing BOCES and school districts across the State, and the chief school officers of the City School District of the City of New York, Buffalo City Schools, Rochester City Schools, Syracuse City Schools, and Yonkers Public Schools.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect candidates for the permanent certificate in school social work, individuals who are employed in public schools and Boards of Cooperative Educational Services (BOCES) as certified school social workers, and school districts and BOCES that employ school social workers, including such individuals and entities located in 44 rural counties with fewer than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. In 2003-2004, 302 individuals were employed as school social workers in the 97 school districts and BOCES located in rural counties of New York State.

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

The purpose of the proposed amendment is 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.

The existing requirement for permanent certification for school social workers provides that candidates must be registered as "certified social workers" pursuant to Article 154 of the Education Law. Effective September 1, 2004, the titles changed for individuals licensed in social work under Article 154 of the Education Law. The amendment updates these titles and requires the candidate for permanent certification to be licensed and registered by the State Education Department as a licensed master social worker or licensed clinical social worker, under Article 154.

The amendment also clarifies the scope of practice for holders of provisional or permanent certificates in school social work. Effective September 1, 2004, social work became a practice protected profession under Article 154 of the Education Law, meaning that only individuals who are licensed pursuant to Article 154 may practice the professions of licensed master social or licensed clinical social work, unless they fall within an exemption enumerated in law. Education Law section 7706(5)(a) provides the exemption for individuals certified by the State Education Department under teacher certification requirements. The amendment clarifies that the holder of the provisional or permanent certificate in school social work may practice licensed master social work under this exemption. To practice licensed clinical social work, such individual must be licensed and

registered by the Department as a licensed clinical social worker when performing the services, unless such individual is exempt from licensure in licensed clinical social work pursuant to Article 154 of the Education Law.

3. COSTS:

The proposed amendment will not impose any costs on applicants for permanent certification as school social workers or individuals employed as school social workers in public schools of New York State, including those located in rural areas of the State.

The proposed amendment will not impose any additional costs on local school districts or BOCES, or any other government unit. The Department believes that the typical duties of school social workers are encompassed within the definitions of the practice of licensed master social work, as prescribed in sections 7701(1) and 7702 of the Education Law. Holders of the provisional or permanent certificate in school social work may practice licensed master social work. Public schools will have to ensure that such individuals providing psychotherapy and other services in the practice of licensed clinical social work are licensed in licensed clinical social work, unless they are otherwise exempt from licensure. Any additional cost imposed by this requirement is attributable to Article 154 of the Education Law, which makes licensed clinical social work a practice protected profession, not the proposed amendment.

4. MINIMIZING ADVERSE IMPACT:

The amendment update references to the titles of the new licensed professions in social work and clarifies the scope of practice of certified school social workers in light of the new practice protected licensed professions in social work. The Department believes that the scope of practice requirements must apply to school social workers regardless of their geographic location to ensure that certified school social workers are performing services that they are qualified to perform and are not violating the licensure law.

5. RURAL AREA PARTICIPATION:

The proposed amendment was discussed with the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives who live and/or work in rural areas, including individuals who are employed as educators in rural school districts and BOCES. Comments were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas of the State. Comments were also solicited from the State's District Superintendents, representing BOCES and school districts across the State, including those located in rural areas of the State.

Job Impact Statement

1. NATURE OF IMPACT:

The proposed amendment updates references to the titles of the new licensed professions in social work and clarifies the scope of practice of certified school social workers in light of the new practice protected licensed professions in social work.

The existing requirements for the permanent certificate in school social work require that the candidate be licensed and registered under Article 154 of the Education Law as a "certified social worker." The amendment replaces the old title "certified social worker" with the new titles for social workers licensed and registered under Article 154 of the Education law, "licensed master social work or licensed clinical social work."

In addition, the amendment clarifies the scope of practice of school social workers, in light of the new practice protected licensed professions in social work. The typical duties of school social workers are encompassed within the practice of licensed master social work, as defined in sections 7701(1) and 7702 of the Education Law. The amendment authorizes the holders of the provisional or permanent certificate in school social work to practice licensed master social work. Public schools will have to ensure that such individuals providing psychotherapy and other services in the practice of licensed clinical social work are licensed in licensed clinical social work, unless they are otherwise exempt from licensure. As a result, there may be some positive impact on the number of jobs for licensed clinical social workers at public schools. However, any impact on jobs or employment opportunities in public schools is attributable to Article 154 of the Education Law, which makes licensed clinical social work a practice protected licensed profession, not the proposed amendment.

2. CATEGORIES AND NUMBERS AFFECTED:

The amendment will affect individuals who seek permanent certification as school social workers and individuals who are employed as school social workers in public schools and BOCES in New York State. In 2003-2004, 224 applicants received permanent certification as school social workers in New York State. In that same year, 2,567 individuals were

employed as school social workers in school districts and BOCES in New York State.

3. REGIONS OF ADVERSE IMPACT:

The proposed amendment is not expected to have an adverse impact on any region of the State.

4. MINIMIZING ADVERSE IMPACT:

The amendment updates the Regulations of the Commissioner of Education to reflect the new licensed professions of licensed master social work and licensed clinical social work. The amendment clarifies the scope of practice of school social workers in light of the new practice protected licensed professions in social work. The amendment is not expected to have any negative impact on jobs or employment opportunities in the State.

5. SELF-EMPLOYMENT OPPORTUNITIES:

The amendment is not expected to have a measurable impact on opportunities for self-employment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State Learning Standards for Mathematics

I.D. No. EDU-09-05-00015-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 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 standards for mathematics.

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

Text of proposed rule: Subdivision (t) of Section 100.1 of the Regulations of the Commissioner of Education is amended, effective June 9, 2005, as follows:

(t) State learning standards means the knowledge, skills and understandings that individuals can and do habitually demonstrate over time as a consequence of instruction and experience.

(1) State learning standards are organized into several general curriculum areas:

(i) . . .

(ii) Mathematics, science and technology.

(a) Students will use mathematical analysis, scientific inquiry and engineering design, as appropriate, to pose questions, seek answers, and develop solutions.

(b) Students will access, generate, process and transfer information using appropriate technologies.

(c) [Students will understand mathematics and become mathematically confident by communicating and reasoning mathematically, by applying mathematics in real-world settings, and by solving problems through the integrated study of number systems, geometry, algebra, data analysis, probability and trigonometry.] *Students will, through the integrated study of number sense and operations, algebra, geometry, measurement, and statistics and probability, understand the concepts of and become proficient with the skills of mathematics, communicate and reason mathematically and become problem solvers by using appropriate tools and strategies.*

(d) Students will understand and apply scientific concepts, principles and theories pertaining to the physical setting and living environment and recognize the historical development of ideas in science.

(e) Students will apply technological knowledge and skills to design, construct, use and evaluate products and systems to satisfy human and environmental needs.

(f) Students will understand the relationships and common themes that connect mathematics, science and technology and apply the themes to these and other areas of learning.

(g) Students will apply the knowledge and thinking skills of mathematics, science and technology to address real-life problems and make informed decisions.

(iii) . . .

(iv) . . .

(v) . . .

(vi) . . .

(vii) . . .

(2) . . .

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

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

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

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.

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

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to the definition of the State learning standards for mathematics.

NEEDS AND BENEFITS:

The proposed amendment is necessary to modify the definition of the State learning standards for mathematics, consistent with policy enacted by the Board of Regents. A Mathematics Standards Committee, comprised of field practitioners and experts, was established to examine the existing Regents learning standards in mathematics, to consider relevant research and other standards from the United States and other nations, and to propose modifications to the Regents mathematics standards to improve clarity, specificity and functionality. In January 2005, the Board of Regents accepted the recommendation of the Committee to modify standard 3 of the State learning standards for Mathematics, Science and Technology.

COSTS:

(a) Costs to State government: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None.

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

The proposed amendment will not impose any costs on the State, local governments, private regulated parties or the State Education Department. It modifies the definition of the State learning standards in mathematics, consistent with policy enacted by the Board of Regents.

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment modifies the definition of the State learning standards for mathematics, consistent with policy enacted by the Board of Regents. School districts and boards of cooperative educational services will need to ensure that curriculum and instruction in mathematics are aligned with the modified State learning standards.

PAPERWORK:

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

DUPLICATION:

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

ALTERNATIVES:

There were no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no related federal standards in this area.

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to State standards for mathematics and will not impose any adverse economic impact, reporting, recordkeeping or 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.

EFFECT OF RULE:

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

COMPLIANCE REQUIREMENTS:

The proposed amendment amends the definition of the State learning standards for Mathematics, consistent with policy enacted by the Board of Regents, to improve clarity, specificity and functionality. The proposed amendment does not impose any additional reporting, recordkeeping or any other compliance requirements on local governments. School districts and boards of cooperative educational services will need to ensure that curriculum and instruction in mathematics are aligned with the modified State learning standards.

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

The proposed amendment will not impose any costs on local governments. The proposed amendment merely amends the definition of the State learning standards for Mathematics.

ECONOMIC AND TECHNICAL FEASIBILITY:

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

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to modify the definition of the State learning standards for mathematics, consistent with policy enacted by the Board of Regents. A Mathematics Standards Committee, comprised of field practitioners and experts, was established to examine the existing Regents learning standards in mathematics, to consider relevant research and other standards from the United States and other nations, and to propose modifications to the Regents mathematics standards to improve clarity, specificity and functionality. In January 2005, the Board of Regents accepted the recommendation of the Committee to modify standard 3 of the State learning standards for Mathematics, Science and Technology.

The proposed amendment is aligned to Regents policy while minimizing the impact on school districts. Where possible, the proposed amendment incorporated existing requirements and eliminated redundant requirements to minimize work at the local level and emphasized local flexibility in meeting the regulatory requirement.

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 and boards of cooperative educational services (BOCES) in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and in 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 amends the definition of the State learning standards for Mathematics, consistent with policy enacted by the Board of Regents, to improve clarity, specificity and functionality. The proposed amendment does not impose any additional compliance requirements on rural areas. School districts and BOCES will need to ensure that curriculum and instruction in mathematics are aligned with the modified State

learning standards. The proposed amendment does not impose any professional services requirements.

COMPLIANCE COSTS:

The proposed amendment does not impose any compliance costs on school districts or BOCES. The proposed amendment merely amends the definition of the State learning standards for Mathematics.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to modify the definition of the State learning standards for mathematics, consistent with policy enacted by the Board of Regents. A Mathematics Standards Committee, comprised of field practitioners and experts, was established to examine the existing Regents learning standards in mathematics, to consider relevant research and other standards from the United States and other nations, and to propose modifications to the Regents mathematics standards to improve clarity, specificity and functionality. In January 2005, the Board of Regents accepted the recommendation of the Committee to modify standard 3 of the State learning standards for Mathematics, Science and Technology.

The proposed amendment is aligned to Regents policy while minimizing the impact on school districts and BOCES in rural areas. Where possible, the proposed amendment incorporated existing requirements and eliminated redundant requirements to minimize work at the local level and emphasized local flexibility in meeting the regulatory requirement. Because, by definition, the State learning standards must apply State-wide, it was not possible to prescribe a lesser standard for rural areas or to exempt them from the proposed amendment. Where possible, the proposed amendment incorporated existing requirements and eliminated redundant requirements to minimize work at the local level and emphasized local flexibility in meeting the regulatory requirement.

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 State learning standards for mathematics and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no adverse 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Registration of Nonpublic Nursery Schools and Kindergartens

I.D. No. EDU-09-05-00016-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 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 of proposed rule: Section 125.1 of the Regulations of the Commissioner of Education is amended, effective June 9, 2005, as follows:

125.1 General.

(a) As used in this Part, school means a nonpublic nursery school or kindergarten organized for the purpose of educating a group or groups of six or more children less than seven years of age, under the supervision of qualified teachers, providing an adequate program of learning activities and maintaining good standards of health and safety.

(b) A school shall be registered by the department upon the submission of satisfactory evidence that it meets the standards set forth in this Part and receives approval after onsite visitation. Registration shall be valid for a period of five years, subject to revocation for cause.

(c) [Consultants shall make annual visits to schools.] *Department staff shall conduct annual visits to schools within the following categories:*

(1) schools with registration certificates that will expire during the year;

(2) schools operated by new applicants, including schools operated by new owners pursuant to section 125.10(a)(3) of this Part;

(3) schools located in newly constructed or renovated sites; and

(4) schools that require onsite technical assistance to alleviate regulatory non-compliance issues.

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

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

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

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority of the Board of Regents and the Commissioner of Education to prescribe standards relating to the voluntary registration of nonpublic nursery schools and kindergartens.

NEEDS AND BENEFITS:

Nonpublic nursery schools and kindergartens may voluntarily register with the State Education Department by meeting the requirements in Part 125 of Commissioner's Regulations. When all requirements are met, a certificate of registration, valid for a five-year period, is issued to the school.

The proposed amendment to section 125.1 of the Commissioner's Regulations will remove the requirement in subdivision (c) for annual visits by Department consultants to each of the registered schools, and replace it with a visitation plan that is consistent with the current resources of the Department and the needs of the schools. Currently, there are 205 registered nonpublic nursery schools and kindergartens. The proposed amendment focuses on schools whose registration status may be in jeopardy for various reasons, by requiring annual site visits to the approximately twenty percent (30-40) of the schools that are in one or more of 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.

The proposed amendment is consistent with Board of Regents policy and provides flexibility concerning the visits by Department staff to registered schools to determine compliance with regulatory requirements. It is anticipated that the proposed amendment will allow the Department to provide more focused technical assistance and support to schools targeted for annual visits to ensure compliance with the Commissioner's Regulations.

COSTS:

(a) Costs to state government: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None.

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

The proposed amendment will result in savings to the State Education Department by replacing a 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 certain specified categories.

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon any county, city, town, village, fire

district or other special district. The proposed amendment merely replaces a 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 certain specified categories.

PAPERWORK:

The proposed amendment does not impose any additional reporting, recordkeeping or other paperwork requirements. The proposed amendment merely replaces a 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 certain specified categories.

DUPLICATION:

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

ALTERNATIVES:

There were no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no related Federal standards.

COMPLIANCE SCHEDULE:

It is anticipated that registered nonpublic nursery schools and kindergartens will be able to achieve compliance with Commissioner's Regulations with the proposed amendment by its effective date. The proposed amendment merely replaces a 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 certain specified categories.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to the voluntary registration of nonpublic nursery schools and kindergartens, and would replace a requirement that the State Education Department annually visit each registered school with a requirement that annual visits be made to only those schools in certain specified categories. The proposed amendment will not impose any adverse economic impact, reporting, recordkeeping or 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 Government:

EFFECT OF RULE:

The proposed amendment applies to all nonpublic schools and kindergartens in the State that are registered or seeking registration under Part 125 of the Regulations of the Commissioner of Education.

COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any reporting, recordkeeping or any other compliance requirements on local governments. The proposed amendment merely replaces a 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 certain specified categories.

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

The proposed amendment will not impose any costs on local governments. The proposed amendment merely replaces a 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 certain specified categories.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any compliance requirements on local governments. The proposed amendment merely replaces a 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 certain specified categories. The proposed

amendment is consistent with Board of Regents policy and minimizes adverse impact by providing flexibility concerning the visits by Department staff to registered schools to determine compliance with regulatory requirements. It is anticipated that the proposed amendment will allow the Department to provide more focused technical assistance and support to schools targeted for annual visits to ensure compliance with the Commissioner's Regulations.

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 nonpublic schools and kindergartens in the State who are registered or that seek registration under Part 125 of the Regulations of the Commissioner of Education, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment does not impose any reporting, recordkeeping or any other compliance requirements. The proposed amendment merely replaces a 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 certain specified categories. The proposed amendment does not impose any additional professional services requirements.

COMPLIANCE COSTS:

The proposed amendment will not impose any costs on rural areas. The proposed amendment merely replaces a 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 certain specified categories.

MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any compliance requirements on rural areas. The proposed amendment merely replaces a 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 certain specified categories. The proposed amendment is consistent with Board of Regents policy and minimizes adverse impact by providing flexibility concerning the visits by Department staff to registered schools to determine compliance with regulatory requirements. It is anticipated that the proposed amendment will allow the Department to provide more focused technical assistance and support to schools targeted for annual visits to ensure compliance with the Commissioner's Regulations.

Because the Regents policy upon which the proposed amendment is based applies uniformly to all registered nonpublic nursery schools and kindergartens in the State, it is not possible to establish different requirements for schools located in rural areas, or exempt them from its provisions.

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 the voluntary registration of nonpublic nursery schools and kindergartens, and would replace a requirement that the State Education Department annually visit each registered school with a requirement that annual visits be made to only those schools in certain specified categories. The proposed amendment will have no adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no adverse 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.

Department of Health

EMERGENCY RULE MAKING

Part-Time Clinics

I.D. No. HLT-32-04-00007-E

Filing No. 148

Filing date: Feb. 15, 2005

Effective date: Feb. 15, 2005

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

Action taken: Amendment of sections 703.6 and 710.1 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803(2)

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

Specific reasons underlying the finding of necessity: The agency finds the immediate adoption of this rule is necessary to preserve the public health, safety and general welfare and compliance with State Administrative Procedure Act Section 202(1) would be contrary to the public interest. These regulations repeal existing section 703.6 of 10 NYCRR and add a new section 703.6, amend sections 710.1(c)(1)(i) and 710.1(c)(4)(ii) and add section 710.1(c)(6)(v) to establish additional standards for the approval and operation of part-time clinics under Article 28 of the Public Health Law. The proposed rules would help ensure the provision of quality health care through needed preventive health screening programs and other public health initiatives to underserved populations and others in safe environments that protect both the patient and the general public.

A review of the part-time clinics approval system and operations raised serious questions and concerns as to whether care was being provided in appropriate sites, under adequate supervision, whether unnecessary care was being provided, whether the site environments were adequate and safe, and whether the type of services provided exceeded the original intent of the part-time clinic regulation. Examples of the problem areas include:

- The provision of radiology services in stationary sites and mobile vans where shielding may be inadequate.
- The provision of a full range of primary care services where minimum physical plant standards may not be met, as part-time clinics are exempt from most physical plant requirements. Inadequate space to provide the range of services safely compromised patient safety with narrow corridors which, if an emergency arises, would not provide for stretcher or wheelchair access or egress.
- The provision of a variety of complex services where more extensive supervision would be expected.
- The provision of services to all the residents in a given location, such as an Adult Home, raises questions about appropriate utilization.
- The provision of specialty services, such as pediatric cardiology utilizing sophisticated equipment, is considered inappropriate for a part-time clinic setting, since a comprehensive, integrated plan of care is needed to treat these patients effectively.
- The use of part-time clinics by some patients as their main source of health care compromises the continuity of their care, as the link to emergency and after-hours treatment becomes problematic.
- The improper application of infection control principles for sterilizing equipment.

The persistence of these problems warrants the issuance of these rules on an emergency basis.

The principal changes in the proposed rules are:

- A more detailed description of the types of services permitted in part-time clinics.
- Explicit exclusion of certain types of locations and premises as acceptable sites for part-time clinics.
- Addition of a requirement that part-time clinics be in sufficient proximity to the sponsoring hospital or diagnostic or treatment center to ensure adequate supervision.
- Enhanced operating standards, including requirements for quality assurance and improvement and for credentialing of staff.

- Addition of a requirement for prior limited review of all new part-time clinic sites and the continuation or proposed relocation of existing clinics.

- Recognition that part-time clinics which are operated by city and county health departments are governed by section 614 of the Public Health Law.

Compliance with the requirements of the State Administrative Procedure Act for filing of a regulation on a non-emergency basis, including the requirements for a period of time for public comment, would be contrary to the public interest because to do so would place patients at continued risk that they would be served in sub-standard environments without adequate supervision and where continuity of care cannot be insured. In addition, the proposed rules guard against the unnecessary expenditure of Medicaid funds for unneeded or duplicative services thereby making funds available for needed care. This emergency regulation will go into effect immediately after the expiration of the prior emergency regulation. Its duration will extend until permanent regulations are promulgated or a subsequent regulation is adopted on an emergency basis.

Subject: Part-time clinics.

Purpose: To clarify and enhance the requirements that apply to part-time clinics and require prior limited review of all part-time clinic sites.

Text of emergency rule: The current section 703.6 is repealed and a new section 703.6 is hereby adopted as follows:

Section 703.6 Part-time clinics.

(a) *Applicability. In lieu of Parts 702, 711, 712 and 715 of this Title, this section shall apply to part-time clinic sites, except for those operated by the State Department of Health (other than those part-time clinics which are operated as an extension of Article 28 hospitals operated by the State Department of Health) or by the health department of a city or county as such terms are defined in section 614 of the Public Health Law. Such cities and counties shall submit to the State Department of Health information which lists the location(s), hours of operation and services offered at each part-time clinic operated by or under the authority of the city or county health department. This information shall be submitted annually, by January 30 of each year, as an update to the Municipal Public Health Services Plan (MPHSP) submitted by the city or county pursuant to section 602 of the Public Health Law, and shall provide such information for each part-time clinic operated by or under the authority of the city or county health department in the previous calendar year. Consistent with the definition of part-time clinic site in section 700.2(a)(22) of this Title, a part-time clinic shall:*

(1) *provide services which shall be limited to low-risk (as determined by prevailing standards of care and services) procedures and examinations which do not normally require backup and support from the primary delivery site of the operator or other medical facility. Such services may include health screening (such as blood pressure screening), preventive health care and other public health initiatives, procedures and examinations (such as well child care, the provision of immunizations and screening for chronic or communicable conditions which are treatable or preventable by early detection or which are of public health significance);*

(2) *be located at a site that has adequate and appropriate space and resources to provide the intended services safely and effectively and is located in proximity to the primary delivery site to ensure that supervision and quality assurance are not compromised; and*

(3) *not be located at a private residence or apartment, an intermediate care facility, congregate living arrangements (not including an individualized residential alternative, a shelter for adults or other group shelter operated by governmental or other organizations to provide temporary housing accommodations in a safe environment to at-risk populations), an area within an adult home, a residence for adults or enriched housing program as defined in section 2 of the Social Services Law unless the part-time clinic is an outpatient mental health program approved by the Office of Mental Health, or the private office of a health care practitioner or group of practitioners licensed by the State Education Department, except if the private office space is leased for a defined period of time and on a regular basis for the provision of services consistent with paragraph (1) of this subdivision.*

(b) Department approval and/or notification.

(1) *An operator of part-time clinics may initiate patient care services at a specific site only upon written approval from the department in accordance with the department's prior limited review process set forth at section 710.1(c)(6)(v) of this Title. To request such approval, the operator shall submit to the department, for each such site, information and documentation in a format acceptable to the department and in sufficient detail to enable the Commissioner to make a decision, including the following:*

(i) the location, type and nature of the building, days and hours of operation, expected duration of operation (specified limited period of time, for example, seasonally), staffing patterns and objectives of the part-time clinic;

(ii) the leasing or other arrangement for gaining access to the site's real property, (including a copy of the agreement which grants the applicant the right to use and occupy the space for the part-time clinic site);

(iii) the plans and strategies for meeting the operational standards set forth in this section and an explanation of how the operator will provide adequate supervision and ensure quality of care;

(iv) a listing of all part-time clinic sites already operated by the applicant;

(v) a description of the services to be provided and the populations to be served; and

(vi) procedures or strategies for advising patients on making arrangements for follow-up care.

(2) After initiating patient care services, an operator of part-time clinics may relocate a part-time clinic or change a category of service only upon written approval from the department in accordance with the department's prior limited review process as set forth in section 710.1(c)(6)(v) of this Title. The operator shall give written notification to the department at least 45 days prior to the relocation or change in services of a part-time clinic site. To request approval, the operator shall submit to the department, for the site of relocation or change in services, information concerning:

(i) the location, type and nature of the building, days and hours of operation, and expected duration of operation (specified limited period of time, for example, seasonally);

(ii) the leasing or other arrangement for gaining access to the site's real property (including a copy of the agreement which grants the applicant the right to use and occupy the space for the part-time clinic site); and

(iii) a description of the services to be provided and the populations to be served.

(3) After initiating patient care services, the operator shall give written notification, including a closure plan acceptable to the department, to the appropriate regional office of the department at least 15 days prior to the discontinuance of a part-time clinic site other than a scheduled discontinuance as indicated in accordance with subparagraph (i) of paragraph (1) of this subdivision. No part-time clinic site shall discontinue operation without first obtaining written approval from the department.

(4) (i) The operator of any part-time clinic that was in operation on the effective date of this paragraph, and in conformance with all pertinent statutes and regulations in effect prior to that date, and has submitted request(s) to the department for approval to continue providing services for each such site by November 13, 2000 in accordance with such requirements shall be permitted to operate until and unless the department issues a written denial of approval to continue operation. If a request to continue operation of a part-time clinic site is denied, the operator shall cease providing services at such site.

(ii) The operator of any part-time clinic site for which an application to continue providing services at such site was not submitted to the department by November 13, 2000, shall give the department the written notification and a closure plan required by subdivision (b)(3) of this section by November 28, 2000. Notwithstanding any other provision of this section, any part-time clinic for which an application to continue providing services at such site was not submitted to the department by November 13, 2000, shall cease operations by December 31, 2000.

(c) Policies and procedures. (1) The operator shall ensure the development and implementation of written policies and procedures specific to each part-time clinic site which shall include, but need not be limited to:

(i) security, confidentiality, maintenance, access to and storage of medical records for each patient, including documentation of any diagnoses or treatments;

(ii) handling and storage of drugs in accordance with state law and regulation;

(iii) provision and storage of sterile supplies including plans for sterilization or disposal of contaminated supplies and equipment;

(iv) disposal of solid wastes and sharps;

(v) handling of patient emergencies, including written transfer agreements with hospitals within the service area;

(vi) a fire plan consistent with local laws;

(vii) credentialing of staff by the governing authority of the operator and assurance that only appropriately licensed and/or certified staff perform functions that require such licensure or certification;

(viii) quality assurance/improvement initiatives coordinated with such activities at the operator's primary delivery site(s);

(ix) utilization review;

(x) community outreach efforts designed to ensure that community members are aware of the availability of and the range of clinic services and hours of operation; and

(xi) assurance that patients can access necessary services without regard to source of payment.

(2) The following services shall not be provided at a part-time clinic site:

(i) services that require specialized equipment such as radiographic equipment, computerized axial tomography, magnetic resonance imaging or that required for renal dialysis;

(ii) services that involve invasion or invasive treatment procedures or disruption of the integrity of the body that normally require a surgical operative environment; and

(iii) services other than those available at the primary delivery site(s) listed on the primary facility's operating certificate.

(d) Services and personnel. The operator shall ensure that all health care services and personnel provided at the part-time clinic site shall conform with generally accepted standards of care and practice and with the following:

(1) Part-time clinics operated by hospitals shall comply with pertinent standards established in Part 405 of this Title including, but not limited to, sections 405.7 (Patients' rights) and 405.20 (Outpatient services), which cross-references the outpatient care provisions of sections 752.1 and 753.1 of this Title.

(2) Part-time clinics operated by diagnostic and treatment centers shall comply with the pertinent provisions of Parts 750, 751, 752 and 753 of this Title including, but not limited to, section 751.9 (Patients' rights).

(e) Environmental health. The operator shall ensure that:

(1) exits and access to exits are clearly marked;

(2) lighting is provided for exit signs and access ways when located in dark areas and/or during night hours or power interruptions;

(3) passageways, corridors, doorways and other means of exit are kept unobstructed;

(4) the part-time clinic site is kept clean and free of safety hazards;

(5) all water used at the part-time clinic site is provided from a water supply which meets all applicable standards set forth in Part 5 of this Title;

(6) equipment to control a limited fire is available; and

(7) smoking is prohibited within patient care areas.

(f) Waivers. The Commissioner, upon a request from the operator, may waive one or more provisions of this section upon a finding that such waiver would:

(1) enable at risk or medically underserved patients to obtain needed care and services which are otherwise unavailable or difficult to access;

(2) contribute to attaining a generally recognized public health goal;

(3) not jeopardize the health or safety of patients or clinic staff; and

(4) not conflict with existing federal or state law or regulation.

Section 710.1(c)(1)(i) is hereby amended to read as follows:

(i) the requirements relating to the addition, modification or decertification of a licensed service other than the addition of a service or decertification of a facility's services as provided for in paragraph (6) of this subdivision or the addition or deletion of approval to operate part-time clinics, regardless of cost [;]. The addition or deletion of approval to operate part-time clinics shall not be applicable to the State Department of Health (other than for the addition or deletion of approval to operate part-time clinics as an extension of an Article 28 hospital operated by the State Department of Health) or to the health department of a city or county as such terms are defined in section 614 of the Public Health Law;

Section 710.1(c) (4)(ii) is hereby amended to read as follows:

(4) Proposals not requiring an application.

(ii) Any proposal to [add,] discontinue [or relocate] a part-time clinic site of a medical facility already authorized to operate part-time clinics pursuant to this Part shall not require the submission of an application pursuant to this Part, but compliance is required with the applicable notice provisions of Parts 405 and 703 of this Title.

Paragraph (6) of subdivision (c) of section 710.1 is hereby amended by the addition of a new subparagraph (v) to read as follows:

710.1(c)(6) Proposals requiring a prior review.

* * *

(v) Any proposal to operate, change services offered or relocate a part-time clinic site shall be subject to a prior limited review under Article 28 of the Public Health Law.

(a) Requests for approval under the prior limited review process shall be consistent with the provisions of section 703.6(b) of this Title.

(b) Requests for approval to operate, change a category of service offered or relocate a part-time clinic site in accordance with section 703.6(b) of this Title shall be made directly to the Division of Health Facility Planning.

(c) If the proposal is acceptable to the department, the applicant shall be notified in writing within 45 days of acknowledgement of receipt of the request. If the proposal is not acceptable, the applicant shall be notified in writing within 45 days of such determination and the bases thereof, and the proposal shall be deemed an application subject to full review, including a recommendation by the State Hospital Review and Planning Council, pursuant to section 2802 of the Public Health Law.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. HLT-32-04-00007-P, Issue of August 11, 2004. The emergency rule will expire April 15, 2005.

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in section 2803(2) of the Public Health Law which authorizes the State Hospital Review and Planning Council (SHRPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of Article 28 of the Public Health Law, and to establish minimum standards governing the operation of health care facilities. This section also grants authority to establish requirements for projects subject to Certificate of Need review and other Department approvals.

Legislative Objectives:

Article 28 of the PHL seeks to ensure that hospitals and related services are of the highest quality, efficiently provided and properly utilized at a reasonable cost. Consistent with this legislative intent, the proposed amendments would update standards under which part-time clinics are permitted to operate and establish new procedures for the process by which clinics are approved to provide services. These changes will promote improved quality and appropriateness of care at a reasonable cost to payors.

Needs and Benefits:

Part-time clinics provide low-risk procedures and examinations which do not normally require back-up and support from the hospitals and diagnostic and treatment centers that sponsor them. Typical of such services are well-child care, immunization and screening for chronic and communicable conditions treatable or preventable by early detection. Part-time clinics may not deliver services which require specialized equipment, such as magnetic resonance imaging or dialysis, nor may they provide invasive treatment procedures which normally require a surgical environment. Once approved, part-time clinics may operate on either a short-term or permanent basis but may not offer services for more than a total of 60 hours per month.

Part-time clinics were established as a separate category of service to encourage the provision of basic preventive health care in community-based settings easily accessible to the general public and to groups targeted for particular services (e.g., senior citizens). Consequently, the approval process for these clinics is simpler than that for extension clinics of hospitals and diagnostic and treatment centers, whose services are more elaborate and hours of operation less restricted. The initial authority for a hospital or diagnostic and treatment center to operate part-time clinics requires administrative approval under the Certificate of Need (CON) process. However, the subsequent opening of individual clinic sites previously required only a letter of notification to the appropriate area office of the Department of Health, submitted a minimum 15 business days in advance of the proposed commencement of service. Environmental requirements for part-time clinics are minimal, calling only for compliance with prevailing standards for life safety, sanitation and infection control. Some 300 hospitals and diagnostic and treatment centers are authorized to operate part-time clinics.

The leniency of regulation which has encouraged the provision of needed services has also led to the delivery of services in locations and on a scale not intended for part-time clinics. Some providers, for example, have set up part-time clinics in sites such as an adult home and patients' private residences and in other settings not sanctioned under the current regulations. Other operators of part-time clinics have offered services far more elaborate than the low-risk screening and basic care procedures to which part-time clinics are restricted. Still others have engaged in questionable billing practices, submitting claims to the Medicaid program at rates approved only for the broader array of services offered at diagnostic and treatment centers and hospital-based clinics.

With large part-time clinic networks (one network has over 600 sites), there are the issues of service quality and patient safety in settings that lack appropriate medical supervision and staff support and which do not meet operational and environmental requirements. The delivery of services under these circumstances can pose a threat to patient safety and demands the issuance of the new rules on an emergency basis.

An emergency regulation addressing part-time clinics was adopted effective August 15, 2000. Additional emergency regulations were adopted effective on November 13, 2000, February 12, 2001, May 14, 2001, August 10, 2001, November 8, 2001, February 7, 2002, May 6, 2002, August 1, 2002, October 29, 2002, January 27, 2003, April 25, 2003, July 24, 2003, October 22, 2003, January 20, 2004, April 20, 2004, July 19, 2004, October 19, 2004 and December 16, 2004. The last emergency adoption is scheduled to expire on February 14, 2005. This new emergency regulation will repeal and/or amend the regulations which would have gone back into effect upon the expiration of the December 16, 2004 emergency regulation.

The proposed emergency regulations will repeal the existing 10 NYCRR section 703.6 and replace it with a new section 703.6 more explicit in the requirements and prohibitions that apply to part-time clinics. They further amend section 710.1 to require a formal approval process for individual clinic sites. The principal changes in the proposed rules are:

- A more detailed description of the types of services permitted in part-time clinics.
- Explicit exclusion of certain types of locations and premises as acceptable sites for part-time clinics.
- A requirement that part-time clinics be in sufficient proximity to the sponsoring hospital or diagnostic and treatment center to ensure adequate supervision.
- Enhanced operational standards, including requirements for quality assurance and improvement and for credentialing of staff.
- A requirement for prior limited review of new part-time clinic sites and proposed relocations of existing clinics. Requests for prior limited review must be submitted to the Department's central office at least 45 days in advance of the proposed commencement of service, instead of the 15 business days required for notification to the appropriate Department regional office.
- Recognition that part-time clinics which are operated by city and county health departments are governed by Section 614 of the Public Health Law.

The proposed rules apply to all existing part-time clinics as well as to all future sites. To ensure that the new regulations do not impede access to care by patients currently receiving services or penalize providers operating bona fide clinics, the proposed rules allow existing sites to continue in operation while their operators' applications for prior limited review of current services and sites are under review by the Department. The rules allowed operators 90 days from the effective date of the original emergency regulation, which was August 15, 2000, to submit such applications, which may include proposals to relocate noncompliant clinics to sites that are in compliance with the proposed regulations. For clinics that failed to submit such timely applications, the rules establish a deadline for submission of a closure plan.

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

Both part-time clinics in existence at the time of the original emergency regulations and any new part-time clinics will be subject to the prior limited review process as set forth in the proposed amendments to section 710.1. The collection and submission of information for the prior limited review process will represent a new cost to the facility, but the Department has minimized that cost through issuance of a standardized form which can be filed electronically. Some facilities may incur additional costs in bringing substandard part-time clinics up to the standards established in the proposed regulations.

The cost impact of the proposed regulations will depend on the number of operators that seek to establish new part-time clinics, relocate existing clinics or change services in existing sites. For the individual provider, costs will vary with the condition of the existing or proposed site. For sites needing little or no renovation, costs will be minimal. For other locations, costs will depend on the degree of renovation needed, on whether the provider engages the services of architectural or construction firms to carry out the renovations, and on which firms the provider chooses to employ. Because the Department lacks data on the number of proposed sites that will need to pay for renovation, it is difficult to estimate these costs with any precision. However, it is expected that any expenditures will be insignificant in relation to the benefits of improved patient care and reductions in the costs to taxpayers of Medicaid claims for part-time clinic services rendered in inappropriate settings.

Cost to State and Local Government:

There will be no additional cost to State or local governments. If inappropriate or duplicative Medicaid billings are reduced, or if sites providing unsafe or inappropriate services discontinue operations, State and local governments will realize a share of the Medicaid savings. However, certain city and county health departments may incur minimal costs associated with submitting to the Department annually basic information regarding any part-time clinics they operate.

Cost to the Department of Health:

Additional costs related to the processing of prior limited review applications and stricter programmatic oversight of part-time clinics will be absorbed within existing resources.

Local Government Mandates:

This regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district. However, certain city and county health departments may incur minimal costs associated with submitting to the Department annually basic information regarding any part-time clinics they operate.

Paperwork:

The governing body will be responsible for filing requests for approval to operate specific sites under the limited prior review process. DOH will attempt to limit the paperwork burden by developing a standardized format for such submissions which may be filed electronically. DOH also considered requiring that each site maintain a patient log with numerous data elements. It was decided not to include this requirement in the operating standards because many of the data elements duplicated information in the medical record, and some could interpret the requirement as an unnecessary paperwork burden unrelated to patient care. However, certain city and county health departments may incur minimal costs associated with submitting to the Department annually basic information regarding any part-time clinics they operate.

Duplication:

The regulations will not duplicate, overlap or conflict with federal or state statutes or regulations.

Alternative Approaches:

The alternative of taking no regulatory action was rejected because of the ongoing potential for questionable quality of care provided at inappropriate sites and because of fiscal irregularities at part-time clinics under current regulations. DOH also considered subjecting all current and proposed part-time clinics to the administrative review process rather than to the prior limited review process. That option was rejected in order to promote a streamlined review process for clinics and DOH and to avoid imposing on facilities the \$1,250 filing fee required for administrative reviews.

Federal Requirements:

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

Compliance Schedule:

The emergency regulations will go into effect immediately upon filing with the Department of State. Part-time clinics in operation at that time must have submitted requests to continue operating within 90 days of the effective date of the adoption of the first emergency regulation (issued August 15, 2000) but may continue to operate until and unless DOH issues a written denial of approval to operate. If the governing body of a primary delivery site wishes to open a new part-time clinic site after the effective date of the regulation, it must submit an application. If the proposal is acceptable, DOH will so notify the applicant within 45 days of acknowledgement of receipt of the request.

Regulatory Flexibility Analysis

Effect of rule:

New York State has 9 hospitals, 167 diagnostic and treatment centers and approximately 455 adult homes and 53 congregate living centers that could be considered small businesses affected by this rule. Physician offices, of which the Department has no statistics on how many there are, also could be considered small businesses and impacted by this regulation. The Office of Mental Health approved approximately 980 outpatient mental health programs, the majority of which are small businesses. The Office of Mental Retardation and Developmental Disabilities approves Intermediate Care Facilities (ICFs) many of which would be considered small businesses and which also could be impacted by the regulation. With respect to local governments, to the extent the New York City Department of Health and 57 county health departments operate or propose to operate part-time clinics, they would be impacted by this regulation.

Compliance requirements:

In order to comply with these requirements, an operator/applicant will need to determine that the services to be provided at the part-time clinic(s) are limited to low-risk procedures and examinations which do not normally require backup and support from the primary delivery site of the operator or other medical facility as described in section 703.6(a)(1), be located at a site as described in 703.6(a)(2) and not be located at one of the sites as described in 703.6(a)(3). In addition, the operator/applicant must obtain written approval pursuant to the Department's prior limited review process set forth in section 710.1(c)(6)(v).

Professional services:

There should be no additional professional services required that a small business or local government is likely to need to comply with the proposed rule. Applicants for, and current operators of, part-time clinics must already be licensed pursuant to Public Health Law Article 28 to provide outpatient services. Therefore, adequate administrative mechanisms already should be in place to comply with any reporting and record-keeping requirements.

Compliance costs:

The collection and submission of information for the prior limited review process will represent a new cost to the facility, including facilities operated by a small business or local government. The Department has attempted to minimize that cost through the issuance of a standardized form, which may be obtained and submitted electronically. Some facilities may incur additional costs in bringing substandard part-time clinics up to the standards in the proposed regulations.

The cost impact of the proposed regulations will depend on the number of operators that seek to establish new part-time clinics, relocate existing clinics or change services in existing sites. For the individual provider, costs will vary with the condition of the existing or proposed site. For sites needing little or no renovation, costs will be minimal. For other locations, costs will depend on the degree of renovation needed, on whether the provider engages the services of architectural or construction firms to carry out the renovations, and on which firms the provider chooses to employ. Because the Department lacks data on the number of proposed sites that will need to pay for renovation, it is difficult to estimate these costs with any precision. However, it is expected that any expenditures will be insignificant in relation to the benefits of improved patient care and reductions in the costs to taxpayers of Medicaid claims for part-time clinic services rendered in inappropriate settings.

Economic and technological feasibility:

It should be economically and technologically feasible for small businesses and local governments to comply with the regulations. Providers should not need to hire additional professional or administrative staff to comply with the requirements of the regulations. Due to the nature of the services provided at part-time clinics, such sites should not involve significant capital expenditures. Also, applicants under the prior limited review process for reviewing part-time clinic proposals are not required to pay the \$1,250 fee applicable to full review and administrative review applications. Therefore, overall costs of compliance should be minimal. The Department of Health also has developed a standardized electronic application form that applicants may use by accessing the Department's "web" page. This is technologically feasible using readily available, standard personal computers and internet access programs.

Minimizing adverse impact:

In developing the regulation, the Department considered the approaches set forth in section 202-b(1) of the State Administrative Procedure Act. The Department considered requiring all current and proposed part-time clinics to undergo the full administrative review process rather than the prior limited review process. That option was rejected in order to permit a streamlined review process for part-time clinics and to permit facilities to avoid the \$1,250 filing fee required for full or administrative

reviews. The Department also has developed a standardized electronic form to minimize the paperwork burden for requests for approval to operate specific sites under the prior limited review process. The Department also rejected a plan to require that each site maintain a patient log with numerous data elements. The maintenance of such a form was determined to be an unnecessary paperwork burden which duplicated information already in the medical record. This proposal also allows for a waiver from one or more provisions of the new regulations if the Department finds, upon a request from an applicant/operator, that a waiver would enable at-risk or medically underserved patients to obtain needed care and services which would be otherwise unavailable or difficult to access.

Language in this regulation in section 703.6(a)(2) specifies that part-time clinics shall be located at a site that "is located in proximity to the primary delivery site to ensure that supervision and quality assurance are not compromised." In order to allow providers flexibility in bringing needed services to patients, the Department has refrained from specifying a mileage limit for this requirement. In evaluating the distance of a part-time clinic from the sponsor's main site, the Department's principal consideration will be whether the sponsor can provide appropriate supervision and oversight of staff and services at the proposed site.

Part-time clinics may continue to operate while going through the prior approval process. Those in operation on the effective date of the first emergency adoption (August 15, 2000) had 90 days from such date to submit applications for the prior limited review process. If an operator wishes to open a new part-time clinic after the effective date of the regulation, it must submit an application. If the proposal is acceptable, the Department will so notify the applicant within 45 days of acknowledgment of receipt of the request.

Small business and local government participation:

Interested parties were given notice of this proposal by its inclusion in the agenda of the Codes and Regulations Committee of the State Hospital Review and Planning Council for its September 21, 2000 meeting and for its March 21, 2002 and November 21, 2002 meetings and for subsequent meetings. Comments were solicited and provided at the September 21, 2000 meeting. While comments were solicited at the March 21, 2002 and November 21, 2002 meetings and at subsequent meetings, none were provided.

Rural Area Flexibility Analysis

Effect on Rural Areas:

This rule applies uniformly throughout the State including all rural areas. Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000:

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

This regulation should not adversely affect current rural part-time clinics that are providing quality services in appropriate settings. The new regulations will provide facilities with clarified operating standards that will enable them to operate in conformance with the law and meet generally accepted standards for quality care and safety of patients. Operators of part-time clinics in the State (including rural areas) must obtain written approval from the Department to continue operation, relocate, or open new part-time clinics in accordance with the Department's prior limited review process as outlined in section 710.1(c)(6)(v) of 10 NYCRR.

Professional Services:

Hospitals should not need to hire additional professional or other staff to comply with the requirements of the new regulation. Applicants for, and current operators of, part-time clinics must already be licensed pursuant to Public Health Law Article 28 to provide outpatient services. Therefore, additional staff should not need to be hired, as administrative mechanisms should already be in place to comply with any reporting and recordkeeping requirements.

Compliance Costs:

Some facilities may incur additional costs in bringing substandard part-time clinics up to the standards established in the proposed regulations. It is impossible to quantify such costs because the Department lacks the data on the number of part-time clinics currently out of compliance with the proposed standards and on the cost of bringing such facilities into conformity with the proposed rules. In general, however, establishment of part-time clinics will not require significant capital expenditures because such clinics are intended to be limited to low risk procedures and examinations that normally do not require backup and support from the primary delivery site of the operator or other medical facilities.

Minimizing Adverse Impact:

In developing the regulation, the Department considered the approaches set forth in section 202-bb(2) of the State Administrative Procedure Act.

To minimize the paperwork and reporting requirements, the Department has developed a standardized application form which may be obtained and submitted electronically. Because the approval process is a limited review, the \$1,250 filing fee required for full or administrative reviews will not be imposed. The Department recognizes that part-time clinics can provide valuable sources of primary care in rural areas. These regulations will help to assure rural residents that such care meets appropriate quality and safety standards. This proposal also allows for a waiver from one or more provisions of the new regulations if the Department finds, upon a request from an applicant/operator, that a waiver would enable at risk or medically underserved patients to obtain needed care and services which are otherwise unavailable or difficult to access. While language in this regulation in section 703.6(a)(2) specifies that part-time clinics shall be located at a site that "is located in proximity to the primary delivery site to ensure that supervision and quality assurance are not compromised," The Department recognized that rural part-time clinics could serve a wide geographical area and did not specify a mileage limit for this requirement. In evaluating the distance of a part-time clinic from the sponsor's main site, the Department's principal consideration will be whether the sponsor can provide appropriate supervision and oversight of staff and services at the proposed site.

Part-time clinics may continue to operate while going through the prior approval process. Those in operation on the effective date of the first emergency adoption (August 15, 2000) had 90 days from such date to submit applications for the prior limited review process. If an operator wishes to open a new part-time clinic after the effective date of the regulation, it must submit an application. If the proposal is acceptable, the Department will so notify the applicant within 45 days of acknowledgment of receipt of the request. The Department also rejected a plan to require that each site maintain a patient log with numerous data elements. The maintenance of such a form was determined to be an unnecessary paperwork burden which duplicated information already in the medical record.

Opportunity for Rural Area Participation:

Rural areas were given notice of this proposal by its inclusion in the agenda of the Codes and Regulations Committee of the State Hospital Review and Planning Council for its September 21, 2000 meeting and for its March 21, 2002 and November 21, 2002 meetings and for subsequent meetings. Comments were solicited and provided at the September 21, 2000 meeting. While comments were solicited at the March 21, 2002 and November 21, 2002 meetings and at subsequent meetings, none were provided.

Job Impact Statement

A Job Impact Statement is not included in accordance with Section 201-a(2) of the State Administrative Procedure Act, because it is apparent from the nature and purpose of these proposed amendments that they will not have a substantial adverse impact on jobs and employment opportunities for those part-time clinics which provide appropriate services in appropriate locations. Those clinics which provide services in locations the Department deems unacceptable will be given an opportunity to relocate to an appropriate setting. The proposed amendments will help to ensure that qualified people provide clinical care and services. Appropriately operat-

ing part-time clinics will be allowed to continue providing care and services and newly-proposed sites will be permitted to open provided they can meet the standards established in the regulation. Thus, the jobs of people qualified to provide services, and currently doing so, will not be negatively impacted.

Assessment of Public Comment

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

EMERGENCY RULE MAKING

Payment for Psychiatric Social Work Services

I.D. No. HLT-32-04-00008-E

Filing No. 147

Filing date: Feb. 15, 2005

Effective date: Feb. 15, 2005

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

Action taken: Amendment of section 86-4.9 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 201.1(v)

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

Specific reasons underlying the finding of necessity: The amendment to 10 NYCRR 86-4.9 will permit Medicaid billing for individual psychotherapy services provided by certified social workers in Article 28 Federally Qualified Health Centers (FQHCs). In conjunction with this change, DOH is also amending regulations to prohibit Article 28 clinics from billing for group visits and to prohibit such services from being provided by part-time clinics.

Based upon the Department's interpretation of 10 NYCRR 86-4.9(c), social work services have not been considered billable threshold visits in Article 28 clinic settings despite the fact that certified social workers have been an integral part of the mental health delivery system in community health centers. New federal statute and regulation require States to provide and pay for each FQHC's baseline costs, which include costs which are reasonable and related to the cost of furnishing such services. Reimbursement for individual psychotherapy services provided by certified social workers in the FQHC setting is specifically mandated by federal law. Failure to comply with these mandates could lead to federal sanctions and the loss of federal dollars. Additionally, allowing Medicaid reimbursement for clinical social worker services is expected to increase access to needed mental health services.

Subject: Payment for psychiatric social work services in art. 28 federally qualified health centers.

Purpose: To permit psychotherapy by certified social workers a billable service under certain circumstances.

Text of emergency rule: 86-4.9 Units of service. (a) The unit of service used to establish rates of payment shall be the threshold visit, except for dialysis, abortion, sterilization services and free-standing ambulatory surgery, for which rates of payment shall be established for each procedure. For methadone maintenance treatment services, the rate of payment shall be established on a fixed weekly basis per recipient.

(b) A threshold visit, including all part-time clinic visits, shall occur each time a patient crosses the threshold of a facility to receive medical care without regard to the number of services provided during that visit. Only one threshold visit per patient per day shall be allowable for reimbursement purposes, except for transfusion services to hemophiliacs, in which case each transfusion visit shall constitute an allowable threshold visit.

(c) Offsite services, visits related to the provision of offsite services, visits for ordered ambulatory services, and patient visits solely for the purpose of the following services shall not constitute threshold visits: pharmacy, nutrition, medical social services with the exception of clinical social services as defined in paragraph (g) of this section, respiratory therapy, recreation therapy. Offsite services are medical services provided by a facility's clinic staff at locations other than those operated by and under the licensure of the facility.

(d) A procedure shall include the total service, including the initial visit, preparatory visits, the actual procedure and follow-up visits related to the procedure. All visits related to a procedure, regardless of number, shall be part of one procedure and shall not be reported as a threshold visit.

(e) Rates for separate components of a procedure may be established when patients are unable to utilize all of the services covered by a procedure rate. No separate component rates shall be established unless the facility includes in its annual financial and statistical reports the statistical and cost apportionments necessary to determine the component rates.

(f) Ordered ambulatory services may be covered and reimbursed on a fee-for-service basis in accordance with the State medical fee schedule. Ordered ambulatory services are specific services provided to nonregistered clinic patients at the facility, upon the order and referral of a physician, physician's assistant, dentist or podiatrist who is not employed by or under contract with the clinic, to test, diagnose or treat the patient. Ordered ambulatory services include laboratory services, diagnostic radiology services, pharmacy services, ultrasound services, rehabilitation therapy, diagnostic services and psychological evaluation services.

(g)(1) For purposes of this section, clinical social services are defined as,

(i) before September 1, 2004, individual psychotherapy services provided in a Federally Qualified Health Center by a certified social worker with psychotherapy privileges certification by the New York State Education Department, or by a certified social worker who is working in a clinic under qualifying supervision in pursuit of a psychotherapy privileges certification by the New York State Education Department.

(ii) on or after September 1, 2004, individual psychotherapy services provided in a Federally Qualified Health Center by a licensed clinical social worker, or by a licensed master social worker who is working in a clinic under qualifying supervision in pursuit of licensed clinical social worker status by the New York State Education Department.

(2) Clinical social services provided in a part time clinic shall be ineligible for reimbursement under this paragraph. Clinical social services shall not include group psychotherapy services or case management services.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. HLT-32-04-00008-P, Issue of August 11, 2004. The emergency rule will expire April 15, 2005.

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in section 2803(2)(a) of the Public Health Law which authorizes the State Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner. Section 702 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000 made changes to the Social Security Act affecting how prices are set for Federally Qualified Health Centers and rural health centers. Section 1902(a)(10) of the federal Social Security Act [42 U.S.C. 1396a(a)(10)] and 1905(a)(2) of the Social Security Act [42 U.S.C. 1396d(a)(2)] require the State to cover the services of Federally Qualified Health Centers. Additionally, section 1861(aa) of the Social Security Act [42 U.S.C. 1395x(aa)] defines the services that a Federally Qualified Health Center provides, including the services of a clinical social worker.

Legislative Objective:

The legislative objective of this authority is to allow, in limited instances, social work visits to be a billable threshold service in Article 28 clinics. This amendment will allow psychotherapy by certified social workers (CSWs) as a billable visit under the following circumstances:

- Services are provided by a certified social worker with psychotherapy privileges (on their SED certification), or a CSW who is working in a clinic under qualifying supervision in pursuit of such certification.
- Payment will only be made for services that occur in Article 28 clinic base and extension clinics only. Billings by part-time clinics will not be allowed.
- Psychotherapy services only will be permitted, not case management and related services.
- Billings for group psychotherapy will not be permitted in Article 28 clinics.
- Payment will only be made for services that occur in Federally Qualified Health Centers (FQHCs).

Needs and Benefits:

For some time, the Department of Health (DOH) has interpreted existing regulation 10 NYCRR Part 86-4.9(c) as restricting threshold reimbursement for medical social work services in Article 28 outpatient and diagnostic and treatment center (D&TC) clinics. Advocacy groups (e.g., United Cerebral Palsy (UCP), Community Health Care Association of New York (CHCANYS)) have challenged this policy interpretation arguing that the prohibition only relates to the provision of social work services coincident to medical care, not to medical/behavioral health services provided by certified social workers.

In addition, DOH's policy interpretation has also been inconsistent with the billing practices of the Office of Alcoholism and Substance Abuse Services (OASAS), the Office of Mental Health (OMH), and the Office of Mental Retardation and Developmental Disabilities (OMRDD). It is clear that permitting certified social workers to be reimbursed for behavioral health services is the generally accepted practice model. Thus, this amendment will, to some extent, provide consistency with billing practices of other state agencies in Article 31, 16 and 32 clinics. Furthermore, recent Federal changes related to Medicaid reimbursement for FQHCs mandate that psychotherapy services provided by a social worker be considered a billable service.

This approach will ensure access to social work services in the most underserved areas and increase consistency with the policies of other state agencies.

COSTS:

Costs for the Implementation of, and Continuing Compliance with this Regulation to Regulated Entity:

Annually the estimated gross Medicaid cost for all CSW psychotherapy visits in FQHCs totals \$600,000, with a state share of \$150,000. This increase is anticipated to be partially offset by the savings associated with the elimination of clinic payments for group psychotherapy and the prohibition of CSW psychotherapy in part-time clinics.

Cost to the Department of Health:

There will be no additional costs to DOH.

Local Government Mandates:

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

Paperwork:

This amendment will increase the paperwork for providers only to the extent that providers will bill for social work services.

Duplication:

This regulation does not duplicate, overlap or conflict with any other state or federal law or regulations.

Alternatives:

Recent changes to federal law make it clear that states must reimburse FQHCs under Medicaid for the services of certified social workers. In light of this federal requirement, no alternatives were considered.

Federal Standards:

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

Compliance Schedule:

The proposed amendment will become effective on the 1st day of the month following publication of a Notice of Adoption in the *State Register*.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

No impact on small businesses or local governments is expected.

Compliance Requirements:

This amendment does not impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Professional Services:

No new professional services are required as a result of this proposed action. The proposed regulation will allow threshold visits to be billed in Article 28 clinics by CSW's with a "P" or "R" designation on their State Education Department's (SED) Certification or by CSWs who are working in a supervised situation towards that certification, in a primary or extension (not part-time) clinic. Although some providers might experience problems hiring the higher level of supervision, the new prospective reimbursement system for FQHCs should ease the hiring of this staff.

Compliance Costs:

This amendment does not impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Economic and Technological Feasibility:

DOH staff has had conversations with the National Association of Social Workers (NASW), UCP, and CHCANYS concerning the interpretation of the current regulation as well as proposed changes to the existing

regulation. Although some systems changes will be necessary to ensure that payment is made only to FQHCs, the proposed regulation will not change the way providers bill for services, and thus there should be no concern about technical difficulties associated with compliance.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Small Business Participation:

Participation is open to any FQHC that is certified under Article 28 of the Public Health Law, regardless of size.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

With the exception of part-time clinics, this rule will apply to all Article 28 primary and extension clinics (not part-time clinics) in New York that have been designated by the Centers for Medicare and Medicaid Services (CMS) as Federally Qualified Health Centers. These businesses are located in rural, as well as suburban and metropolitan areas of the State.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

No new reporting, recordkeeping or other compliance requirements and professional are needed in a rural area to comply with the proposed rule.

Compliance Costs:

There are no direct costs associated with compliance. However, part-time clinic providers that perform fraudulent billing may be investigated and subsequently realize reduced Medicaid reimbursement.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Rural Area Participation:

The Department has had conversations with the National Association of Social Workers Association (NASW), UCP, and CHCANYS to discuss Medicaid reimbursement for social work services and the impact of this new rule on their constituents. These groups and Association represent social workers from across the State, including rural areas.

Job Impact Statement

Nature of Impact:

It is not anticipated that there will be any impact of this rule on jobs or employment opportunities.

Categories and Numbers Affected:

There are approximately 58 FQHCs, FQHC look-alikes, and rural health clinics.

Regions of Adverse Impact:

This rule will affect all regions within the State and businesses out of New York State that are enrolled in the Medicaid Program as an Article 28 clinic and that has been designated by the Centers for Medicare and Medicaid Services (CMS) as a Federally Qualified Health Center.

Minimizing Adverse Impact:

The Department is required by federal rules to reimburse FQHCs for the provision of primary care services, including clinical social work services, based upon the Center's reasonable costs for delivering covered services.

Self-Employment Opportunities:

The rule is expected to have no impact on self-employment opportunities since the change affects only services provided in a clinic setting.

Assessment of Public Comment

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Adult Care Facility Inspection Reports

I.D. No. HLT-09-05-00007-P

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

Proposed action: Amendment of sections 486.2 and 486.5 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 460 and 461

Subject: Adult care facility inspection reports.

Purpose: To conform regulations to statute, requiring the department's inspection reports to find whether each area of an ACF operation is or is not in compliance with regulations, pursuant to a recent State Supreme Court decision.

Text of proposed rule: Subdivision (i) of Section 486.2 is amended to read as follows:

(i) A written report of inspection shall be sent to the operator, and shall include:

(1) *a statement attesting that of the areas reviewed, if no violations or findings are noted, then said areas shall be deemed to be in compliance with applicable requirements* [identification of any areas in which the facility meets or exceeds compliance with applicable requirements];

(2) identification of any areas which are in violation of applicable requirements, *including areas found in violation as a result of failure in systemic practices and procedures; and*

(3) [the steps which must be taken to correct any violations;] *directions as may be appropriate as to the manner and time in which compliance with applicable requirements of law or regulations of the department shall be effected*

[(4) the timetable for correction].

Paragraph (3) of Section 486.5(a) is amended to read as follows:

(3) No penalty can be imposed, except as provided in paragraph (4) of this subdivision, if at the time of a hearing, the operator satisfactorily demonstrates that either (i) the violations have been rectified within 30 days of receipt of the written report of inspection first citing the violation, or (ii) an acceptable plan for rectification and monitoring to ensure that violations do not recur had been submitted to the department within 30 days of receipt of such written report of inspection and the plan was being implemented in accordance with the procedures and time frames approved by the department. A violation is not deemed rectified unless an operator implements and maintains the necessary corrective actions [set forth by the department in a report of inspection issued pursuant to this Part]. When the department inspects a facility and finds one or more violations of this Title, it must issue a report of inspection to the operator of that facility. This report *shall contain directions as may be appropriate as to the manner and time in which compliance with applicable requirements of law or regulations of the department shall be effected* [must describe the actions necessary to rectify the violation(s)]. If [these actions] *the violations* require facility-wide rectification, the operator must rectify all conditions which constitute a violation of the cited regulation.

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

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

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

Regulatory Impact Statement

Statutory Authority:

These proposed regulations are promulgated under the authority of Sections 460 and 461 of the Social Services Law (SSL). Chapter 436 of the Laws of 1997 transferred the responsibility for adult homes, enriched housing programs, and residences for adults from the former Department of Social Services to the Department of Health.

SSL Section 461-a(2)(c) requires Department of Health inspection reports of adult care facilities (ACFs) to clearly identify and indicate in detail each area of operation, including, but not limited to, the premises, equipment, personnel, resident care and services, and whether each such area of operation or any of its component parts is or is not in compliance with the regulations of the department and all other applicable requirements.

In accordance with SSL section 461(1), the Department of Health has consulted with the State Office for the Aging and the Office of Mental Health concerning these proposed regulations.

Legislative Objectives:

While SSL Section 461-a(2)(c) directs that inspection reports clearly identify and indicate in detail each area of operation and whether each such area or any of its component parts is or is not in compliance with regulations, Section 486.2(i)(1) of Title 18 of New York Codes, Rules and Regulations (NYCRR) further requires the Department to identify in its inspection reports those areas of operation that have been found to meet or exceed compliance standards.

Prior to August 2, 1994, the Department was required by SSL Section 461-a(2)(c) to make inspection reports which identified areas in which the facility exceeded minimum standards, and 18 NYCRR Section 486.2(i)(1) was enacted in conformance with this provision. However, when SSL Section 461-a(2)(c) was amended by Chapter 735 of the Laws of 1994 to require only a finding of whether each area of operation "is or is not in

compliance," the Department concluded that its administrative regulation was in fact superceded by the new statute and it was no longer obligated to include this data in its inspection reports.

On August 20, 2003, the New York State Supreme Court ruled that "the Department is required to follow its regulations. If it is of the view that its regulations are not to be enforced, the Department is obligated to take appropriate action to insure that the regulations in question are no longer part of the applicable administrative scheme" (*Bayview Manor Home for Adults v. Novello Index No. 7662-20, Supreme Court, Albany Co., decision of August 20, 2003*). Therefore, in order to maintain consistency with the intent of Chapter 735 of the Laws of 1994, this regulation amends the inconsistent provisions of 18 NYCRR Section 486.2(i)(1).

Needs and Benefits:

These revisions will ensure that Department activities regarding ACF inspections and the enforcement process comport more appropriately to the statutory authority provided, and thereby address recent decision of the Supreme Court of the State of New York.

Costs to Regulated Parties:

There will be no additional costs to regulated parties.

Costs to State and Local Government:

There will be no additional costs to State or local government.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

The proposed regulations impose no program, duty, service, or other responsibility upon any city, town, village, school, fire or other special district.

Paperwork:

The proposed regulations impose no additional paperwork.

Duplication:

There is no duplication of federal or State requirements.

Alternative Approaches:

While an alternative approach would be to leave the current regulations in place, this alternative is not considered to be feasible, given the ruling made by the Supreme Court of the State of New York on August 20, 2003.

Federal Standards:

The proposed regulations do not exceed any minimal standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The proposed regulations will be effective upon publication of a Notice of Adoption in the *New York State Register*.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

For the purposes of the Regulatory Flexibility Analysis, small businesses are considered to be adult care facilities (ACFs) with 100 or fewer certified beds. Based on recent data extracted from facility directories, 407 ACFs were identified as being certified for 100 or fewer beds. The new regulations would not impose any new requirements on ACF operators, and merely comport facility inspections and the enforcement process more appropriately to the statutory authority provided the Department. The proposed regulations will not impact local governments.

Compliance Requirement:

The regulations permit the Department to conduct inspections and pursue enforcement actions within compliance of existing statutory authority.

Professional Services:

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

Compliance Costs:

Compliance with these regulations will not impose any additional costs to regulated parties, State or local governmental entities.

Economic and Technological Feasibility Assessment:

The proposed regulation would impose no compliance requirements which would raise technological or feasibility issues.

Minimizing Adverse Impact:

The proposed regulations pose no adverse impact to ACF providers, as they merely continue existing Department practices and amend Title 18 NYCRR to be consistent with statutory authority.

Small Business and Local Government Input:

The proposed regulations will not have any impact on local governments, as they merely continue existing Department practices and amend Title 18 NYCRR to be consistent with statutory authority. The Supreme Court rulings necessitating these regulations were the direct result of legal proceedings commenced by The Empire Association of Adult Homes and

Assisted Living Facilities and their member facilities against the Department's regulations and practices.

On August 20, 2003, the Supreme Court ruled that "the Department is required to follow its regulations. If it is of the view that its regulations are not to be enforced, the Department is obligated to take appropriate action to insure that the regulations in question are no longer part of the applicable administrative scheme" (*Bayview Manor Home for Adults v. Novello*). Therefore, in order to maintain consistency with the intent of Chapter 735 of the Laws of 1994, this regulation amends the inconsistent provisions of 18 NYCRR Section 486.2(i)(1).

Rural Area Flexibility Analysis

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

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

The regulations permit the Department to conduct inspections and pursue enforcement actions within compliance of existing statutory authority.

Professional Services:

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

Compliance Costs:

Compliance with these regulations will not impose any additional costs to regulated parties, State or local governmental entities.

Economic and Technological Feasibility Assessment:

The proposed regulation would impose no compliance requirements which would raise technological or feasibility issues.

Minimizing Adverse Impact:

The proposed regulations pose no adverse impact to ACF providers, as they merely continue existing Department practices and amend Title 18 NYCRR to be consistent with statutory authority.

Opportunity for Rural Area Participation:

The Empire State Association of Adult Homes and Assisted Living Facilities (the "Association") represents both urban and rural facilities. The Supreme Court rulings necessitating these regulations were the direct result of a legal proceeding commenced by the Association and their member facilities against the Department's regulations and practices.

Job Impact Statement

A Job Impact Statement is not necessary because it is apparent from the nature and purpose of the proposed regulation that it will not have a substantial adverse impact on jobs or employment opportunities. These regulations should not result in a reduction of staff providing necessary care.

Insurance Department

NOTICE OF ADOPTION

Plan of Conversion by Utilities Mutual Insurance Company

I.D. No. INS-52-00-00004-A

Filing date: Feb. 11, 2005

Effective date: March 2, 2005

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

Action taken: Conversion by Utilities Mutual Insurance Company from a mutual property/casualty insurance company into a stock property/casualty company.

Statutory authority: Insurance Law, section 7307

Subject: Plan of conversion to convert from a mutual property/casualty insurance company into a stock property/casualty company.

Purpose: To convert Utilities Mutual Insurance Company into a stock property/casualty company.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-52-00-00004-P, Issue of December 27, 2000.

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

Text of 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

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.

Department of Labor

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

Minimum Wage Allowances

I.D. No. LAB-09-05-00005-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 137, 138, 141, 142, 143 and 190 of Title 12 NYCRR.

Statutory authority: Labor Law, art. 19, section 652; and art. 2, section 21

Subject: Minimum wage allowances.

Purpose: To incorporate the increase in the minimum wage enacted pursuant to the Laws of 2004.

Substance of proposed rule (Full text is not posted on a State website): 12 NYCRR Parts 137 and 138, the minimum wage and minimum wage allowances for the restaurant and hotel industries, are amended to incorporate the increase in the minimum wage enacted pursuant to the Laws of 2004 as embodied in Assembly Bill #11760-A and Senate Bill #7682-A and the statutorily required amendments to the minimum wage allowances (*i.e.*, tips, uniforms, meals and lodging).

12 NYCRR Part 141 (building service industry), Part 142 (miscellaneous industries and occupations), Part 143 (non-profitmaking institutions), are amended to incorporate the increase in the minimum wage enacted pursuant to the Laws of 2004 and the statutorily required amendments to the minimum wage allowances.

12 NYCRR Part 190 (farm workers) is amended to incorporate the increase in the minimum wage enacted pursuant to the Laws of 2004.

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

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

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

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

Regulatory Impact Statement

1. Statutory authority: Article 19 §§ 652 and 653, Article 2 § 21(11) and Article 19-A §§ 673 and 674 of the Labor Law require the Commissioner of Labor to issue rules and regulations modifying wage orders to reflect increases in the minimum wage and any related allowances. Article 19 § 652 gives the Commissioner authority to modify the minimum wage orders in proportion to the increase in the minimum wage and Article 19 § 653 gives the Commissioner authority to investigate the adequacy of wages. Article 2 § 21(11) gives the Commissioner authority to issue such regulations governing any provision she finds necessary and proper. Article 19-A § 673 gives the Commissioner authority to modify the existing wage orders regarding farm workers after considering the recommendations, if any, of the advisory council, and Article 19-A § 674 gives the Commissioner authority to promulgate such regulations as she deems appropriate to carry out this article and to safeguard the minimum wage standards.

2. Legislative objectives: The legislature found it necessary to increase basic wages to guarantee adequate maintenance of the employees and their families. At the time of the last increase to the minimum wage payable within this state to \$5.15 per hour, the legislature noted that existing wage orders in this state permit employers of certain tipped employees working in certain industries to pay an amount that is less than the minimum wage. The legislature adjusted the effect of such wage orders for food service workers. The legislature acknowledged that the food and beverage service industry is highly competitive and that tipping employees who serve customers in food and beverage establishments is a common practice. It is also common that the total income earned by employees in this industry, when tips are combined with the wages required under existing wage orders of the department of labor, frequently exceed the mandated minimum wage. The legislature modified the impact of the existing state wage order for food service workers in order to obtain a balance between the need to protect the rights and income of the workers against the prices paid by consumers for food and beverage in restaurants, grills, diners and other establishments. Current legislation continues this modification.

3. Needs and benefits: The amendments to Parts 137, 138, 141, 142, 143 and 190 (which set forth minimum wage orders) are needed to conform the regulations to Section 652 of the Labor Law. Section 652(1) was amended effective January 1, 2005 to increase the minimum wage from \$5.15 per hour to \$6.00 per hour; on January 1, 2006 to increase the minimum wage from \$6.00 per hour to \$6.75 per hour; and January 1, 2007 to increase the minimum wage from \$6.75 per hour to \$7.15 per hour. Additionally, Section 652(2) requires that these minimum wage orders be modified by the Commissioner of Labor to increase all monetary amounts specified therein in the same proportion as the increase in the hourly minimum wage. The modified minimum wage orders are to be promulgated by the Commissioner without a public hearing, and without reference to a wage board, and become effective on the effective date of such increases in the minimum wage. Therefore, these amendments are needed to provide employers with the correct wage allowances to avoid confusion in the employer community and promote compliance with the statutory amendments to Section 652 (The Laws of 2004 as embodied in Assembly Bill #11760-A and Senate Bill #7682-A).

4. Costs: The Department of Labor recognizes that the increase in the minimum wage will increase costs to employers. However, these changes to the wage orders are required by sections 652 and 673 of the Labor Law.

5. Local government mandates: This regulation imposes no mandates on local governments because employees of the Federal, State or municipal government or a political subdivision thereof are excluded from coverage of the provisions of Parts 137 (section 137-3.2(b)), 138 (section 138-4.4(b)), 141 (section 141-3.2(b)(3)) and 190 (section 190-1.3(b)(3)). In addition, Part 143 is not applicable to local governments because this part is only applicable to employees in nonprofit making institutions that have not elected to be exempt from coverage under a minimum wage order.

6. Paperwork: This regulation will not require any additional paperwork.

7. Duplication: None.

8. Alternatives: The Laws of 2004 as embodied in Assembly Bill #11760-A and Senate Bill #7682-A amended the minimum wage thereby requiring the Commissioner of Labor to modify the wage orders set forth in 12 NYCRR Parts 137, 138, 141, 142, 143 and 190. The Commissioner

has no discretion to amend the rules other than as set forth therein. Section 652 of the Labor Law requires the Commissioner of Labor to issue rules and regulations modifying wage orders to reflect increases in the minimum wage and any related allowances.

9. Federal standards: The federal Fair Labor Standards Act (FLSA) provides for minimum wage allowances and salary thresholds for exempt employees. Generally, Parts 137, 138, 141, 142 and 143 are more restrictive than similar provisions found in the FLSA. The FLSA allows for fair market value for wage allowances for meals and lodging while the wage allowances set forth in the proposed amendments are more restrictive. The Wage Board established these standards many years ago and the Labor Law requires that the wage allowances be modified in proportion to any increase in the minimum wage. In addition, the FLSA has a tip allowance that requires a cash wage of \$2.13 per hour plus tips to equal the minimum wage of \$5.15 per hour.

10. Compliance schedule: Regulated entities should be able to achieve immediate compliance with the regulations because the requirements are well known as the Department of Labor has publicized the rate change, updated their website to advise of the change and is assisting employers as needed.

Regulatory Flexibility Analysis

1. Effect of rule: The rule increases the minimum wage and the minimum wage orders and allowances as required by the amendments to sections 652 of the Labor Law enacted by the Laws of 2004 as embodied in Assembly Bill #11760-A and Senate Bill #7682-A. In addition, the minimum wage for farm workers is increased as required by the amendment to section 673 of the Labor Law enacted by the Laws of 2004 as embodied in Assembly Bill #11760-A and Senate Bill #7682-A. There will be no additional fees or record-keeping requirements as a result of the changes to these rules. These regulations have no effect on local governments.

2. Compliance requirements: These regulations impose no new requirements on small business or local governments because the increases in the minimum wage and the minimum wage orders and allowances are statutorily required by the amendments to section 652 and 673 of the Labor Law enacted by the Laws of 2004 as embodied in Assembly Bill #11760-A and Senate Bill #7682-A.

3. Professional services: These regulations will not require small businesses or local governments to obtain additional professional services.

4. Compliance costs: There are no additional costs to be incurred as a result of these regulations.

5. Economic and technological feasibility: Compliance with these regulations will be economically and technologically feasible since the procedures for minimum wage allowances have been in existence for a number of years.

6. Minimizing adverse impact: There will be no adverse impact on small businesses or local governments. In some cases, these regulations will increase the minimum wage allowances that affected businesses are currently permitted to take. The regulations do not impose any new paperwork or recordkeeping requirements.

7. Small business and local government participation: Copies of the regulations will be furnished to the Business Council of New York, Inc., the New York State Department of Economic Development, the National Federation of Independent Business, the New York State Restaurant Association and the New York State Hospitality & Tourism Association ("NYSH&T"). Furthermore, the Department of Labor cooperated with NYSH&T to present education workshops to the association's members across the State.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: These regulations apply to all employers in rural areas of the State.

2. Reporting, recordkeeping and other compliance requirements: There are no additional reporting, recordkeeping or compliance for regulated entities.

3. Costs: There are no additional compliance costs associated with this proposal. However, regulated entities experience an increase in costs due to the increase in the minimum wage and the minimum wage orders and allowances.

4. Minimizing adverse impact: There is no adverse impact to entities in rural areas.

5. Rural area participation: Copies of this regulation will be provided to the Business Council of New York, Inc., the New York State Department of Economic Development, the National Federation of Independent Business, the New York State Restaurant Association and the New York State Hospitality & Tourism Association.

Job Impact Statement

1. Nature of impact: These regulations should have no significant impact on present employment opportunities because they are conforming the Department of Labor's Wage Orders and allowances to amendments to Labor Law, section 652 (The Laws of 2004 as embodied in Assembly Bill # 11760-A and Senate Bill # 7682-A) and Labor Law, section 673 (The Laws of 2004 as embodied in Assembly Bill #11760-A and Senate Bill #7682-A).

2. Categories and number affected: These regulations should not have any effect on employment.

3. Regions of adverse impact: There will be no adverse impact on employment opportunities as a result of these regulations in any region of the State.

4. Minimizing adverse impact: There will be no adverse impact on employment opportunities as a result of these regulations.

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Personalized Recovery-Oriented Services

I.D. No. OMH-09-05-00003-P

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

Proposed action: Addition of Part 512 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b), 31.04(a), 41.05, 43.02(a), (b), (c); and Social Services Law, sections 364(3) and 364-1(1)

Subject: Program and fiscal requirements for personalized recovery-oriented services.

Purpose: To establish standards for personalized recovery-oriented services.

Substance of proposed rule (Full text is posted at the following State website: www.omh.state.ny.us): This rule will establish a new licensed program category for Personalized Recovery-Oriented Services (PROS) programs. The purpose of PROS programs is to assist individuals to recover from the disabling effects of mental illness through the coordinated delivery of a customized array of rehabilitation, treatment and support services. Such services are available both in traditional program settings and in off-site locations where such individuals live, learn, work or socialize. Providers are expected to create a therapeutic environment which fosters awareness, hopefulness and motivation for recovery, and which supports a harm reduction philosophy.

Depending upon program configuration and licensure category, PROS programs will be required to include the following four components:

1) Community Rehabilitation and Support (CRS): designed to engage and assist individuals in managing their illness and in restoring those skills and supports necessary to live in the community.

2) Intensive Rehabilitation (IR): designed to intensively assist individuals in attaining specific life roles such as those related to competitive employment, independent housing and school. The IR component may also be used to provide targeted interventions to reduce the risk of hospitalization or relapse, loss of housing or involvement with the criminal justice system, and to help individuals manage their symptoms.

3) Ongoing Rehabilitation and Support (ORS): designed to assist individuals in managing symptoms and overcoming functional impairments as they integrate into a competitive workplace. ORS interventions focus on supporting individuals in maintaining competitive integrated employment. Such services are provided off-site.

4) Clinical Treatment: designed to help stabilize, ameliorate and control an individual's symptoms of mental illness. Clinical Treatment interventions are expected to be highly integrated into the support and rehabilitation focus of the PROS program. The frequency and intensity of Clinical Treatment services must be commensurate with the needs of the target population.

There are 3 license categories for PROS programs: Comprehensive PROS with clinical treatment (provides all 4 components), Comprehensive

PROS without clinical treatment (provides CRS, IR and ORS components), and limited license PROS (provides IR and ORS components only).

All PROS providers will be required to offer individualized recovery planning services and pre-admission screening services. Any additional services may be offered if they are clinically appropriate and approved by OMH. Persons eligible for admission to a PROS program must: be 18 years of age or older; have a designated mental illness diagnosis; have a functional disability due to the severity and duration of mental illness; and have been recommended for admission by a licensed practitioner of the healing arts. Such recommendation may be made by a member of the PROS staff, or through a referral from another provider.

A PROS provider will be required to continuously employ an adequate number and appropriate mix of clinical staff consistent with the objectives of the program and the number of individuals served. Providers must maintain an adequate and appropriate number of professional staff relative to the size of the clinical staff. At least one of the members of the provider's professional staff must be a licensed practitioner of the healing arts, and must be employed on a full-time basis. IR services must be provided by, or under the direct supervision of, professional staff. The regulation provides that if a PROS provider has recipient employees, such employees must adhere to the same requirements as other PROS staff, and must receive training regarding confidentiality requirements.

An Individualized Recovery Planning (IRP) process must be carried out by, or under the direct supervision of, a member of the professional staff, and must be in collaboration with the individual and any persons the individual has identified for participation. The regulation sets out the contents and the time frames for development of the IRP.

The regulation provides standards and requirements that must be met in order for providers to receive medicaid reimbursement. The reimbursement will be based on a case payment basis in accordance with the total number of hours of service provided to PROS participants and collaterals in specific components. The rate of payment will be a monthly fee determined by the Commissioner and approved by the Division of the Budget. Fee schedules, based on defined Upstate and Downstate geographic area, are included in the regulation.

The regulation also addresses requirements relating to the content of the case record, co-enrollment in PROS and other mental health programs, quality improvement, organization and administration, governing body, recipient rights, and physical space and premises.

Text of proposed 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

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

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

Regulatory Impact Statement

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

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

Section 41.05 of the Mental Hygiene Law provides that a local governmental unit shall direct and administer a local comprehensive planning process for its geographic area in which all providers of service shall participate and cooperate through the development of integrated systems of care and treatment for people with mental illness.

Subdivision (a) of Section 43.02 of the Mental Hygiene Law provides that payments under the medical assistance program for services approved by the Office of Mental Health shall be at rates certified by the Commissioner of Mental Health and approved by the Director of the Budget. Subdivision (b) of Section 43.02 of the Mental Hygiene Law gives the Commissioner authority to request from operators of facilities licensed by the Office of Mental Health such financial, statistical and program information as the Commissioner may determine to be necessary. Subdivision (c) of Section 43.02 of the Mental Hygiene Law gives the Commissioner of Mental Health authority to adopt rules and regulations relating to methodologies used in establishment of schedules of rates for services.

Sections 364(3) and 364-a(1) of the Social Services Law give the Office of Mental Health responsibility for establishing and maintaining standards for medical care and services in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

2. Legislative Objectives: Articles 7, 31 and 43 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs and establish rates of payments for services under the Medical Assistance program. Sections 364 and 364-a of the Social Services Law reflect the role of the Office of Mental Health regarding medicaid reimbursed programs.

3. Needs and Benefits: The Personalized Recovery-Oriented Services (PROS) initiative will create a framework to assist individuals and providers in improving both the quality of care and outcomes for people with serious mental illness in New York State. The body of this section refers to several reports or studies that serve as the basis for this rule and sets forth how these reports or studies were used to determine the necessity for and benefits to be derived from this initiative. An appropriate citation and summary of each referenced report appears in a note at the end of this section.

The Institute of Medicine of the National Academy of Sciences issued a report in 2001 entitled *Crossing the Quality Chasm: A New Health System for the 21st Century*. (Note 1.) This report indicates that chronic conditions are now the leading cause of illness; there are effective practices to treat many of these conditions but these practices are not generally available on the front lines of medicine (knowledge does not readily move into general practice); and the delivery system is fragmented and care is often not coordinated, leading to poor quality outcomes for healthcare consumers.

As with physical healthcare, scientifically proven effective treatment and rehabilitation practices for psychiatric conditions are not being promptly incorporated into treatment settings. The 1998 *Schizophrenia Patient Outcome Research Team (PORT)* report (Note 2.) found that in many cases only a small percentage of people with schizophrenia were receiving services that had been proven effective. For example only 9% received family education and support, 23% received vocational rehabilitation, and 29% received the appropriate dose of medication on an ongoing basis.

A major national project is underway to test approaches to move six science based practices into the front lines of treatment settings. These practices include:

- Wellness Self Management
- Supported Employment
- Family Psycho-education
- Assertive Community Treatment (ACT)
- Integrated Treatment for Co-occurring Mental Health and Substance Abuse Disorders
- Evidence-Based Medication

Researchers have shown that if scientifically validated practices are offered in combination, the various science interventions work together to improve clinical outcomes. Dr. Ian Falloon has demonstrated, in his international work on optimal treatment (Note 3.), that if family education, problem solving and social skills training are added to medication therapy and case management, one year relapse rates can be reduced from 54% to as low as 14%.

In April of 2002, President Bush announced the New Freedom Commission on Mental Health. The final report of this Commission, *Achieving the Promise: Transforming Mental Health Care in America* (Note 4.), was submitted to the President in July, 2003. The report indicated that the current system, in many cases, is fragmented and not recovery oriented. Referencing the report *Mental Health: A Report of the Surgeon General* (Note 5.), issued in 1999, the New Freedom Commission pointed out that scientific advances in treatment approaches for mental illness are often not readily available to Americans in need of mental health services.

These same issues are present in portions of the mental health system in New York State. Many of the current services, programs, and licensing requirements have their roots in the community support program movement (CSP) of the 1980's and 90's. Although these approaches to managing symptoms, providing support and accepting long term disability were "Astate of the art" at the time, these community support services now need to be updated to reflect current science based approaches to treatment and rehabilitation and to embrace a recovery focus and culture of hope.

This regulation will improve New York's current program and licensing categories by promoting accountability for sustained progress toward recovery. For example, currently an Intensive Psychiatric Rehabilitation Treatment Program (IPRT) must close a case when a consumer achieves the stated goal even if the person needs ongoing support to maintain (keep) that goal. This results in a discharge, followed by an admission, in order to achieve a transfer to a new program. The PROS approach will reduce such

transfers and provide for a more comprehensive and coordinated approach to treatment.

To address these issues nationally, the New Freedom Commission recommends:

- New service delivery patterns and incentives to insure easy and continuous access to the most current treatments and best support services.
- Individualized plans of care for managing the illness, developed in full partnership with consumers and families. This plan will include treatment and supports and other services to allow consumers to integrate into the community and improve their quality of life.
- Incentives must change to encourage continuous improvement in agencies that provide care.
- Increased accountability and greater flexibility must go hand in hand to expand choices, and the range of services and creative programs.

The New York State Office of Mental Health, with input from local government, consumers, family members and provider organizations, has developed a new Medicaid license: PROS. This license takes advantage of the flexibility offered through the Rehabilitation Option of the Federal Medicaid Program. The license gives local government and providers the ability to integrate multiple programs into a comprehensive rehabilitation service. Providers may combine clubhouses, employment services, intensive psychiatric rehabilitation treatment (IPRT) programs and other rehabilitation program categories, reducing fragmentation and increasing continuity of care and accountability for achieving recovery goals. Also, there is the option to incorporate Continuing Day Treatment (CDT) programs and clinic treatment programs into a PROS license. These two program categories are currently licensed separately under mental health regulations.

The new PROS license will give service providers the ability to support consumers as they progress with their recovery. The purpose of PROS programs is to assist individuals in recovery from the disabling effects of mental illness through the coordinated delivery of a customized array of rehabilitation, treatment and support services. Such services are expected to be available both in traditional program settings and in off-site locations where such individuals live, learn, work or socialize. Providers must create a therapeutic environment which fosters awareness, hopefulness and motivation for recovery, and which supports a harm reduction philosophy.

The PROS program structure combines under one license basic rehabilitation services; time limited, goal focused intensive rehabilitation, which a consumer can access at various points in the recovery process; vocational support, which allows a provider to offer ongoing support to an individual who has secured a job; and an optional clinical treatment component, which allows treatment services to be fully integrated into rehabilitation planning and service provision. All these components are coordinated toward a person's recovery using an Individualized Recovery Plan (IRP).

The PROS license will be used to advance the adoption on the front lines of care of several scientifically proven practices which have produced superior outcomes for individuals with severe and persistent psychiatric conditions. These include wellness self-management (illness management and recovery), family psycho-education, supported employment, integrated treatment for co-occurring mental illness and substance abuse, and evidence-based medication practices. By using the comprehensive nature of the PROS license and the IRP, these practices will be able to be provided in combination, offering the potential to amplify recovery outcomes.

Providers will be asked to collect outcome data over time in the areas of psychiatric hospitalization, emergency room use, contact with the criminal justice system, consumer satisfaction, employment, education and housing stability. This data will be used to help determine program effectiveness and each provider will be asked to develop an ongoing quality improvement process using this outcome data.

The design of PROS is intended to address many of the care delivery system problems identified by the national studies. Access to the range of services needed to facilitate recovery will be increased due to the comprehensive nature of the license. IRP will promote consumer and provider collaboration toward recovery and will foster integration of rehabilitation, support and treatment, thereby reducing fragmentation. The flexibility of the license will stimulate creative development of recovery oriented services. Consumers are allowed to choose services from more than one PROS provider, so consumer choice is preserved. The design encourages a provider to work with a consumer throughout the recovery process, enhancing accountability for outcomes. By collecting outcome data and using it to help improve individual and program effectiveness, a data based

continuous quality improvement process is introduced. The various aspects of the PROS license, when viewed as a whole, support and encourage a recovery focused culture and service delivery system.

Note 1. *Crossing the Quality Chasm: A New Health System for the 21st Century*, March 1, 2001, Institute of Medicine, 500 Fifth Street NW, Washington, DC 20001, Summary: This report from the committee on the Quality of Health Care in America makes an urgent call for fundamental change to close the quality gap, recommends a redesign of the American health care system, and provides overarching principles for specific direction for policymakers, health care leaders, clinicians, regulators, purchasers, and others. It offers a set of performance expectations for the 21st century health care system, a set of 10 new rules to guide patient-clinician relationships, a suggested organizing framework to better align incentives inherent in payment and accountability with improvement in quality, and key steps to promote evidence-based practice and strengthen clinical information systems. Analyzing health care organizations as complex systems, this report also documents the causes of the quality gap, identifies current practices that impede quality care, and explores how systems approaches can be used to implement change. Copies of *Crossing the Quality Chasm: A New Health System for the 21st Century*, are available for sale from the National Academy Press (NAP); call (800) 624-6242, or visit the NAP home page at www.nap.edu. The full text is available at <http://www.nap.edu/books/0309072808/html>.

Note 2. *At Issue: Translating Research Into Practice: The Schizophrenia Patient Outcomes Research Team (PORT) Treatment Recommendations*, Lehman, Anthony F. and Steinwachs, Donald M., *Schizophrenia Bulletin*, 24(1):1-10, 1998, Summary: Beginning in 1992, the Agency for Health Care Policy and Research and the National Institute of Mental Health funded the Schizophrenia Patient Outcomes Research Team (PORT) to develop and disseminate recommendations for the treatment of schizophrenia based on existing scientific evidence. These Treatment Recommendations are presented in final form for the first time, and are based on exhaustive reviews of the treatment outcomes literature and focus on those treatments for which there is substantial evidence of efficacy. The recommendations address antipsychotic agents, adjunctive pharmacotherapies, electroconvulsive therapy, psychological interventions, family interventions, vocational rehabilitation, and assertive community treatment/intensive case management. Support for each recommendation is referenced to previous PORT literature reviews, and the recommendations are referenced according to the level of supportive evidence. The PORT Treatment Recommendations provide a basis for moving toward "evidence-based" practice for schizophrenia and identify both the strengths and limitations in our current knowledge base. Reprint requests should be sent to Dr. A. F. Lehman, Depart. Of Psychiatry, University of Maryland School of Medicine, 645 West Redwood St., Baltimore, M.D. 21201.

Note 3. *Optimal Treatment for Psychosis in an International Multi-site Demonstration Project*, Ian R. H. Falloon, M.D., D.Sc. and The Optimal Treatment Project Collaborators, *Psychiatric Services*, 1999 May; 50(5):615-8. Summary: In the past three decades several clinical strategies for the treatment and rehabilitation of schizophrenia have been empirically validated. It is generally agreed that all persons with a schizophrenic disorder should be provided with a combination of three essential interventions: optimal dosages of antipsychotic medication; education for themselves and their caregivers to cope more effectively with environmental stresses; and assertive case management to help prevent and resolve major social needs and crises, including exacerbations of symptoms. Despite strong scientific support for the routine clinical implementation of these strategies, few treatment programs provide more than pharmacotherapy, and even this intervention is seldom applied in the manner associated with the best results achieved in controlled clinical trials. Only one clinical trial has attempted to determine the efficacy of providing all of the recommended treatment components to individuals with schizophrenia. In that study, a group of 40 individuals with schizophrenia received carefully titrated antipsychotic medication, family psychoeducation, social skills training, and case management; none of the study participants who received the treatments had a relapse in the first year of the program. The relapse rate was 40 percent in the first year for a comparison group receiving only medications and case management; 21 percent for a group who received medications, case management, and social skills training; and 19 percent for a group who received medications, case management, and family psychoeducation. By the second year, however, relapse rates for the groups receiving family psychoeducation and social skills training began to approach the level for the group receiving only medication and case management. The presumptive reason given for this outcome was that the benefits of the interventions dissipated with their termination, high-

lighting the importance of offering efficacious psychosocial interventions on a flexible, as needed or maintenance basis, just as medication is provided. Building on this finding, Dr. Ian Falloon demonstrated that publicly funded services could deliver evidence-based interventions for schizophrenic, affective, and anxiety disorders in routine practice, with outcomes comparable to those found in randomized controlled trials and without the need for additional resources. Soon thereafter, Dr. Falloon recruited a large number of investigators and clinicians with ties to routine mental health services for persons with schizophrenia and established an international collaboration with the goal of implementing and evaluating optimal treatment in ordinary clinical facilities.

Note: 4. New Freedom Commission on Mental Health, *Achieving the Promise: Transforming Mental Health Care in America*, DHHS Pub. No. SMA-03-3831. Rockville, MD: 2003. Summary: In February 2001, President George W. Bush announced his New Freedom Initiative to promote increased access to educational and employment opportunities for people with disabilities. The President's New Freedom Commission on Mental Health is a key component of this initiative. The President directed the Commission's members to study the problems and gaps in the mental health system and make concrete recommendations for immediate improvements that the Federal government, State governments, local agencies, as well as public and private health care providers, can implement. The Commission's findings confirm that there are unmet needs and that many barriers impede care for people with mental illness. In any given year, about 5% to 7% of adults have a serious mental illness. A similar percentage of children, about 5% to 9%, have a serious emotional disturbance. Over the years, science has broadened our knowledge about mental health and illness, showing the potential to improve the way in which mental health care is provided. However, despite substantial investments that have enormously increased the scientific knowledge base and have led to developing many effective treatments, many Americans are not benefiting from these investments. Far too often, treatments and services that are based on rigorous clinical research languish for years rather than being used effectively at the earliest opportunity. To achieve the promise of community living for everyone, new service delivery patterns and incentives must ensure that every American has easy and continuous access to the most current treatment and best support services. This publication may be accessed electronically through the following web site: www.mentalhealthcommission.gov. For free copies of this document call the National Mental Health Information Center at 1-800-662-4357.

Note: 5. U.S. Department of Health and Human Services. *Mental Health: A Report of the Surgeon General*. Rockville, MD: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services, National Institutes of Health, National Institute of Mental Health, 1999. Summary: The past century has witnessed extraordinary progress in improvement of the public health through medical science and ambitious, often innovative, approaches to health care services. Previous Surgeons General reports have saluted our gains while continuing to set ever higher benchmarks for the public health. Through much of this era of great challenge and greater achievement, however, concerns regarding mental illness and mental health too often were relegated to the rear of our national consciousness. Tragic and devastating disorders such as schizophrenia, depression and bipolar disorder, Alzheimer's disease, the mental and behavioral disorders suffered by children, and a range of other mental disorders affect nearly one in five Americans in any year, yet continue too frequently to be spoken of in whispers and shame. Fortunately, leaders in the mental health field, fiercely dedicated advocates, scientists, government officials, and consumers, have been insistent that mental health flow in the mainstream of health. This report makes evident that the neuroscience of mental health, a term that encompasses studies extending from molecular events to psychological, behavioral, and societal phenomena, has emerged as one of the most exciting arenas of scientific activity and human inquiry. We recognize that the brain is the integrator of thought, emotion, behavior, and health. Indeed, one of the foremost contributions of contemporary mental health research is the extent to which it has mended the destructive split between "Amental" and "Aphysical" health. We know more today about how to treat mental illness effectively and appropriately than we know with certainty about how to prevent mental illness and promote mental health. Common sense and respect for our fellow humans tells us that a focus on the positive aspects of mental health demands our immediate attention. Even more than other areas of health and medicine, the mental health field is plagued by disparities in the availability of and access to its services. These disparities are viewed readily through the lenses of racial and cultural diversity, age, and gender. A key disparity often hinges on a

person's financial status; formidable financial barriers block off needed mental health care from too many people regardless of whether one has health insurance with inadequate mental health benefits, or is one of the 44 million Americans who lack any insurance. Promoting mental health for all Americans will require scientific know-how but, even more importantly, a societal resolve that we will make the needed investment. The investment does not call for massive budgets; rather, it calls for the willingness of each of us to educate ourselves and others about mental health and mental illness, and thus to confront the attitudes, fear, and misunderstanding that remain as barriers before us.

Copies of this report are available from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954.

4. Costs:

a. Any additional costs to existing efficiently and economically run programs that are converting to PROS will be fully funded through the PROS Medicaid fee and/or start up funding provided by the Office of Mental Health.

b. Sufficient funding has been included in the 2004-05 enacted budget to enable economically and efficiently run programs to convert to PROS. Approximately 350 providers have programs that are eligible for conversion to PROS. Existing resources associated with these programs include approximately \$251 million in gross program funding, of which \$139 million is State funding, \$14 million is local funding and \$97 million is Federal funding. After conversion to PROS, gross program funding is estimated to be \$283 million of which State resources are \$129 million, local resources are \$14 million and Federal resources are \$140 million. The implementation of PROS is estimated to result in no increase in local funding.

5. Local Government Mandates: The regulation will not mandate any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts. The regulation will provide for optimal county involvement in the process of evaluating the quality and appropriateness of PROS programs. Counties may choose to participate in this process with the Office of Mental Health, but it is not required.

6. Paperwork: The regulatory amendment will require programs that participate to complete the paperwork which is necessary to receive medical assistance payments. For programs that have not previously billed Medicaid there will be new requirements involving the Medicaid billing process. Integrating multiple programs under a single new PROS license will however greatly reduce separate required filings for operating certificates, separate treatment planning, paperwork associated with admission, discharge and transfers or referrals to separate programs, and separate required financial reporting.

7. Duplication: The regulatory amendment does not duplicate existing State or federal requirements.

8. Alternatives: The only alternative considered was to continue the current program and licensing categories and current funding approaches. This alternative was rejected because of deficiencies in the current approaches and the need to access additional federal funding.

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

10. Compliance Schedule: The regulatory amendment will be effective upon promulgation of this rule as a final agency action.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not submitted with this notice because this new rule will not impose an adverse economic impact on small businesses or local governments. While this rule, which establishes a new Personalized Recovery-Oriented Services (PROS) license, will result in changes in the organization and administration of existing programs and services and will establish new standards for obtaining reimbursement, the reimbursement rates established under this regulation have been designed to provide sufficient funding to meet the costs associated with regulatory compliance.

The providers who will be subject to this rule will be organizations that apply to establish a PROS program. The majority of these provider organizations are not-for-profit corporations and county governments who currently operate outpatient programs funded and licensed by the Office of Mental Health and/or provide mental health services under contract with local governments and/or OMH and supported by state and/or local funding.

The existing programs and services that will transition into PROS include Intensive Psychiatric Rehabilitative Treatment and Continuing Day Treatment, currently licensed by the Office of Mental Health (OMH). They also include services currently funded by OMH, but not currently

required to be licensed, such as Psychosocial Clubs, On-Site Rehabilitation, Ongoing Integrated Employment, Enclave in Industry, Affirmative Business, Client Worker and Supported Education.

The licensed programs are currently required to be established through a process that is subject to Part 551 of 14NYCRR and must comply, on an ongoing basis, with the appropriate program and fiscal regulations as contained in Title 14, including standards for receiving Medicaid reimbursement. The unlicensed programs are established and provide services under contracts with OMH and/or the local governmental unit (the county or the City of New York, depending on location) and are subject to contractual program and fiscal requirements. The requirements are, in part, specific to the funding streams involved, which include: Local Assistance Regular, Community Support Services, Reinvestment, Ongoing Integrated Employment, Psychiatric Rehabilitation, Flexible Funding and Medicaid. While many of the fiscal contractual requirements are the same there are certain fiscal requirements specific to certain funding streams. Most funding passes from the State to local governments and then to providers and are subject to both State and local government contract requirements.

The PROS program will promote comprehensive and coordinated services, foster continuity, and result in more effective program organization and service delivery. It will reduce program related paper work involved with transfers, for example, an Intensive Psychiatric Rehabilitation Program must currently discharge an individual when that person achieves the stated goal even if the person needs ongoing support to maintain that goal. That individual's ongoing needs may then require transfer to another program in order to obtain necessary clinical services. Since the PROS program provides for integration of programs and services, it will serve to reduce the paperwork required in such a situation, as what were formerly separate programs and services will now be service components under a single PROS license.

The PROS regulation also provides for a case payment approach to reimbursement which simplifies the Medicaid billing process. The multiple program and service components that formerly had to comply with separate contract requirements for each program funding stream and/or Medicaid fee-for-service with a more complex billing process will, under PROS, come together into a single program and be funded by a comprehensive per client case payment, billed on a monthly basis. For a number of service providers, billing Medicaid, as opposed to contract funding, will be a new experience. In recognition of this, OMH will provide start-up funding for Medicaid billing development costs for providers transitioning to a PROS license in Phase I of implementation. Such start-up funds will be provided in accordance with need and availability of appropriations. Model record keeping forms will also be developed by OMH and made available to all providers, for use at their discretion. The case payment rate has been developed at a level sufficient to fund the costs of providing the PROS services, including the costs of documenting compliance and billing for services.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this notice because the amended rule will not impose any adverse economic impact on rural areas. Rural and non-rural programs will benefit from the integration of now separate programs and services under a single new Personalized Recovery-Oriented Services (PROS) license.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because it will have no negative impact on jobs and employment opportunities. It is expected that employment opportunities for individuals receiving services from a new Personalized Recovery-Oriented Services (PROS) provider will increase when compared to the current fragmented service system.

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-16-04-00006-P	April 21, 2004

PSC-16-04-00008-P	April 21, 2004
PSC-43-04-00024-P	October 27, 2004
PSC-01-05-00011-P	January 5, 2005
PSC-03-05-00022-P	January 19, 2005

NOTICE OF ADOPTION

Provision of High Capacity Loops as Unbundled Network Elements by Verizon New York Inc.

I.D. No. PSC-48-03-00010-A

Filing date: Feb. 10, 2005

Effective date: Feb. 10, 2005

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

Action taken: The commission, on Feb. 9, 2005, adopted an order in Case 02-C-1233 directing Verizon New York Inc. (Verizon) to comply with the requirement set forth in the triennial review order issued by the Federal Communications Commission.

Statutory authority: Public Service Law, sections 91, 92, 94 and 96

Subject: High-capacity facilities by Verizon.

Purpose: To perform routine network modifications necessary to make high capacity loops available as unbundled network elements.

Substance of final rule: The Commission directed Verizon New York Inc. to commence immediately to make any and all routine network modifications necessary to make available high capacity (DS1 and DS3) unbundled network element loops requested by a competitive local exchange carrier, without imposing any charge for such modifications.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (02-C-1233SA1)

NOTICE OF ADOPTION

Water Rates and Charges by National Aqueous Corporation

I.D. No. PSC-24-04-00009-A

Filing date: Feb. 10, 2005

Effective date: Feb. 10, 2005

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

Action taken: The commission, on Feb. 9, 2005, adopted an order in Case 04-W-0641 allowing National Aqueous Corporation (NAC) to amend its tariff schedule, P.S.C. No. 1—Water.

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

Subject: Electronic tariff filing.

Purpose: To increase annual revenues and establish an escrow account.

Substance of final rule: The Commission approved an increase in National Aqueous Corporation's (NAC) annual revenues by \$17,176 or 136% to be phased in over two years and allowed NAC to establish an Escrow Account, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-W-0641SA2)

NOTICE OF ADOPTION

New Types of Electricity Meters, Transformers and Auxiliary Devices by Ritz Instrument Transformer Inc.

I.D. No. PSC-43-04-00011-A

Filing date: Feb. 14, 2005

Effective date: Feb. 14, 2005

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

Action taken: The commission, on Feb. 9, 2005, adopted an order in Case 04-E-1159 approving Ritz Instrument Transformer Company's request to use electrical transformers manufactured by Ritz Instrument Transformer Inc. (Ritz).

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

Subject: New types of electrical transformers.

Purpose: To permit the use of Ritz's six families of electrical transformers for revenue metering and billing applications in New York State.

Substance of final rule: The Commission authorized the use of the following series of electrical transformers manufactured by Ritz Instrument Transformer Inc.: GIFU 15.01-GIF 72.5, VEF 15-10-72.5, VZF 15-10-36-10, OSKF 72.5-765, OTEF 72.5-765, KOTEF 72.5-345 and KSKEF 123-765 for revenue metering and billing applications in New York State.

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-1159SA1)

NOTICE OF ADOPTION

Submetering of Electricity by American Metering & Planning Services, Inc.

I.D. No. PSC-43-04-00012-A

Filing date: Feb. 11, 2005

Effective date: Feb. 11, 2005

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

Action taken: The commission, on Feb. 9, 2005, adopted an order in Case 04-E-1172 allowing American Metering and Planning Services, Inc. on behalf of 125 Court Street, LLC to submeter electricity at 125 Court St., Brooklyn, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (5), (12) and (14)

Subject: Submetering of electricity.

Purpose: To authorize the submetering of electricity at a new residential apartment complex.

Substance of final rule: The Commission approved the petition of American Metering and Planning Services, Inc. on behalf of 125 Court Street, LLC to submeter electricity at 125 Court Street, Brooklyn, New York, 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-1172SA1)

NOTICE OF ADOPTION

New Types of Electricity Meters by General Electric Energy**I.D. No.** PSC-44-04-00005-A**Filing date:** Feb. 14, 2005**Effective date:** Feb. 14, 2005

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

Action taken: The commission, on Feb. 9, 2005, adopted an order in Case 04-E-1220 approving General Electric Company's request for permission to use the General Electric I-210 electronic watt-hour meter line.

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

Subject: New types of electronic meters.

Purpose: To authorize the use of General Electric I-210 line of electricity meters for residential and commercial metering applications.

Substance of final rule: The Commission approved the use of the General Electric I-210 line of electricity meters for residential and commercial metering applications in New York State.

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-1220SA1)

NOTICE OF ADOPTION

Account Authorization by Corning Natural Gas Corporation**I.D. No.** PSC-44-04-00006-A**Filing date:** Feb. 14, 2005**Effective date:** Feb. 14, 2005

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

Action taken: The commission, on Feb. 9, 2005, adopted an order in Case 04-G-1183 allowing Corning Natural Gas Corporation (Corning Gas) to defer incremental expenses over and above the level last established rates.

Statutory authority: Public Service Law, section 69-9

Subject: Deferred accounting treatment.

Purpose: To defer accounting treatment for uncollectible account expense incurred in the fiscal year ended Sept. 30, 2004.

Substance of final rule: The Commission approved the request of Corning Natural Gas Corporation for deferred accounting treatment of incremental uncollectible account expense of \$74,883 for the fiscal year ended September 30, 2004.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-G-1183SA1)

NOTICE OF ADOPTION

Transfer of Water Plant Assets by the Town of Schodack**I.D. No.** PSC-45-04-00022-A**Filing date:** Feb. 9, 2005**Effective date:** Feb. 9, 2005

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

Action taken: The commission, on Feb. 9, 2005, adopted an order in Case 04-W-1307 approving the transfer of Golf View Water Supply Co.'s water plant assets to the Town of Schodack.

Statutory authority: Public Service Law, section 89-h

Subject: Transfer of water plant assets.

Purpose: To allow the Town of Schodack to acquire water system assets from Golf View Water Supply Co.

Substance of final rule: The Commission approved a request by the Town of Schodack for the acquisition of the water plant system of Golf View Water Supply Co., subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-W-1307SA1)

NOTICE OF ADOPTION

Economic Development by Orange and Rockland Utilities, Inc.**I.D. No.** PSC-49-04-00004-A**Filing date:** Feb. 9, 2005**Effective date:** Feb. 9, 2005

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

Action taken: The commission, on Feb. 9, 2005, adopted an order in Case 04-E-1449 approving revisions to Orange and Rockland Utilities, Inc.'s (O&R) tariff schedule, P.S.C. No. 2—Electricity.

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

Subject: Tariff filing by O&R.

Purpose: To add a new provision to Rider H—Economic Development Rider.

Substance of final rule: The Commission authorized Orange and Rockland Utilities, Inc. to establish a new provision, Revenue Test for Facility Extensions, to its Rider H—Economic Development Rider to provide an additional incentive for certain qualifying customers, owning buildings that would benefit from improvements to the company's facilities, to locate or expand in the company's service territory.

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-1449SA1)

NOTICE OF ADOPTION

Pole Attachment Rates by Bath Electric, Gas & Water Systems**I.D. No.** PSC-51-04-00012-A**Filing date:** Feb. 10, 2005**Effective date:** Feb. 10, 2005

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

Action taken: The commission, on Feb. 9, 2005, adopted an order in Case 04-E-1471 approving with modifications Bath Electric, Gas & Water Systems' (Bath) tariff filing to establish annual pole attachment rates.

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

Subject: Tariff filing to establish annual pole attachment rates.

Purpose: To revise pole attachment charges.

Substance of final rule: The Commission denied Bath Electric, Gas & Water Systems' (Bath) proposal to establish a pole attachment charge of \$12.18 and directed Bath to file further amendments to its Schedule P.S.C. No. 1 — Electricity to institute a pole attachment charge of \$2.95.

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-1471SA1)

NOTICE OF ADOPTION

Lightened Regulation by Calpine Bethpage 3, LLC

I.D. No. PSC-51-04-00013-A

Filing date: Feb. 11, 2005

Effective date: Feb. 11, 2005

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

Action taken: The commission, on Feb. 9, 2005, adopted an order in Case 04-E-1549 authorizing lightened regulation of Calpine Bethpage 3, LLC (Calpine) as an electric corporation.

Statutory authority: Public Service Law, sections 4(1), 66(1), 70 and 110

Subject: Request for lightened regulation.

Purpose: To allow Calpine to be regulated under a lightened regulatory regime.

Substance of final rule: The Commission granted Calpine Bethpage 3, LLC an order providing for lightened regulation of it as an electric corporation operating in the wholesale electric market, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-E-1549SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Intercarrier Agreement between Frontier Communications of New York, Inc. and Frontier Communications of America, Inc.

I.D. No. PSC-09-05-00008-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Frontier Communications of New York, Inc. and Frontier Communications of America, Inc. to revise the interconnection agreement effective on June 6, 2003.

Statutory authority: Public Service Law, section 94(2)

Subject: Intercarrier agreements to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Frontier Communications of New York, Inc. and Frontier Communications of America, Inc. in June 2003. The companies subsequently have jointly filed amendments to clarify the provisions re-

garding interconnection trunking arrangements. The Commission is considering these changes.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-C-1515SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Natural Gas by Hamlet on Olde Oyster Bay

I.D. No. PSC-09-05-00009-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by the Hamlet on Olde Oyster Bay for permission to submeter gas at the Hamlet of Olde Oyster Bay, One Hamlet Dr., Village of Plainview, Nassau County, in the service territory of KeySpan Energy Delivery (Long Island).

Statutory authority: Public Service Law, section 65(1), (2), (3), (4), (5), (8), (9), (10), (12) and (14)

Subject: Submetering of natural gas service.

Purpose: To submeter natural gas to a commercial customer.

Substance of proposed rule: The Hamlet on Olde Oyster Bay has filed a petition for approval to submeter natural gas service to commercial tenants, located in the Hamlet of Olde Oyster Bay, in the Service Territory of KeySpan Energy Delivery (Long Island), filed in C 26998. The Commission may approve, reject, or modify, in whole or in part, the request.

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

Data, views or arguments may be submitted to: Jaclyn A. Brillling, 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-G-0155SA1)

Racing and Wagering Board

EMERGENCY RULE MAKING

Pari-Mutuel Wagering

I.D. No. RWB-09-05-00006-E

Filing No. 146

Filing date: Feb. 14, 2005

Effective date: Feb. 14, 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 and 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 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: 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 to head to head wager is cancelled, declared non-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
- 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 non-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

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 May 14, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Erin Dahlmeyer, Racing and Wagering Board, One Watervliet Ave. Ext., Albany, NY 12206, (518) 457-8460, e-mail: edahlmeyer@racing.state.ny.us

Regulatory Impact Statement

1. Statutory Authority: The New York State Racing and Wagering Board ("Board") is authorized to promulgate these rules pursuant to Racing, Pari-Mutuel Wagering and Breeding Law ("RPMWBL") §§ 101 and 909. Under § 101, the Board has general jurisdiction over all horse racing activities and all pari-mutuel thoroughbred racing activities. Under § 909, the Board has been directed to promulgate rules and regulations to administer the conduct and offering of proposition wagers.

2. Legislative Objectives: To enable the Board to promulgate rules and regulations to administer the conduct and offering of proposition wagers, in order to implement § 909 of the RPMWBL.

3. Needs and Benefits: The purpose of this rulemaking is to promulgate rules and regulations to implement § 909 of the RPMWBL as mandated by the Legislature in that statute. RPMWBL § 909 was passed into law on August 17, 2004 and has an effective date of February 14, 2005. The statute enables track operators in New York State to offer a new type of wager called a proposition wager on its own races. A proposition wager is a type of wager that may be placed by a bettor who must choose which of two or three betting interests will finish before the other in the order of finish. The statute further broadens the scope of the traditional wager that may be placed in New York in that it permits the track operator to offer the wagerer the opportunity to place wagers on trainers, jockeys or drivers. For instance, the bettor may choose whether a given horse finish ahead of one or two other horses, or which one of two or three jockeys will win a race or more races than the other either in one day or the course of days.

The impetus for the implementation and enactment of the law permitting proposition wagering in New York was the fact that in October 2005 the Breeder's Cup World Thoroughbred Championships (Breeder's Cup) will be hosted at Belmont Park. Founded in 1982, the Breeder's Cup is the year-end international showcase of the racing world's greatest stars. It is hosted by different racetracks every year around the North America. Major tracks compete aggressively for the right to stage the championship program. It is like the Super Bowl of racing, attracting owners and trainers from all over the world. With the exception of two races with purses of two-hundred fifty thousand dollars (\$250,000.00), the remaining races on the Breeder's Cup racing program's card have purse ranging from one to four million dollars (\$1,000,000.00-\$4,000,000.00). The quality of racing on this day is the highest. It is televised and simulcasted all over the world and there are major corporate sponsors.

Over the last three years the Breeder's Cup has been hosted at tracks in California, Illinois, and Texas. The host states permitted proposition wagers to be offered at their tracks on Breeder's Cup day at the request of the Breeder's Cup.

RPMWBL § 909 instructs that in proscribing the rules and regulations, the Board shall consider (i) 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 Board has endeavored to propose rules that take into consideration the aforementioned legislative directives; make it attractive for the Breeder's Cup (thereby enhancing the best interests of racing in New York); while offering other times for track operators, outside of breeder's cup, to offer, the opportunity to avail themselves of offering a proposition wager.

In carrying out its legislative charge of considering the class of race upon which to offer the race, the Board considered the potential for manipulation or abuse by third parties or by licensees of the board. In doing so the Board sought comments from the industry and concluded that the class of race on which a proposition wager may be offered should be races with a minimum purse amount of two hundred fifty thousand dollars (\$250,000.00) or more. The New York Racing Association ("NYRA"), is the track operator of Belmont Park, Aqueduct and Saratoga. NYRA operates three or four race tracks at which thoroughbred racing is conducted in the State. Their comments indicate they are not interested in offering proposition wagering on races that often or in races with purses that are less than two-hundred fifty thousand (\$250,000.00).

Also considered in making the decision the determination to limit the class of race to a minimum purse amount of two hundred fifty thousand dollars (\$250,000.00), is the fact that the tote systems in New York are outdated, and, as demonstrated by the pick six scandal, several years ago, (a bet was "rigged" through a New York OTB phone account after the races had been run), somewhat subject to chicanery. Until a more secure

system is devised to detect suspicious betting patterns, regulators cannot adopt wagering schemes that would provide more temptation for manipulation by allowing this type of wager to take place often or in lower caliber races. Also, very recently, in the press, it was disclosed that federal investigators have exposed an alleged gambling ring with accompanying allegations of illegal drugging of horses and race fixing at a New York track. The milieu is such that because the industry needs a tightening of enforcement in certain areas, certain areas cannot be given more motivation for temptation for manipulation. In races with purses of \$250,000.00 or more, the competitive level is of a higher caliber, and therefore the ethical standard is higher as the risk of loss is greater should any of the participants on that level engage in the manipulation of the outcome of a race in order to win a wager.

For the same reasons as indicated above the rulemaking permits the subject of the wager to be on a horse only. Given the current climate, the Board did not receive a positive response with respect to using jockeys, trainers, drivers and owners as the subject of a proposition wager, nor was it a type of wager the Breeder's Cup indicated it was interested in offering on Breeder's Cup day.

The rulemaking will permit the track operator to offer a proposition wager on two horses (the head to head) or three horses (the head to head to head) in a race.

The rules also delineate the methods by which the track operator seeks approval from the Board to offer the wager, and how the wager should be advertised to the betting public. The proposed rules also establish parameters for the manner in which the wager pool is set up, calculated and distributed. The rulemaking also delineates the manner in which the odds pertaining to the wager must be posted and establishes the length of time during which the the outcome of the proposition wager will be determined. The rulemaking also outlines what happens to the wager when it is cancelled and refunded, depending on whether there is a horse scratch dead heat, no contest or a race cancellation.

In devising these rules, the Board has studied 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. In addition, the Board has circulated the text of the proposed rule to racing officials, industry members and people with regulatory backgrounds for comment and has considered those comments in drafting these rules. Proposed new parts to Title 9E N.Y.C.R.R. §§ 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 this proposition wager. In response to the recent legislation pertaining to proposition wagering, the proposed rules will facilitate the regulation of the new type of wager to provide more clarity to the track operator and to provide consumer-type protections 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 costs will be incurred by the regulated entities such as the tracks and OTB's to comply with the new requirements, but that the costs will be minimal. In particular, offering a new type of bet and/or wager is something that those entities, tote systems can already accommodate. For example, the proposed rule requires that the monies derived from the proposition bets be kept separate and the proposition wagering money be segregated. The tracks and OTB's have tote systems and personnel on staff who handle these items with respect to other wager types. 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) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. There will be no cost to the agency.

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.

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, 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.

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

Drug Testing of Horses

I.D. No. RWB-09-05-00001-P

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

Proposed action: Amendment of sections 4043.6, 4043.7, 4038.18, 4120.10, 4120.11, 4109.7 and 4113.3 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 301 and 902

Subject: Drug testing of horses.

Purpose: To provide for effective testing for the drugs reserpine and fluphenazine and for the antibodies of erythropoietin and darbepoietin and the consequences of positive tests, in order to deter their use in horses that compete in pari-mutuel racing. These rules will provide for the exclusion from racing of those horses that are the subject of a positive test until there is a subsequent negative test. Claimants of horses will have the option of voiding any claim based upon the report of a positive test.

Text of proposed rule: THOROUGHBRED

AMEND Part 4043 (Drugs Prohibited and Other Prohibitions) to add a new Rule 4043.6:

4043.6 Erythropoietin and Darbepoietin

(a) *A finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from a horse shall establish that the horse is unfit to race in any subsequent race, subject to the provisions of paragraph b.*

(b) *Any horse that has been the subject of a finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from that horse shall not be entered or allowed to race in any subsequent race until the horse has tested negative for the antibodies of erythropoietin or darbepoietin in a test conducted by the laboratory.*

(c) *Notwithstanding any inconsistent provision of this Part, a horse shall not be subject to disqualification from the race and from any share of the purse in the race, and the trainer of the horse shall not be subject to application of trainer's responsibility based upon the finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from that horse.*

AMEND Rule 4038.18 (Certain Voidable Claims) to add new paragraphs b and c and reletter existing paragraphs b and c to be d and e respectively:

(a) *Post-race positive. Should the analysis of a post-race blood or urine sample taken from a claimed horse result in a post-race positive test, the claimant's trainer shall be promptly notified in writing by the stewards and the claimant shall have the option to void said claim within five days of receipt of such notice by his trainer. An election to void a claim shall be submitted in writing to the stewards by the claimant or his trainer.*

(b) *Erythropoietin and darbepoietin. Should the analysis of a post-race blood or urine sample taken from a claimed horse result in a finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from that horse, the claimant's trainer shall be promptly notified in writing by the stewards and the claimant shall have the option to void said claim within five days of receipt of such notice by*

his trainer. An election to void a claim shall be submitted in writing to the stewards by the claimant or his trainer.

(c) *Reserpine and fluphenazine. Notwithstanding any inconsistent provision of Part 4043, should the analysis of a post-race blood or urine sample taken from a claimed horse result in a finding by the laboratory that the drug reserpine or the drug fluphenazine was present in the sample taken from that horse, the claimant's trainer shall be promptly notified in writing by the stewards and the claimant shall have the option to void said claim within five days of receipt of such notice by his trainer. An election to void a claim shall be submitted in writing to the stewards by the claimant or his trainer.*

[(b)] (d) *Upper neurectomy or unreported lower neurectomy. Where an upper neurectomy as defined in subdivision (a) of section 4025.31 of this Subchapter or a lower neurectomy which has not been reported as required in subdivision (b) of section 4025.31 has been performed on a horse prior to the race in which it is claimed, the claimant shall have the option to void said claim upon written notice to the stewards from the claimant or his trainer given within 10 days following the date of the claim.*

[(c)] (e) *Undeclared pregnant mare. Where a pregnant mare has been claimed which pregnancy has not been disclosed as required in section 4038.17 of this Part, the claimant shall have the option to void the claim upon written notice to the stewards from the claimant or his trainer within 10 days following the date of the claim.*

HARNESS

AMEND Part 4120 (Drugs Prohibited and Other Prohibitions) by adding a new Rule 4120.10:

4120.10 Erythropoietin and Darbepoietin

(a) *A finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from a horse shall establish that the horse is unfit to race in any subsequent race, subject to the provisions of paragraph b. Such horse shall be placed on the steward's list.*

(b) *Any horse that has been the subject of a finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from that horse shall not be entered or allowed to race in any subsequent race until the horse has tested negative for the antibodies of erythropoietin or darbepoietin in a test conducted by the laboratory.*

(c) *Notwithstanding any inconsistent provision of this Part, a horse shall not be subject to disqualification from the race and from any share of the purse in the race and the trainer of the horse shall not be subject to application of trainer's responsibility based upon the finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from that horse.*

AMEND Rule 4109.7 (Certain Voidable Claims) to add new paragraphs b and c and reletter paragraphs b and c to be d and e respectively:

(a) *Post-race positive. Should the analysis of a post-race blood or urine sample taken from a claimed horse result in a post-race positive test, the claimant's trainer shall be promptly notified in writing by the judges and the claimant shall have the option to void said claim within five days of receipt of such notice by his trainer. An election to void a claim shall be submitted in writing to the judges by the claimant or his trainer.*

(b) *Erythropoietin and darbepoietin. Should the analysis of a post-race blood or urine sample taken from a claimed horse result in a finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from that horse, the claimant's trainer shall be promptly notified in writing by the judges and the claimant shall have the option to void said claim within five days of receipt of such notice by his trainer. An election to void a claim shall be submitted in writing to the judges by the claimant or his trainer.*

(c) *Reserpine and fluphenazine. Notwithstanding any inconsistent provision of Part 4120, should the analysis of a post-race blood or urine sample taken from a claimed horse result in a finding by the laboratory that the drug reserpine or the drug fluphenazine was present in the sample taken from that horse, the claimant's trainer shall be promptly notified in writing by the judges and the claimant shall have the option to void said claim within five days of receipt of such notice by his trainer. An election to void a claim shall be submitted in writing to the judges by the claimant or his trainer.*

[(b)] (d) *Upper neurectomy or unreported lower neurectomy. Where an upper neurectomy as defined in subdivision (a) of section 4025.31 of this Subchapter or a lower neurectomy which has not been reported as required in subdivision (b) of section 4025.31 has been performed on a horse prior to the race in which it is claimed, the claimant shall have the option to void*

said claim upon written notice to the judges from the claimant or his trainer given within 10 days following the date of the claim.

[(c)] (e) Undeclared pregnant mare. Where a pregnant mare has been claimed which pregnancy has not been disclosed as required in section 4038.17 of this Part, the claimant shall have the option to void the claim upon written notice to the judges from the claimant or his trainer within 10 days following the date of the claim.

AMEND Rule 4113.3 to add a new paragraph h:

4113.3. Reasons for placing a horse on the steward's list. A horse shall be placed on the steward's list at each track for the following reasons:

(a) it has a tube in its throat;

(b) it is dangerous or unmanageable. Such horse must work out before the judges on the main track, secure permission of the judges to qualify and then qualify in two consecutive qualifying races before release from the steward's list;

(c) it is sick, lame or unfit to race. Such horse must perform before the State veterinarian and be certified fit to race by the State veterinarian before release from the steward's list;

(d) it is unable to start satisfactorily behind the starting gate. Such horse must work out behind the starting gate, be approved by the starter and then qualify once before release from the steward's list;

(e) it has been high nerved;

(f) it has performed poorly. Such horse shall qualify once before release from the steward's list;

(g) it has tested positively for a drug. Such horse shall qualify in a workout and thereafter test negative for drugs before release from the steward's list;

(h) it has been the subject of a finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from the horse. Such horse shall test negative for the antibodies of erythropoietin or darbepoietin in a test conducted by the laboratory before release from the steward's list.

THOROUGHBRED:

4043.7 Reserpine and Fluphenazine

(a) Notwithstanding any inconsistent provision of this Part, a finding by the laboratory that the drug reserpine or the drug fluphenazine was present in the sample taken from a horse shall result in the disqualification of the horse from the race and from any share of the purse in the race.

(b) The trainer of a horse which has been the subject of a finding by the laboratory that the drug reserpine or the drug fluphenazine was present in the sample taken from that horse shall not be subject to application of trainer's responsibility based solely upon the finding by the laboratory that the drug reserpine or the drug fluphenazine was present in the sample.

HARNESS:

4120.11 Reserpine and Fluphenazine

(a) Notwithstanding any inconsistent provision of this Part, a finding by the laboratory that the drug reserpine or the drug fluphenazine was present in the sample taken from a horse shall result in the disqualification of the horse from the race and from any share of the purse in the race.

(b) The trainer of a horse which has been the subject of a finding by the laboratory that the drug reserpine or the drug fluphenazine was present in the sample taken from that horse shall not be subject to application of trainer's responsibility based solely upon the finding by the laboratory that the drug reserpine or the drug fluphenazine was present in the sample.

Text of proposed rule and any required statements and analyses may be obtained from: Robert A. Feuerstein, Counsel, Racing and Wagering Board, One Watervliet Ave. Ext., Albany, NY 12206-1668, (518) 453-8460, e-mail: info@racing.state.ny.us

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

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

Regulatory Impact Statement

Statutory authority: The Board is authorized to promulgate these rules pursuant to Racing, Pari-Mutuel Wagering and Breeding Law Section 101, 301, and 902. The Board has general jurisdiction over all horse racing and all pari-mutuel wagering activities in New York State. The Board is authorized to promulgate rules necessary to prevent the administration of drugs or other improper acts to racehorses prior to a race. The Legislature has directed that the Board promulgate any rules necessary to implement equine drug testing so that the public's confidence and the high degree of integrity in racing are assured.

Legislative objectives: To enable the New York State Racing and Wagering Board to preserve the integrity of pari-mutuel racing.

Needs and benefits: These rule amendments are necessary to provide an effective mechanism to address and deter the use in the racing horse of

the tranquilizers reserpine and fluphenazine, as well as the substances erythropoietin and darbepoietin. All drugs are being abused in an effort to gain an improper advantage in pari-mutuel racing.

The substance erythropoietin and darbepoietin, which stimulate red cell production, are similarly being abused. Erythropoietin (EPO) and darbepoietin (D-EPO) are proteins produced by the kidneys to stimulate red blood cell production. These proteins have been produced as drugs through chemical engineering and are used to treat anemia in humans associated with kidney disease and cancer treatment. These two drugs are also used in sports to improve performance due to increased oxygen carrying capacity in both humans and horses. The abuse of EPO/D-EPO is undisputed fact throughout the world. EPO abuse became so prevalent because there was not a drug test available capable of detecting its use. Dr. George Maylin, Director of the Board's equine drug testing and research program at Cornell University discovered that horses given repeated injections of EPO/D-EPO produced antibodies that could be detected in an ELISA test that he developed. The test is highly specific and is suitable for forensic purposes. This information is derived from tests on samples from horses in competition and research conducted by Dr. Maylin at the Board's Equine Drug Testing and Research Program at Cornell University.

In 2003-2004, Dr. Maylin conducted a field survey on blood samples collected from racehorses in New York State to verify the extent of the abuse problem reported by Board's investigators.

From 9-12-02 to 10-23-03, 403 samples of 37,000 blood samples tested positive for EPO/D-EPO. This was an alarming incidence of abuse. It was ten times the rate of normal drug positives. The results of this study were provided to the Board and in turn, was the basis for promulgation of the rules to regulate the abuse of the drug.

The incidence of EPO/D-EPO positive tests has been reduced from about 400 per year to only several since the rules were put in effect.

Reserpine and Fluphenazine are tranquilizer drugs that are commonly used to treat schizophrenia in humans. There is no therapeutic use of these drugs in a race horse. They are used strictly to affect the performance of a race horse.

In 2003, investigative reports were made to Dr. George Maylin indicating these drugs were being used on racehorses at the racetrack. As a consequence of these findings, Dr. George Maylin developed tests for these drugs, using experimental horses in his own barns, to develop standards and protocols for testing. Through immunoassay screening and confirmation by liquid chromatography and mass spectrometry, and mass spectrometry again, Dr. Maylin found the horse samples could test positive for reserpine and fluphenazine after 21 days of administration to a horse. In view of this fact, it could not be proven that the drug was given in violation of any current board rules, the highest being prohibited administration within seven days of post time. Once the test protocol was formalized, Dr. Maylin conducted testing on race track samples. Samples were confirmed as positive. Thus, in view of the fact that it is being used at the track, the automatic disqualification of the horse in which it is detected and the option of voiding a claim on a claimed horse with the drug present in its system is also necessary.

The Board's existing time-based equine drug rules do not provide effectively for the determination of use or sanctions. The continued and undeterred use of these drugs and substances undermines public confidence in the integrity of racing with corresponding loss of wagering handle. Wagering handle generates significant revenues for the State, municipalities, breeders and tracks. In addition, the continued abuse of the regulated drugs and substances poses a threat to the health of the horse and the safety of both the equine and human participants.

Costs: These rules will impose no new costs for state or local governments. The rule will not impose any new costs on the Racing and Wagering Board for the implementation and continued administration of the rule. The costs of manpower, testing and incidental expenses will be accomplished within existing budget limitations.

These rules will impose no costs upon regulated parties in order to comply with limitations concerning the use of the regulated drugs and substances. The only costs are those associated with the sanctions in the event of non-compliance.

Paperwork: There is no additional paperwork required by or associated with these rule amendments.

Local government mandates: This rule would impose no local government mandates.

Duplication: There are no other state or federal requirements similar to the provisions contained in the rule amendment.

Alternative approaches: There are no other significant alternatives to this rule, which was drafted to accomplish the stated benefits with the least

negative impact upon the pari-mutuel racing industry. No action would fail to address the existing problems associated with continued abuse of the drugs and substances that are the subject of these rules.

Federal standards: The rule does not exceed any minimum standards of the federal government because there are no applicable federal rules.

Compliance schedule: Compliance can be accomplished immediately.

Regulatory Flexibility Analysis

1. Effect of Rule: The rules do not apply to and thus will not adversely affect local government. The rules will impact all licensed owners and trainers of racehorses that seek to compete in pari-mutuel racing. There are thousands of such licensed owners and/or trainers. The number of horses owned or trained by such licensees may range from one to hundreds. These individuals operate businesses that generally employ less than one hundred persons.

2. Compliance Requirements: There are no required reporting or recordkeeping requirements for small businesses. There are no professional services that are likely to be needed to comply with these rules. The rules do not impose any technological requirements on the industry. The compliance component of the rules, *i.e.*, the exclusion of a horse from pari-mutuel racing competition, is a consequence of the report of a positive test. In that situation, the horse may not participate again until the horse has been retested without a positive result.

3. Professional Services: There are no professional services required to comply with the proposed rules.

4. Compliance Costs: There are few anticipated compliance costs. The licensees should already be monitoring use of drugs and other substances to assure conformity with Board rules. There will be a potential loss of purse monies associated with the exclusion of horses until a clearance test. This cost cannot be estimated due to the competitive nature of horse racing. During this time there might be lower costs associated with the care of the horse if the horse is not maintained in active training status. The cost of the necessary retest will be borne by the Board.

5. Economic and Technological Feasibility: There are no technological requirements associated with compliance. There should be no costs associated with compliance. Erythropoietin and darbepoietin have no legitimate use in the racing horse and therefore no affirmative compliance requirement exists. The drugs reserpine and fluphenazine are tranquilizers for which alternatives exist. Horsemen may comply with the prohibitions of the rule by use of alternative drugs at an equal or lesser cost.

6. Minimizing Adverse Impact: The Board attempted to minimize adverse impact, consistent with the need to assure public safety and general welfare, by excluding a horse from competition only for the limited period necessary for a negative retest and by providing for limitation of disciplinary sanctions from the otherwise general application of the trainer's responsibility rule.

7. Small Business and Local Government Participation: The Board provided notice of the concepts and general requirements of these rules to various segments of the regulated racing industry. Among those segments were the representative horsemen's associations. These associations (one per track) include most if not all of the small business industry participants (owners and trainers) as members.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rules will impact all licensed owners and trainers of racehorses that seek to compete in pari-mutuel racing. Many of the licensees affected by these rules are located within "rural areas" as that term is defined in New York State Executive Law Section 481(7). The impact of compliance of those entities located in rural areas should be substantially the same as, if not identical to that in other than rural areas.

2. Reporting, recordkeeping and other compliance requirements:

There are no required reporting or recordkeeping requirements for small businesses. There are no professional services that are likely to be needed to comply with these rules. The rules do not impose any technological requirements. The compliance component of the rules, *i.e.*, the exclusion of a horse from pari-mutuel racing competition, is a consequence of the report of a positive test. In that situation, the horse may not participate again until the horse has been retested without a positive result.

3. Costs:

There are few anticipated compliance costs. The licensees should already be monitoring use of drugs and other substances to assure conformity with Board rules. There will be a potential loss of purse monies associated with the exclusion of horses until a clearance test. This cost cannot be estimated due to the competitive nature of horse racing. During this time there might be lower costs associated with the care of the horse if

the horse is not maintained in active training status. The cost of the necessary retest will be borne by the Board.

4. Minimizing adverse impact:

As a consequence of the location of horsemen in rural areas, these rules have similar impact on rural areas as on non-rural areas of the State. The geographic location of the horses and horsemen is incidental to the substance of the rule. Consequently, there is no way to design the rule to minimize impact on rural areas.

5. Rural area participation:

The Board provided notice of the concepts and general requirements of these rules to various segments of the regulated racing industry. Among those segments were the representative horsemen's associations. These associations (one per track) include most if not all of the rural area small business industry participants (owners and trainers) as members.

Job Impact Statement

A job impact statement is not submitted with this notice because the New York State Racing & Wagering Board has determined that these rules will not have a substantial adverse impact on jobs and employment opportunities. The area of potential impact is that which will result from the exclusion of a horse from pari-mutuel competition until such time as the horse tests negative for the drug or substance that resulted in the ineligibility to participate. For the drugs reserpine and fluphenazine, it is estimated that the period of exclusion following the reported result of a positive test would be very short. Based upon the facts that these drugs may not be lawfully administered to the horse within one week before the start of the racing program and the typical ten-day period between the collection of a sample and report of a positive test, there should be a relatively short period of exclusion provided the horse is subject to a prompt retest. Although reserpine and fluphenazine are detectible beyond the one-week period, this situation differs little from the existing situations involving other drugs. Based upon experience, there will be relatively few positive tests and no substantial adverse impact on jobs for industry participants such as trainers and grooms.

For the substances erythropoietin and darbepoietin, it is estimated that the period of exclusion following the reported result of a positive test would range from several weeks to a period in excess of 120 days. However, based upon the results of preliminary testing, which involved approximately 37,000 horses, it is estimated that less than one percent of horses actually tested will test positive. All horses are not subject to post-race testing. Although a single horse may be excluded potentially for a period of several months, most owners and trainers do not race only one horse. Thus there should be no likelihood of substantial adverse impact on jobs due to the temporary exclusion of these horses from racing. Furthermore, these horses will still require care even if not actively training or racing.

The New York State Racing and Wagering Board has made this determination based upon the above information and its knowledge and familiarity with the conduct of pari-mutuel wagering throughout New York State.

**Office of Real Property
Services**

**EMERGENCY
RULE MAKING**

State Reimbursement of Expenses of Local Officials in Satisfying Training Requirements

I.D. No. RPS-09-05-00004-E
Filing No. 144
Filing date: Feb. 10, 2005
Effective date: Feb. 10, 2005

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

Action taken: Amendment of Subpart 188-2 of Title 9 NYCRR.
Statutory authority: Real Property Tax Law, sections 202(1)(l), 318(4), 1530(4); and L. 2004, ch. 53

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

Specific reasons underlying the finding of necessity: This proposal would allow payment of expenses from appropriated funds.

Subject: State reimbursement of expenses of local officials in satisfying training requirements.

Purpose: To authorize payment of late vouchers if funds are available.

Text of emergency rule: Section 1. Paragraph 4 of subdivision b of section 188-2.9 is amended to read as follows:

Reimbursement for completing components of the basic course of training for attaining certification as a State Certified Assessor and for satisfaction of continuing education requirements shall be made [only] upon claims submitted no later than 30 days following completion of such training. Submissions by mail shall be deemed to have been submitted when postmarked. *Claims submitted more than 30 days following the completion of such training will be reviewed for possible payment on or before the first day of June of the succeeding fiscal year. If funds remain from the appropriation for training reimbursement in the fiscal year in which the assessor completed such training, claims will be paid in full or, if the remaining funds are insufficient, prorated.*

Section 2. This amendment shall first apply to the State Fiscal Year 2004-2005.

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 May 10, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: James J. O’Keeffe, General Counsel, Office of Real Property Services, 16 Sheridan Ave., Albany, NY 12210-2714, (518) 474-8821, e-mail: internet.legal@orps.state.ny.us

Regulatory Impact Statement

1. Statutory Authority: Section 202(1)(l) of the Real Property Tax Law (RPTL) authorizes the State Board of Real Property Services to adopt such rules “as may be necessary for the exercise of its powers and the performance of its duties.”

Section 318(4) of the RPTL provides that “travel and other actual and necessary expenses” incurred by an assessor in satisfactorily completing required training “shall be a state charge upon audit by the comptroller”.

Section 1530(3)(f) provides reimbursement of necessary and actual expenses incurred by directors of county real property tax services agencies.

Chapter 53 of the Laws of 2004, at page 592, provides an appropriation for training reimbursement of \$350,000.

2. Legislative Objectives: Payment of expenses of assessors who satisfactorily complete required training.

3. Needs and Benefits: Section 318(4) RPTL provides that “travel and other actual and necessary expenses” incurred by an assessor in satisfactorily completing required training “shall be a state charge upon audit by the comptroller.” Section 1530(3)(f) contains similar language providing reimbursement of necessary and actual expenses incurred by directors of county real property tax services agencies. The office of Real Property Services (NYSORPS) receives an annual appropriation to satisfy this obligation. The appropriation of \$300,000 in Chapter 53 of the Laws of 2002 was accompanied by the language “the amount appropriated herein shall represent fulfillment of the state’s obligation for this purpose”. In other words, irrespective of the categorical language of sections 318 and 1530, the Legislature capped reimbursement expenditures at \$300,000. Based upon past experience, NYSORPS feared that the 2002-2003 appropriation might be insufficient.

The State Board of Real Property Services adopted a proposal establishing a delayed payment system with a possible proration of payments if an annual appropriation was insufficient that is contained in 9 NYCRR 188-2.9(f). Briefly one-half of the annual appropriation is allocated to the first third of the State fiscal year (April 1 to July 31), one-third to the second third of the State fiscal year (August 1 to November 30) and one-sixth to the last third (December 1 to March 31). Throughout the year, basic training, which was deemed to be of a higher importance, is paid as vouchers are received. Vouchers for continuing education received in the first third are held until August 31. If the remainder of the first allotment is sufficient, all continuing education vouchers are paid in full and any

surplus is added to the second allotment. If the remainder or “net” allotment is insufficient, a pro-ration factor is calculated. This factor is the net allotment divided by the total of vouchers. The factor is applied to each voucher so that each individual would receive the same percentage of the voucher submitted. To insure the effectiveness of the process, the rules contain a requirement that vouchers be submitted within thirty days of the completion of training.

This process functioned as intended in the face of a slight shortfall in fiscal 2002-2003. In fiscal 2003-2004, the appropriation was increased to \$350,000. At the end of that fiscal year, a surplus of \$50,087.28 remained. In other words, reimbursement remained about the same, but the increased appropriation removed the pressure of a possible shortfall. This proposal addresses an issue that has been raised by local officials. As noted, the proration process adopted in 2002 also included a thirty-day submission requirement. Local officials that have missed the requirement, often with good reason, have been denied reimbursement. At the same time, the increased appropriation has left a surplus at the end of the fiscal year. For example, in fiscal 2003-2004, with the \$50,000 surplus, \$2,310.04 in vouchers was denied for late filing. In 2004-2005, NYSORPS has so far denied \$2,836.02 in vouchers. The agency expects a surplus far in excess of this amount.

This proposal would address this situation by allowing payment of late vouchers out of any surplus that might occur. The status of the appropriation and late vouchers would be reviewed after the last date for submitting vouchers (which would be around May 1). This review would take place by June 1. If there is no surplus, no late vouchers would be paid. If the surplus is large enough, all vouchers would be paid. If the surplus is insufficient, payments would be prorated.

4. Costs: (a) To State Government: An amount estimated at between \$5,000 and \$10,000.

(b) To local governments: None.

(c) To private regulated parties: None. There are no private regulated parties in this program.

(d) Basis of cost estimates: The amount of untimely vouchers submitted in the last two years.

5. Local Government Mandates: None. The initial submission of a voucher is discretionary.

6. Paperwork: None. The proposal only affects vouchers that have already been submitted.

7. Duplication: There are no comparable State or Federal requirements.

8. Alternatives: Continued failure to pay untimely submissions.

9. Federal Standards: There are no Federal regulations concerning this subject.

10. Compliance Schedule: None.

Regulatory Flexibility Analysis

The amendment proposed would not impose any adverse economic conditions or any reporting, recordkeeping or other compliance requirements on small businesses. The rule imposes no additional recordkeeping or reporting requirements on local governments. The rule allows for payment, if funds are available at the end of the State fiscal year, of submitted vouchers that were not timely. The rule would only affect those local governments in which assessors sought reimbursement of expenses but did not file vouchers in a timely manner. The rule imposes no additional requirements. The rule does not require any additional expense for compliance.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this rule making because the amendment would not impose any adverse economic conditions, any reporting, recordkeeping or compliance requirements on public or private entities in rural areas. It provides for payment of vouchers from assessors seeking reimbursement of training expenses that were not filed within the existing timing requirement if funds remain from the annual appropriation. The new provision applies to all assessing units. It is intended to benefit all assessing units, including those in rural areas, by providing reimbursement that would not otherwise be available.

Job Impact Statement

A job impact statement is not required for this rule making because the amendment only concerns reimbursement of municipal assessors for training expenses. The amendments thus has no impact on employment opportunities.

State University of New York

NOTICE OF ADOPTION

Traffic and Parking Regulations at the State University College of Technology at Canton

I.D. No. SUN-38-04-00003-A

Filing No. 150

Filing date: Feb. 15, 2005

Effective date: March 2, 2005

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

Action taken: Amendment of Part 571 of Title 8 NYCRR.

Statutory authority: Education Law, section 360(1)

Subject: Traffic and parking regulations at the State University Collage of Technology at Canton.

Purpose: To change parking and enforcement regulations and add traffic stop intersections.

Text or summary was published in the notice of proposed rule making, I.D. No. SUN-38-04-00003-P, Issue of September 22, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Penelope Ploughman, State University of New York, State University Plaza, Albany, NY 12246, (518) 443-5400, e-mail: Penelope.Ploughman@suny.edu

Assessment of Public Comment

The agency received no public comment.

Thruway Authority

NOTICE OF ADOPTION

Management and Operation of the New York Canal System

I.D. No. THR-34-04-00002-A

Filing No. 149

Filing date: Feb. 15, 2005

Effective date: March 2, 2005

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

Action taken: Amendment of Parts 151-153 and 155 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, sections 354(5) and 382(7)(d) and (k); Canal Law, sections 6(3) and 10(9)

Subject: Management and operation of the New York State Canal System.

Purpose: To simplify the rules by making language consistent with the management structure of the New York State Canal Corporation and for operating a vessel on the canal system.

Text or summary was published in the notice of proposed rule making, I.D. No. THR-34-04-00002-P, Issue of August 25, 2004.

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

Text of rule and any required statements and analyses may be obtained from: J. Marc Hannibal, New York State Thruway Authority, 200 Southern Blvd., Albany, NY 12209, (518) 436-2867, e-mail: marc_hannibal@thruway.state.ny.us

Assessment of Public Comment

The agency received no public comment.