

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.

Affordable Housing Corporation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Public Access to Information

I.D. No. AHC-52-05-00025-P

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

Proposed action: This is a consensus rule making to add Part 1990 to Title 21 NYCRR.

Statutory authority: Public Officers Law, section 87(1)(a)

Subject: Public access to information.

Purpose: To adopt regulations regarding freedom of information as dictated by the Public Officers Law.

Text of proposed rule:

PART 1990

PUBLIC ACCESS TO RECORDS

“1990.1 Purpose and scope.”

(a) *The people’s right to know the process of government decision-making and the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by secrecy or confidentiality.*

(b) *This Part provides information concerning the procedures by which records may be obtained from the Corporation pursuant to the Freedom of Information Law.*

(c) *Personnel shall furnish to the public the information and records required by the Freedom of Information Law, as well as records otherwise available by law.*

(d) *Any conflicts among laws governing public access to records shall be construed in favor of the widest possible availability of public records. “1990.2 Designation of records access officer.”*

(a) *The President and Chief Executive Officer is responsible for insuring compliance with this Part, and designates the following person as records access officer:*

*Public Information Officer
New York State Affordable Housing Corporation
641 Lexington Avenue
New York, NY 10022*

(b) *The records access officer is responsible for insuring appropriate corporation response to public requests for access to records. The designation of records access officers shall not be construed to prohibit officials who have in the past been authorized to make records or information available to the public from continuing to do so. Records access officers shall insure that personnel:*

(1) *maintain an up-to-date subject matter list.*

(2) *assist the requester in identifying requested records, if necessary.*

(3) *upon locating the records, take one of the following actions:*

(i) *make records available for inspection; or*

(ii) *deny access to the records in whole or in part, and explain in writing the reasons therefor.*

(4) *upon request for copies of records make a copy available upon payment or offer to pay established fees, if any; in accordance with section 1990.8 of this Part.*

(5) *upon request, certify that a record is a true copy; and*

(6) *upon failure to locate records, certify that:*

(i) *the New York State Affordable Housing Corporation is not the custodian for such records; or*

(ii) *the records of which the New York State Affordable Housing Corporation is a custodian cannot be found after diligent search.*

“1990.3 Location.”

Records shall be available for inspection and copying at the offices of the Affordable Housing Corporation.

“1990.4 Hours for public inspection.”

Records of the Corporation shall be produced for inspection by appointment during hours and days regularly open for business. These hours are: Monday through Friday, 9 a.m. to 5 p.m.

“1990.5 Requests for public access to records.”

(a) *A written request is required. Written requests must be received by mail or hand delivery, or facsimile transmission, at the offices of the Corporation.*

(b) *A request shall reasonably describe the record or records sought. Whenever possible, a person requesting records should supply information regarding dates, file designations or other information that may help to describe the records sought.*

(c) *A response shall be given regarding any request reasonably describing the record or records sought within five business days of receipt of the request.*

(d) *When a request is granted in whole or in part, the record shall be delivered within twenty business days from the date of the acknowledgment of receipt of the request. If circumstances prevent disclosure of the record*

the Corporation shall state, in writing, the reason for the inability to grant the request within twenty business days, and, a date certain within a reasonable period when the request will be granted in whole or in part.

(e) If the records access officer or his/her designee, does not provide or deny access to the record sought within five business days of receipt of a request, he or she shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied. If access to records is neither granted nor denied within ten business days after the date specified in such written acknowledgment, the request may be construed as a denial of access that may be appealed.

“1990.6 Subject matter list.”

(a) The records access officer shall maintain a reasonably detailed current list, by subject matter, of all records in its possession, whether or not records are available pursuant to subdivision 2 of section 87 of the Public Officers Law.

(b) The subject matter list shall be sufficiently detailed to permit identification of the category of the record sought.

(c) The subject matter list shall be updated not less than twice per year. The most recent update shall appear on the first page of the subject matter list.

“1990.7 Denial of access to records.”

(a) Denial of access shall be in writing, stating the reason therefor and advising the requester of the right to appeal to the individual or body established to hear appeals.

(b) If requested records are not provided promptly, as required in section 1990.5(c) of this Part, such failure shall also be deemed a denial of access.

(c) The following person or persons or body shall hear appeals for denial of access to records under the Freedom of Information Law:

Senior Vice President and Counsel
New York State Affordable Housing Corporation
641 Lexington Avenue
New York, NY 10022

(d) The time for deciding an appeal by the individual or body designated to hear appeals shall commence upon receipt of a written appeal, identifying:

- (1) the date of the appeal;
- (2) the date and location of the requests for records;
- (3) the records to which the requester was denied access;
- (4) whether the denial of access was in writing or due to failure to provide records promptly as required by section 1990.5(c) of this Part; and
- (5) the name and return address of the requester.

(e) The individual or body designated to hear appeals shall inform the requester of its decision, in writing, within ten business days of receipt of an appeal.

(f) The person or body designated to hear appeals shall transmit to the Committee on Open Government copies of all appeals upon receipt of appeals. Such copies shall be addressed to:

Committee on Open Government
Department of State
41 State Street
Albany, NY 12231

(g) The person or body designated to hear appeals shall inform the Committee on Public Access to Records of its determination in writing within ten business days of receipt of an appeal. The determination shall be transmitted to the Committee on Public Access to Records in the same manner as set forth in subdivision (f) in this section.

“1990.8 Fees.”

(a) There shall be no fee charged for the following:

- (1) inspection of records;
- (2) search for records; or
- (3) any certification pursuant to this Part.

(b) The fee for photocopies not exceeding 8½ by 14 inches is 25 cents per page. The fee for copies of records other than photocopies which are 8½ by 14 inches or less in size shall be the actual copying cost, excluding fixed corporation costs such as salaries.

“1990.9 Public notice.”

Information regarding the title or name and business address of the records access officer and appeals person or body, and the location where records can be seen or copied, shall be made available by inquiring to the Corporation’s general telephone number.

“1990.10 Severability.”

If any provision of this Part or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons and circumstances.

Text of proposed rule and any required statements and analyses may be obtained from: Jay Ticker, Associate Counsel, Affordable Housing Corporation, 641 Lexington Ave., New York, NY 10022, (212) 688-4000 ext. 365, e-mail: jayt@nyhomes.org

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

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

Consensus Rule Making Determination

Under Chapter 210 of the Laws of 1998, the New York State Affordable Housing Corporation’s proposed rule is a consensus rule because no person is likely to object to its adoption, and it conforms with statutory changes recently passed in regard to the Freedom of Information Law (Public Officers Law §§ 84 – 92). The statutory change includes the creation of a twenty-day time limit during which time the Corporation must deliver information to a member of the public if their request for information was granted. The adoption will likely be supported because the regulations will provide, in writing, a process that makes information more accessible to the public. As required, the Corporation will withdraw the consensus rule if it receives any comment objecting to the consensus rule.

Job Impact Statement

The proposed amendments to the regulation will not have a substantial impact on jobs or employment opportunities because the rule will not involve the creation of substantial regulatory costs or burdens. A current program exists at the New York State Affordable Housing Corporation, despite the lack of a regulation, to provide information to the public under the Freedom of Information Law. This program will not be substantially altered by the adoption of regulations.

Department of Agriculture and Markets

NOTICE OF EXPIRATION

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

Research and Development Program for Peaches and Nectarines

I.D. No.	Proposed	Expiration Date
AAM-16-05-00004-P	April 20, 2005	December 7, 2005

NOTICE OF EXPIRATION

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

Research and Development Program for Tart Cherries

I.D. No.	Proposed	Expiration Date
AAM-16-05-00005-P	April 20, 2005	December 7, 2005

NOTICE OF EXPIRATION

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

Research and Development Program for Sweet Cherries

I.D. No.	Proposed	Expiration Date
AAM-16-05-00006-P	April 20, 2005	December 7, 2005

Banking Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Reporting of Suspicious Transactions

I.D. No. BNK-52-05-00015-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 302 to Title 3 NYCRR.

Statutory authority: Banking Law, sections 37(3), 359, 371, 482(2), 498(b), 561, 587, 597, 649 and 651-b

Subject: Reporting of suspicious transactions by organizations chartered, licensed or registered under the Banking Law.

Purpose: To make any entity chartered, licensed or registered under the Banking Law that was subject to any existing or future Federal Suspicious Activity Reporting ("SAR") requirements also subject to an identical State reporting requirement.

Text of proposed rule:

PART 302

REPORTING OF SUSPICIOUS TRANSACTIONS

(Statutory Authority - Banking Law Sections 37(3), 359, 371, 482(2), 498-b, 561, 587, 597, 649 and 651-b)

Section 302.1 – Required Reports.

(a) Every organization chartered, licensed or registered under the Banking Law, or an agent thereof, and to which the suspicious activity reporting requirements of either Parts 208, 211, 353 and 748 of Title 12 of the Code of Federal Regulations or Part 103 of Title 31 of the Code of Federal Regulations apply, shall submit a report to the Banking Department's Director of Criminal Investigations ("DCI") upon discovery of any event which is deemed reportable pursuant to the such-referenced federal regulations. These regulations may be viewed at the New York State Banking Department, located at One State Street, New York, NY 10004 and the Department of State located at 41 State Street, Albany NY 12231. The Code of Federal Regulations is published by the Office of the Federal Register; National Archives and Records Administration. The Code of Federal Regulations is for sale by the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-0001;

(b) A report need not be filed in the event of a robbery or burglary, committed or attempted, that is reported to appropriate law enforcement authorities.

Section 302.2 – Form of Reports.

Organizations may fulfill the reporting requirement of Part 302.1(a) by filing a completed copy of the federally-required report with the Banking Department's DCI.

Section 302.3 – Time for Reports.

(a) Any organization or regulated entity that is required to file a report pursuant to section 302.1 shall do so in accordance with the applicable time periods as stated in 12 CFR Parts 208, 211, 353 and 748 and 31 CFR Part 103.

(b) Upon the discovery of facts that require immediate attention, for example, ongoing criminal activity, the reporting entity shall immediately notify, by telephone, the Banking Department's DCI and any appropriate law enforcement agency, in addition to filing a timely report as required by this section.

Section 302.4 – Reports to Law Enforcement Authorities, etc.

Every organization which discovers an event which is reportable under Part 302.1 shall consider reporting the details of such event or events to the appropriate federal, state or local law enforcement agency, particularly where doing so might mitigate further losses, prevent future events or lead to the apprehension of the perpetrators.

Section 302.5 – Records to be Maintained.

An organization shall maintain a copy of all reports filed, along with the original or business record equivalent of any supporting documentation, for a period of five years from the date of filing, or such longer period as may be required by other applicable laws or regulations. An organization must make all supporting documentation available to appropriate law enforcement agencies upon request.

Section 302.6 – Confidentiality.

Reports submitted pursuant to this part shall be treated as confidential pursuant to Supervisory Procedure G 106.6

Section 302.7 – Notification to Board of Directors.

For corporate organizations, management shall promptly notify its board of directors, or appropriate committee thereof, of any report filed pursuant to this part.

Section 302.8 – Penalties

Failure to file reports required by this Part 302.1 may result in commencement of appropriate enforcement proceedings by the Department pursuant to the provisions of the Banking Law.

Text of proposed rule and any required statements and analyses may be obtained from: Sam L. Abram, Secretary to 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:

Sections 37(3), 359, 371, 482(2), 498-b, 561, 587, 597, 649 and 651-b grant the Superintendent of Banks broad authority to impose reporting requirements on: banks; trust companies; private bankers; savings banks; safe deposit companies; savings and loan associations; investment companies; licensed lenders; licensed check cashers; sales finance companies; credit unions; premium finance agencies; budget planners; mortgage bankers and brokers; and money transmitters.

Proposed new Part 302 would make any such entity subject to existing or future federal Suspicious Activity Reporting ("SAR") requirements also subject to an identical state-reporting requirement. At present, banks, trust companies, savings banks, savings and loan associations, credit unions, private bankers, safe deposit companies, investment companies and money transmitters (including check cashers engaged in the sale of travelers checks and money orders) are subject to federal SAR reporting requirements. All such entities would become subject to an identical state reporting requirement upon adoption of this proposal. Other listed entities -- licensed lenders, sales finance companies, premium finance companies, budget planners, licensed check cashers (not engaged in money transmission activities) and mortgage bankers and brokers -- would become subject to this state SAR reporting requirement if subject in the future to federal SAR reporting.

The Department has existing enforcement authority under various Sections of the Banking Law, including Sections 44 (Violations and Penalties), which will allow it to fine the above-identified institutions for violations of the new regulation. The Department also will be authorized to revoke the license or suspend the registration of various of the above identified entities for violations of the new regulation under other, existing provisions of the Banking Law, including: Section 347 (Licensed Lenders); Section 373 (Licensed Check Cashers); Section 495 (Sales Finance companies); Section 559 (Premium Finance Agencies); Section 584 (Budget Planners); Section 595 (licensed mortgage bankers and registered mortgage brokers); and Section 646 (Licensed Transmitters of Money).

2. Legislative Objectives:

In enacting the above-cited provisions, the legislature gave the Superintendent of Banks broad discretion to adopt reporting requirements. In the interval since September 11, 2001, the federal government has moved to expand SAR reporting and to vigorously enforce existing SAR reporting. This effort has been triggered by concerns over money laundering by terrorist organizations.

New York does not currently have a reporting requirement applicable to institutions where the entity is used as a conduit for illegal activities and is not the subject of the illegal act. The current proposal would address this deficiency by requiring entities subject now or in the future to a federal SAR reporting requirement to file a duplicate copy of the SAR report with the New York State Banking Department (the "Department").

3. Needs and Benefits:

Currently, Part 300 of the Superintendent's Regulations requires all entities organized, licensed or registered under the Banking Law to report to the Department any criminal activity where the entity is the victim of the activity or where the activity is engaged in by an employee of the entity. Nevertheless, Part 300 does not cover criminal activity where the institution is the conduit for the activity. Thus, current state regulations result in the anomalous situation where crimes like check cashing fraud and check kiting are reportable, but crimes such as money laundering and terrorist financing are not. Institutions subject to federal SAR reporting are, however, required to report such crimes.

The current proposal attempts to remedy this disparity by adopting an identical state SAR reporting requirement for those institutions subject to a federal SAR reporting requirement.

4. Costs:

No new costs are imposed by this proposal. Entities would be required to file a SAR with the Department only if required to do so under federal law.

5. Local Government Mandates:

The proposal imposes no burdens on local governments.

6. Paperwork:

Paperwork and reporting requirements for institutions subject to this proposed rule are expected to be modest. Only entities already subject to the federal SAR reporting requirement would be subject to this new state requirement. In all such cases, covered institutions would only have to file a duplicate copy of a report already filed with a federal agency. Electronic filings will also be possible.

7. Duplication:

None.

8. Alternatives:

One alternative is to do nothing. This is not a viable alternative because the proposed regulation is necessary to ensure that regulatory resources in New York State are focused on crimes particularly dangerous to the public at large.

9. Federal Standards:

As discussed above, the proposed changes would bring state reporting requirements into line with federal standards. Given the importance of New York as a financial center, this change would help to ensure that the regulatory resources of New York are appropriately focused on crimes potentially dangerous to the public at large.

10. Compliance Schedule:

Compliance would be immediate upon adoption. Entities that become subject to federal SAR filing requirements in the future would be subject to the filing requirements of Part 302 at such time.

Regulatory Flexibility Analysis

The proposed rule requires banks, trust companies, savings banks, savings and loan associations, private bankers, investment companies, credit unions, and money transmitters (including licensed check cashers engaged in the sale of travelers checks) that are currently subject to a federal Suspicious Activity Reporting ("SAR") requirements to also file a copy of such report with the Banking Department whenever they are required to file a federal SAR. In addition, if licensed lenders, sales finance companies, premium finance companies, safe deposit companies, budget planners, licensed check cashers (not engaged in money transmission activities) and mortgage bankers and brokers ever become subject to a federal SAR requirement, they would likewise become subject to a state-filing requirement. In general, such entities are part of large, sophisticated financial entities, are not local governmental units, and since in any event the new regulation will have only a minimal impact on any of these entities, the proposed rule will not impose any appreciable or substantial adverse economic impact, or reporting, or recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted because the rule does not result in any hardship to a rural area based on the character and nature of a rural area. Specifically, the rule requires banks, trust companies, savings banks, savings and loan associations, investment companies, private bankers, credit unions and money transmitters (including licensed check cashers engaged in the sale of travelers checks and money orders) to file with the New York State Banking Department copies of Suspicious Activity Reports ("SARS") that they are already required to file with federal agencies. In addition, if safe deposit companies, licensed lenders, sales finance companies, premium finance companies, budget planners, licensed check cashers (not engaged in money transmission activities) and mortgage bankers and brokers become subject to a federal SAR requirement, they likewise will become subject to a state SAR reporting requirement pursuant to the provisions of this proposed regulation. Therefore, a Rural Area Flexibility Analysis is not submitted because it is apparent from the nature and purpose of the rule that it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A job impact statement is not submitted because the proposed rule has no effect on the creation or elimination of jobs. The rule requires banks, trust companies, savings banks, savings and loan associations, private bankers, investment companies, credit unions and money transmitters (including

licensed check cashers engaged in the sale of travelers checks and money orders) currently required to file federal Suspicious Activity Reporting ("SAR") reports also to file one with the New York State Banking Department. In addition, if safe deposit companies, licensed lenders, sales finance companies, premium finance companies, licensed check cashers (not engaged in the money transmission activities), budget planners and mortgage bankers and brokers become subject to a federal SAR requirement, they would likewise become subject to a state SAR reporting requirement. Where applicable, the regulation would require merely the filing of a duplicate copy of the SAR report.

**REGULATORY IMPACT STATEMENT,
REGULATORY FLEXIBILITY
ANALYSIS, RURAL AREA
FLEXIBILITY ANALYSIS AND/OR
JOB IMPACT STATEMENT**

Maximum Fee Charged by Licensed Check Cashers for Cashing Checks, Drafts or Money Orders

I.D. No. BNK-51-05-00007-E

This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement pertain(s) to a notice of emergency rule making, I.D. No. BNK-51-05-00007-E, printed in the *State Register* on December 21, 2005.

Regulatory Impact Statement

1. Statutory authority. Section 372(1) requires that the Superintendent of Banks prescribe the maximum fees that may be charged for cashing a check, draft or money order (hereafter "check"). Pursuant to section 400.12 of Title 3 NYCRR, the Superintendent has established a maximum percentage amount that each check casher may charge against the face amount of the check made payable to a natural person (hereafter "personal" check).

2. Legislative objectives. When imposing certain economic restrictions upon the conduct of business by check cashers pursuant to Chapter 546 of the laws of 1994, the Legislature stated as a matter of legislative intent that "check cashers provide important and vital services to New York citizens; that the business of check cashers shall be supervised and regulated through the banking department in such a manner as to maintain consumer confidence in such business and protect the public interest; that the licensing of check cashers shall be determined in accordance with the needs of the communities they are to serve; and that it is in the public interest to promote the stability of the check cashing business for the purpose of meeting the needs of the communities that are served by check cashers."

3. Needs and benefits. The setting of a maximum fee is in keeping with legislative intent in that it provides essentially for a fixed percentage return per personal check, thus promoting the stability of the check cashing industry by providing the industry with a reasonable return on equity. However, by limiting the amount of such fees, it serves to maintain the public confidence by preventing excessive fees particularly where the availability of alternate check cashing facilities may be limited.

The Superintendent has determined that the maximum fee adjustment promulgated pursuant to this rule making is necessary because the annual CPI adjustment of the maximum fee did not and will not account for the significant increase in expenses of check cashers attributable to the imposition of the Department's general assessment upon non-bank licensees, which commenced in 2005.

4. Costs. The rule imposes no additional costs or regulatory burden upon regulated parties, the Banking Department or other state agencies, or any other unit of government. Though the increase in the base maximum percentage amount will increase the fee cost to the consumer, the per centum adjustment is 3 basis points, which is three-hundredths of one percent of the base percentage maximum fee charge or three cents per \$100 of the face amount of a check.

5. Local government mandates. The rule imposes no mandates or costs upon local governments. The regulatory provisions apply only to licensed entities, and such entities are private business enterprises, and not governmental entities, whether local, state or national.

6. Paperwork. The rule imposes no paperwork requirements upon regulated parties or any unit of state government.

7. Duplication. None.

8. Alternatives. Section 400.12 provides that the Superintendent may modify the maximum per centum fee at any time by regulation, if he or she finds that the adjustment is necessary and appropriate to protect the public interest and promote the stability of the industry in order to meet the needs

of the communities served by the check cashing industry. The Department has determined by its industry analysis that the annual fee rate adjustment mechanism will not account for such cost increases, thus necessitating this rule making.

The Department could have determined not to increase the maximum permissible fee, notwithstanding the cost increases experienced by the check cashing industry as a result of the initial imposition of annual general assessment charges. However, it concluded that failure to grant such an increase would increase the potential for industry instability resulting from the significant increase in unanticipated expenses resulting from the assessment, which could in turn affect the ability of the industry to meet the needs of the communities it serves.

The Department also considered whether to use a per centum adjustment to the maximum fee cap other than that set forth in the regulation. The Department analyzed the most current data for the industry, which included check volume, dollar amount volume, number of licensed entities, and current and anticipated general assessment charges, and determined that a three basis point adjustment of the maximum cap was justified.

9. Federal standards. There are no federal standards that apply to the setting of fees for the check cashing industry. The federal government does not license check cashers or directly regulate the primary transaction activity of check cashers.

10. Compliance schedule. None. Though licensees are not required to set their fee charges at the maximum per centum fee rate, the check cashing industry is expected to adopt the maximum per centum fee upon the date the increased per centum fee rate becomes effective.

Regulatory Flexibility Analysis

1. Effect of rule: The check cashing industry serves those areas and populations not traditionally served by banking institutions, which generally are immigrant and first-generation communities or communities demonstrating lower socio-economic conditions. Residents in such communities tend not to be accustomed or inclined to maintain customer account relationships with banking institutions. In short, absent the maintenance of an account relationship with a banking institution, members of these communities have virtually no source to cash payroll, government benefit, or other types of personal checks other than check cashers or retail vendors where they make purchases.

Because Section 372(1) of the Banking Law requires the Superintendent to regulate the fees that the industry may charge, the industry cannot unilaterally set fees beyond the maximum rates set by the Superintendent's regulations. Thus, if a licensee incurs additional and unforeseen expenses or desires to increase the business's profit margin, it is impossible to increase the business's revenue derived from cashing checks under the existing regulatory structure, all other factors remaining the same, unless the mix of commercial (*i.e.*, checks made payable to other than natural persons) and personal checks cashed changes, or the dollar volume of the checks cashed, the number of checks cashed, or both increases. Because of this situation, the Superintendent promulgated a rule in 2004 (see New York *State Register* BNK-10-04-00001; effective 6-23-04) which established a mechanism for the annual adjustment of the maximum per centum rate based upon the annual change in the regional urban consumer price index (CPI-U), thus permitting automatic adjustment of the rate to account for normal inflationary increases. That rule making, however, also expressly stated that the Superintendent could subsequently modify the maximum per centum fee at any time by regulation, if she finds that the adjustment is necessary and appropriate to protect the public interest and promote the stability of the industry in order to meet the needs of the communities served by the check cashing industry.

In July 2005, the Financial Services Centers of New York ("FSNY") requested a three basis point increase of the maximum per centum fee rate from 1.55 to 1.58 to account for the increased costs resulting from the Department's imposition of a general assessment upon the check cashing industry. All non-bank financial services industries licensed and regulated by the Department were first subjected to an annual general assessment commencing in 2005, the purpose of which was to recoup the Department's costs of supervising regulated financial services businesses.

The Superintendent determined, based upon the Department's analysis of industry, that the expenses incurred by the industry as the result of the imposition of the Department's annual general assessment would not be recouped by the 2004 annual CPI-U fee adjustment which increased the maximum per centum fee from 1.5 to 1.55. The Department's Research and Technical Assistance (RATA) Division concluded that such specialized cost increases are not well reflected by a generalized index and as such

the magnitude of the cost increase experienced does represent a legitimate rationale to support a rate review.

The initial annual general assessment charged licensed check cashers as the basis to compute the first quarterly billing in February 2005 was determined to be for \$3,487,660. This amount was subsequently increased as the Department refined its general assessment allocations to the non-bank entities it regulates to \$3,982,618. The only assessment paid heretofore by the regulated non-bank entities has been examination expenses when such entities were specifically examined. Thus, the check cashing industry reported assessment increases for individual companies of 300% to 3,500%. Non-bank licensed entities also pay annual licensing fees.

The initial review of the industry data indicated that a four, rather than three, basis point adjustment of the per centum fee cap was necessary for the industry to recover its costs due to the general assessment. However, a subsequent analysis, based upon revised and updated industry data, indicates that a three basis point adjustment is sufficient, with such adjustment commencing January 1, 2006. The revised and updated data included a substitution of reported 2004 industry data for 2003 data which became available following the initial analysis. It is noted that the growth in check cashing dollar volume, even as the number of checks cashed declined, is in part attributable to the ability now of existing licensed check cashers to cash commercial checks. These checks are not subject to the per centum fee cap. Thus, the Department determined that the final dollar volume of checks cashed upon which to base any increase in per centum fee cap should be \$15.2 billion contrasted to a general assessment charge, commencing 2005, of \$3.9 million, or a rounded up increase of the fee cap of three basis points. It is estimated that the three basis point adjustment will generate sufficient incremental income to mitigate the impact of the general assessment.

Finally, pursuant to this rule making, the three basis point adjustment will be annually added to the CPI adjusted per centum fee cap, and it will not itself be subject to any annual CPI adjustment. The Superintendent determined that marginal or incremental increases in the Department's general assessment allocation, due to annual inflationary factors affecting the Department's budget, should be sufficiently accounted for by the annual CPI adjustment. Further, increased check dollar volume, which reflects normal growth in the expansion of wages and income, and also any possible increase in the volume of checks cashed, offsets annual inflationary cost increases experienced by the industry. It is also noted, due the initial regulation of commercial check cashers in 2004, that the number of licensees will increase in the near future, and this will cause a reduction in the amount of the general assessment expense allocated to the currently licensed check cashers.

In summary, the Superintendent's determination that such a fee increase is appropriate is based upon: (1) the small amount of the per centum increase; (2) the potential for industry instability resulting from a significant increase in unanticipated expenses (*i.e.*, Department's general assessment); (3) the estimated range of industry profitability projected for 2005; (4) the limitation that a fee cap imposes on the industry to meet unanticipated increased operating costs (this type of regulatory "price" control generally is not applied to the charges for services and products set by other industry groups regulated by the Department); and (5) the modest increased costs consumers will face given in particular that the three basis point increase will not be inflated by the annual CPI adjustment in the future.

2. Compliance requirements: There are no additional compliance requirements necessitated by this rule making other than the need for licensed check cashers to alter their signage to reflect the new fees, if they decide to adjust their current per centum fee rates.

3. Professional services: No professional services would be required as a result of this rule making.

4. Compliance costs: There are no compliance costs associated with this rule making other than those that may be associated with modification of their signage to reflect any new fee rates.

5. Economic and technological feasibility: There are no economic or technological feasibility problems caused by this rule making.

6. Minimizing adverse economic impact: This rule making has no adverse impact upon affected regulated entities, and, in fact, it will have a positive economic impact in that it will permit licensees to increase operating revenue sufficient to recoup the additional costs caused by the Department's imposition of an annual general assessment fee.

7. Small business participation and local government participation: There are 217 licensed check cashing businesses and 908 facilities of such businesses that will be affected by this regulatory action. This fee increase and annual adjustment mechanism is supported by the industry and im-

poses no additional regulatory burden upon the regulated parties. No participation by local government is necessitated by this rule making.

Rural Area Flexibility Analysis

The rule making will impose no additional costs on businesses or units of government located in rural areas of the state. Virtually all licensed check cashing facilities are located in metropolitan areas of the state, particularly the New York City metropolitan area. To the extent any licensed facilities are located in rural areas, they will realize the same benefits attributed to the rule making.

Job Impact Statement

This regulatory amendment will impose no adverse effect upon regulated parties or upon other businesses in this state. It is presumed that the regulatory amendment will benefit the regulated parties.

Office of Children and Family Services

EMERGENCY RULE MAKING

Market Rates for Subsidized Child Care

I.D. No. CFS-52-05-00001-E

Filing No. 1465

Filing date: Dec. 8, 2005

Effective date: Dec. 8, 2005

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

Action taken: Amendment of section 415.9 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 410 and 410-x(4)

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

Specific reasons underlying the finding of necessity: The adoption of these regulations on an emergency basis is necessary for the preservation of the health, safety and welfare of children in need of subsidized child care services in this State. Section 410-x(4) of the Social Services Law requires that the market rates be sufficient to ensure equal access to eligible children to comparable day care available to children whose parents are not eligible to receive a subsidy. The current market rates were initially issued in October, 2003 and reflect rate data collected in 2003. Accordingly, the current rates are artificially low. The adjustments to the market rates are needed to address the significantly escalating costs of providing child care services. Social services districts have experienced difficulty in recruiting and retaining providers to care for subsidized children because the actual costs of providing child care are greater than the current market rates.

Continuing to maintain the existing rates could result in subsidized families losing their child care arrangements or being unable to find appropriate child care. As a result, such families could be forced to place their children in child care settings that are inappropriate or unsafe for their children, leave their children unsupervised, or leave their jobs or training programs. If they choose the latter option, the families may remain on public assistance for longer periods of time or return to public assistance. This would directly counter the overriding purpose of welfare reform to encourage families on public assistance to move into employment or training programs. Thus, the increases in the market rates are necessary to maintain and preserve the gains achieved for poor families under welfare reform. As a result of these regulations, public assistance recipients and other low income families will not have to decide between losing their employment income and placing their children in child care that is unsafe or inappropriate.

Delaying the adoption of these regulations would be contrary to the public interest because it could result in children from public assistance or other low income families receiving unhealthy or unsafe child care, or in persons leaving jobs or training programs and returning to public assistance, to the detriment of the public welfare system. Therefore, it is necessary to adopt these regulations on an emergency basis.

Subject: Market rates for subsidized child care.

Purpose: To update the market rates social services districts can pay for subsidized child care.

Text of emergency rule: Section 415.9(f) is amended to read as follows:

Where child care services are provided by multiple providers, reimbursement will be made for the actual cost of such services up to the applicable rate for each child care provider used. *However, if the combined reimbursement to the multiple providers would exceed one weekly market rate, in order to receive such reimbursement the parent or caretaker must demonstrate that the schedule of employment of the parent or caretaker or the special needs of the child necessitates that child care services be arranged with multiple providers. If the social services district determines that the parent or caretaker has not demonstrated that there is a necessity to use multiple providers, reimbursement is limited to one weekly market rate that is applicable for the type of provider who provides care for the highest number of hours. The social services district will determine how to distribute the reimbursement for the multiple providers.*

Section 415.9(j) is amended to read as follows:

Effective October 1, [2003] 2005, following are the local market rates for each social services district set forth by the type of provider, the age of the child and the amount of time the child care services are provided per week. The market rates are established in five groupings of social services districts. Except for districts noted as an exception in the market rate schedule, the rates established for a group apply to all districts in the designated group. The district groupings are as follows:

Group A: Nassau, Putnam, Rockland, Suffolk, Westchester
 Group B: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins, Warren

Group C: Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, Yates

Group D: Albany, Dutchess, Orange, Ulster

Group E: Bronx, Kings, New York, Queens, Richmond

GROUP A COUNTIES:

Nassau, Putnam, Rockland, Suffolk, and Westchester

DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$300	\$265	\$240	\$250
Exceptions:				
<i>Nassau</i>	--	--	\$248	\$261
<i>Westchester</i>	\$338	\$317	\$271	--
DAILY	\$70	\$60	\$55	\$54
Exceptions:				
<i>Westchester</i>	\$75	\$70	\$58	--
PART-DAY	\$47	\$40	\$36	\$36
Exceptions:				
<i>Westchester</i>	\$50	\$47	\$39	--
HOURLY	\$8.88	\$8.75	\$8.81	\$8.75

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$250	\$225	\$225	\$225
Exceptions:				
<i>Westchester</i>	--	\$246	--	--
DAILY	\$56	\$56	\$55	\$50
PART-DAY	\$37	\$37	\$37	\$33
HOURLY	\$8.00	\$8.00	\$7.50	\$7.50

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$250	\$250	\$243	\$240
Exceptions:				
<i>Rockland</i>	--	--	\$250	\$250
<i>Westchester</i>	--	--	--	\$250
DAILY	\$58	\$56	\$55	\$56
PART-DAY	\$39	\$37	\$37	\$37
HOURLY	\$8.00	\$8.00	\$8.00	\$8.00

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$250
Exceptions:				
<i>Nassau</i>	--	--	--	\$261
DAILY	\$0	\$0	\$0	\$54
PART-DAY	\$0	\$0	\$0	\$36
HOURLY	\$0	\$0	\$0	\$8.75

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$175	\$158	\$158	\$158
DAILY	\$40	\$40	\$39	\$35
PART-DAY	\$27	\$27	\$26	\$23
HOURLY	\$5.60	\$5.60	\$5.25	\$5.25

GROUP B COUNTIES: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins and Warren

DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$190	\$180	\$166	\$160
Exceptions:				
<i>Monroe</i>	--	\$185	\$173	--
DAILY	\$45	\$43	\$39	\$38
Exceptions:				
<i>Erie</i>	--	--	\$44	--
<i>Monroe</i>	--	\$49	--	--
PART-DAY	\$30	\$28	\$26	\$25
Exceptions:				
<i>Erie</i>	--	--	\$29	--
<i>Monroe</i>	--	\$33	--	--
HOURLY	\$7.00	\$7.00	\$6.25	\$7.00

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$150	\$145	\$135	\$135
Exceptions:				
<i>Erie</i>	--	\$150	\$140	--
<i>Saratoga</i>	--	\$150	\$150	\$143
<i>Schenectady</i>	\$170	\$150	\$150	\$150
DAILY	\$34	\$33	\$31	\$31
Exceptions:				
<i>Columbia</i>	\$35	--	--	--
<i>Erie</i>	\$38	\$38	\$34	\$34
<i>Saratoga</i>	\$35	\$35	--	\$33
<i>Warren</i>	--	--	--	\$33
PART-DAY	\$23	\$22	\$21	\$21
Exceptions:				
<i>Erie</i>	\$25	\$25	\$23	\$23
<i>Saratoga</i>	--	\$23	--	\$22
<i>Warren</i>	--	--	--	\$22
HOURLY	\$5.00	\$5.00	\$5.00	\$4.41

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$158	\$150	\$150	\$149
Exceptions:				
<i>Erie</i>	--	\$173	\$165	\$160
<i>Schenectady</i>	\$175	\$175	\$165	\$160
DAILY	\$38	\$35	\$34	\$33
Exceptions:				
<i>Erie</i>	--	--	--	\$34
PART-DAY	\$25	\$23	\$23	\$22
Exceptions:				
<i>Erie</i>	--	--	--	\$23
HOURLY	\$5.00	\$5.00	\$5.00	\$5.00

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$160
DAILY	\$0	\$0	\$0	\$38

	\$0	\$0	\$0	\$25
PART-DAY	\$0	\$0	\$0	\$7.00
HOURLY	\$0	\$0	\$0	\$7.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$105	\$102	\$95	\$95
DAILY	\$24	\$23	\$22	\$22
PART-DAY	\$16	\$15	\$15	\$15
HOURLY	\$3.50	\$3.50	\$3.50	\$3.09

GROUP C COUNTIES:

Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, and Yates

DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$160	\$150	\$142	\$130
Exceptions:				
<i>Niagara</i>	--	--	--	\$138
DAILY	\$39	\$36	\$34	\$31
PART-DAY	\$26	\$24	\$23	\$21
HOURLY	\$5.00	\$5.00	\$5.00	\$5.00

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$135	\$130	\$125	\$125
Exceptions:				
<i>Clinton</i>	--	--	--	\$135
DAILY	\$31	\$31	\$30	\$30
Exceptions:				
<i>Clinton</i>	--	--	--	\$34
<i>Sullivan</i>	--	--	--	\$31
PART-DAY	\$21	\$21	\$20	\$20
Exceptions:				
<i>Clinton</i>	--	--	--	\$23
<i>Sullivan</i>	--	--	--	\$21
HOURLY	\$3.18	\$3.00	\$3.00	\$3.00

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$135	\$130	\$125	\$125
DAILY	\$34	\$33	\$31	\$30
PART-DAY	\$23	\$22	\$21	\$20
HOURLY	\$4.00	\$4.00	\$4.00	\$4.00

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$130
Exceptions:				
<i>Niagara</i>	--	--	--	\$138
DAILY	\$0	\$0	\$0	\$31
PART-DAY	\$0	\$0	\$0	\$21
HOURLY	\$0	\$0	\$0	\$5.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$95	\$91	\$88	\$88
DAILY	\$22	\$22	\$21	\$21
PART-DAY	\$15	\$15	\$14	\$14
HOURLY	\$2.23	\$2.10	\$2.10	\$2.10

GROUP D COUNTIES:

Albany, Dutchess, Orange, and Ulster

DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$205	\$190	\$175	\$176
Exceptions:				
<i>Dutchess</i>	\$227	\$215	\$197	--
DAILY	\$49	\$46	\$44	\$44
Exceptions:				
<i>Albany</i>	--	\$50	\$45	--
PART-DAY	\$33	\$30	\$29	\$29
Exceptions:				
<i>Albany</i>	--	\$33	\$30	--
HOURLY	\$7.00	\$6.75	\$6.50	\$7.00

REGISTERED FAMILY DAY CARE
AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$175	\$175	\$167	\$175
Exceptions:				
<i>Dutchess</i>	\$180	\$180	\$175	\$180
<i>Orange</i>	\$196	\$181	\$175	--
DAILY	\$44	\$41	\$38	\$38
Exceptions:				
<i>Dutchess</i>	--	\$45	\$44	\$45
<i>Orange</i>	--	--	--	\$44
PART-DAY	\$29	\$27	\$25	\$25
Exceptions:				
<i>Dutchess</i>	--	\$30	\$29	\$30
<i>Orange</i>	--	--	--	\$29
HOURLY	\$6.00	\$6.00	\$6.00	\$6.00

GROUP FAMILY DAY CARE
AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$185	\$180	\$175	\$175
Exceptions:				
<i>Orange</i>	\$200	\$194	--	--
DAILY	\$44	\$44	\$41	\$40
PART-DAY	\$29	\$29	\$27	\$27
HOURLY	\$6.00	\$6.00	\$6.00	\$6.00

SCHOOL AGE CHILD CARE
AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$176
DAILY	\$0	\$0	\$0	\$44
PART-DAY	\$0	\$0	\$0	\$29
HOURLY	\$0	\$0	\$0	\$7.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE
AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$123	\$123	\$117	\$123
DAILY	\$31	\$29	\$27	\$27
PART-DAY	\$21	\$19	\$18	\$18
HOURLY	\$4.20	\$4.20	\$4.20	\$4.20

GROUP E COUNTIES:
Bronx, Kings, New York, Queens, and Richmond
DAY CARE CENTER
AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$288	\$255	\$180	\$177
DAILY	\$67	\$67	\$50	\$50
PART-DAY	\$45	\$43	\$33	\$33
HOURLY	\$13.75	\$17.00	\$13.00	\$11.65

REGISTERED FAMILY DAY CARE
AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$150	\$135	\$125	\$125
DAILY	\$34	\$35	\$35	\$31
PART-DAY	\$23	\$23	\$23	\$21
HOURLY	\$15.00	\$10.00	\$11.00	\$11.60

GROUP FAMILY DAY CARE
AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$160	\$150	\$150	\$140
DAILY	\$38	\$38	\$36	\$35
PART-DAY	\$25	\$25	\$24	\$23
HOURLY	\$15.00	\$13.00	\$11.00	\$16.00

SCHOOL AGE CHILD CARE
AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$177
DAILY	\$0	\$0	\$0	\$50
PART-DAY	\$0	\$0	\$0	\$33
HOURLY	\$0	\$0	\$0	\$11.65

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE
AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$105	\$95	\$88	\$88
DAILY	\$24	\$25	\$25	\$22
PART-DAY	\$16	\$17	\$17	\$15
HOURLY	\$10.50	\$7.00	\$7.70	\$8.12

SPECIAL NEEDS CHILD CARE

The rate of payment for child care services provided to a child determined to have special needs is the actual cost of care up to the statewide limit of the highest weekly, daily, part-day or hourly market rate for child care services in the State, as applicable, based on the amount of time the child care services are provided per week regardless of the type of child care provider used or the age of the child.

The highest full time market rate in the State is:

WEEKLY	\$338
DAILY	\$ 75
PART-DAY	\$ 50
HOURLY	\$ 17

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 March 7, 2006.

Text of emergency 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

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (Office) to establish rules, regulations and policies to carry out the Office's powers and duties under the SSL.

Section 34(3)(f) of SSL authorizes the Commissioner to establish regulations for the administration of public assistance and care within the State.

Section 410 of the SSL authorizes a social services official of a county, city or town to provide day care for children at public expense and authorizes the Office to establish criteria for when such day care is to be provided.

Section 410-x(4) of the SSL requires the Office to establish, in regulation, the applicable market-related payment rates that will establish the ceilings for State and federal reimbursement for payments made under the New York Child Care Block Grant. The amount to be paid or allowed for child care assistance funded under the Block Grant and under Title XX shall be the actual cost of care but no more than the applicable rate established in regulations. Payment rates must be sufficient to ensure equal access for eligible children to comparable child care assistance in the substate area that are provided to children whose parents are not eligible to receive assistance under any federal or State programs. Payment rates must take into account the variations in the costs of providing child care in different settings and to children of different age groups, and the additional cost of providing child care for children with special needs.

Federal statute, section 658E(c)(4)(A) of the Social Security Act, and federal regulation, 45 CFR 98.43(a), also require that the State establish payment rates for federally-funded child care subsidies that are sufficient to ensure such equal access for eligible children. Additionally, federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved State plan for the Child Care and

Development Fund. The current State Plan covers the period October 1, 2003 through September 30, 2005 and the proposed State Plan for the period October 1, 2005 through September 30, 2007 has been submitted for approval by the federal government. The market rates that are being replaced were issued in October 2003 and were based on a survey conducted in 2003.

2. Legislative objectives:

The legislative intent is to have child care subsidy payment rates that reflect market conditions and that are adequate to enable subsidized families to access child care services comparable to other families not in receipt of a child care subsidy.

3. Needs and benefits:

The regulations are needed to adjust existing rates that were established based on a survey done in 2003. Since then, child care providers have experienced increased costs in operating their businesses. These costs are reflected in the higher rates that they are charging as compared to the existing rates. The rates need to be updated to reflect the increased rates in order to continue to provide subsidized families with equal access to child care comparable to that received by unsubsidized families as required by federal and State laws.

The methodology used by the Office to establish the payment rates for the regulations meets the federal and State statutory requirements for conducting a local survey of child care providers. Prior to conducting the market rate survey, a letter was mailed to all licensed and registered providers to inform them that they might be among the sample of providers who would be asked to participate in the market rate survey. The Office contracted with a market research firm to conduct the telephone survey in English and Spanish and had resources available to assist providers in other languages. The sample was drawn so that it encompassed the full range of providers within all geographic areas.

The payment rates were established based on approximately 4,800 completed telephone market rate surveys from licensed and registered providers throughout the State. Providers were asked for the rates they charge for full-time and part-time care, if applicable, based on the age of the child.

These rates were analyzed to determine the 75th percentile. The federal Administration of Children and Families has indicated in the preamble to the final rule for the Child Care and Development Fund that it regards the 75th percentile of the actual cost of care as sufficient to provide subsidized parents with equal access to child care providers. The rates that resulted were then clustered into five distinct groupings of social services districts based on rate similarities. Within each group, rates are differentiated by type of provider (*i.e.*, day care center, school-age child care, family day care, group family day care and legally-exempt family child care and in-home child care), age of child (*i.e.*, under 1½, 1½-2, 3-5, 6-12), and amount of time in care (*i.e.*, weekly, daily, part-day, and hourly). This data was compiled and analyzed by Suzanne Zafonte Sennett, Director within the Office's Bureau of Early Childhood Services.

The market rates for legally-exempt family child care and in-home child care were established based on a 70 percent differential applied to the market rates established for family day care. This differential reflects the higher costs associated with meeting the higher regulatory standards to become a registered family day care provider.

Revising the existing rates will help subsidized families to avoid losing their child care arrangements or being unable to find appropriate child care. This will help prevent such families from being forced to place their children in child care settings that are inappropriate or unsafe or to leave their children unsupervised. Avoiding such results is important because it can be detrimental to a child's development to experience disruption in care or to receive substandard or no care at all. The updated rates also will help subsidized families avoid having to choose whether to use their limited income to supplement the cost of child care services or to meet their basic living costs.

The proposed regulations clarify the maximum reimbursement that may be issued when a family uses multiple child care providers. When the combined reimbursement to multiple child care providers exceeds one weekly market rate, the caretaker must demonstrate that the caretaker's schedule of employment or the special needs of the child necessitates that child care services be arranged with multiple providers. If the family does not demonstrate a necessity to use multiple providers, then reimbursement is limited to the weekly market rate that is applicable for the type of provider who provides care for the highest number of hours.

4. Costs:

Under section 410-v(2) of the SSL, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing

subsidized child care services to public assistance recipients; and, districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2005-2006, social services districts received their allocations of \$716,520,153 in federal and State funds under the New York State Child Care Block Grant, an increase of \$5.9 million from the base amount allocated to districts for SFY 2004-05. These increases in funding are sufficient to cover the increased payments by social services districts due to the implementation of the adjusted market rates. In addition, social services districts had the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations.

5. Local government mandates:

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the new market rates. Districts will need to review cases to determine whether the payments reflect the actual cost of care up to applicable market rates. When a caretaker uses multiple child care providers and the reimbursement exceeds one weekly market rate, districts will need to determine whether the situation requires multiple child care providers. Payment adjustments will have to be made, as appropriate.

6. Paperwork:

Social services districts will need to process any required payment adjustments after conducting the necessary case reviews.

7. Duplication:

The new requirements do not duplicate any existing State or federal requirements.

8. Alternatives:

The adjustments in rates set forth in the regulations are necessary to implement the federal and State statutory and regulatory mandates. The language added to Section 415.9(f) is consistent with the intent of the existing regulations and is necessary to prevent recipient families and providers from exploiting the child care subsidy system by allowing providers to receive unwarranted payments in excess of the market rates. Some social services districts have informed the Office of instances in which recipient families have used multiple child care providers unnecessarily to evade the market rates, and maximize each provider's child care payments. Given the limited amount of child care subsidy funding and the unnecessary use of multiple providers in these situations, the Office made the regulatory change to prevent the abuse of the child care subsidy system, and provide more needed funding to eligible families. The Office is aware that some families legitimately need multiple providers to address their families unique circumstances. This regulatory change will not prevent those families from accessing the needed providers.

9. Federal standards:

The regulations are consistent with applicable federal regulations. 45 CFR 98.43(a) and (b)(2) and (3) require that the State establish payment rates that are sufficient to ensure equal access to comparable care received by unsubsidized families, based on a survey of providers and consistent with the parental choice provisions in 45 CFR 98.30.

10. Compliance schedule:

These provisions must be implemented effective on October 1, 2005.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments:

The adjustments to the child care market rates will affect the 58 social services districts. There is a potential effect on over 20,000 licensed and registered child care providers and an estimated 70,000 informal providers that may provide child care services to families receiving a child care subsidy.

2. Compliance requirements:

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the new market rates. Districts will need to review cases to determine whether the payments reflect the actual cost of care up to the new market rates. When a family uses multiple child care providers and the reimbursement exceeds one weekly market rate, districts will need to determine whether the situation requires multiple child care providers. Payment adjustments will have to be made, as needed.

3. Professional services:

Neither social services districts nor child care providers should have to hire additional professional staff in order to implement these regulations.

4. Compliance costs:

Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing subsidized child care services to public assistance recipients; districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2005-06, social services districts received their allocations of \$716,520,153 in federal and State funds under the New York State Child Care Block Grant, an increase of \$5.9 million from the base amount allocated to districts for SFY 2004-05. These increases in funding are sufficient to cover the increased payments by social services districts due to the implementation of the new market rates. In addition, social services districts had the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations.

5. Economic and technological feasibility:

The child care providers and social services districts affected by the regulations have the economic and technological ability to comply with the regulations.

6. Minimizing adverse impact:

Federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved State plan for the Child Care and Development Fund. The market rates were developed in accordance with federal guidelines for conducting a survey of child care providers. The Office took a representative sample of approximately 4,800 licensed and registered child care providers throughout the State. The rates were analyzed to establish the market rates at the 75th percentile of the amounts charged in accordance with guidelines issued in the Child Care and Development Fund Final Rule. The market rates are clustered into five distinct groupings of counties based on similarities in rates among the counties in each group. As a result, the rates established for counties are based on the actual costs of care within the counties.

Social services districts will benefit from the increases in the rates. The increases will enable districts to provide temporary assistance recipients and low-income families receiving subsidized child care services with access comparable to those families not receiving a child care subsidy. This will assist these districts to enable more temporary assistance and low-income families to work, thereby reducing the number of families in need of public assistance. It also should assist the districts in meeting their federal participation rates for Temporary Assistance (TA) recipients because there should be a reduction in the number of TA recipients who are excused from work activities due to a lack of child care.

Child care providers also will benefit from the increases in the market rates. The adjustments to the market rates will help address the escalating costs incurred by child care providers in operating their businesses. These providers will also be in a better position to serve low-income families who previously may not have had access to their programs due to their rates.

Social services districts will benefit from the clarification given regarding reimbursement when multiple child care providers are used. These regulations will strengthen the ability of social services districts to monitor payments so that families and child care providers do not receive unwarranted payments in excess of the market rates. Parents and caretakers will be able use multiple child care providers, with payments reflecting the appropriate market rate for each provider, when their employment schedule or the special needs of the children merit it.

7. Small business and local government participation:

In accordance with federal regulatory requirements, OCFS conducted a telephone survey of a sample of regulated providers. Prior to conducting the telephone survey, a letter was sent to all regulated child care providers to inform them that they might be included among the sample of providers called to participate in the market rate survey. A copy of the questions was also sent so that providers could prepare responses. A market research firm conducted the telephone survey in English and in Spanish, as needed, and had the resources available to assist providers in other languages, if needed. Rate data was collected from almost 4,800 providers and that information formed the basis for the updated market rates.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The regulations will affect the 44 social services districts located in rural areas of the State and the child care providers located in those districts.

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

The regulations will not result in any new reporting or recordkeeping requirements for social services districts.

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the new market rates. Districts will need to review cases to determine if the payments reflect the actual cost of care up to the new market rates. When a family uses multiple child care providers and the reimbursement exceeds one weekly market rate, districts will need to determine whether the situation requires multiple child care providers. Payment adjustments will have to be made, as needed.

Neither social services districts nor child care providers should have to hire additional professional staff in order to implement these regulations.

3. Costs:

Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing subsidized child care services to public assistance recipients; districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2005-2006, social services districts received their allocations of \$716,520,153 in federal and State funds under the New York State Child Care Block Grant, an increase of \$5.9 million from the base amount allocated to districts for SFY 2004-05. These increases in funding are sufficient to cover the increased payments by social services districts due to the implementation of the new market rates. In addition, social services districts had the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations.

4. Minimizing adverse impact:

The market rates were developed in accordance with federal guidelines for conducting a survey of child care providers. The Office took a representative sample of approximately 4,800 completed surveys from licensed and registered child care providers throughout the State. The rates were analyzed to establish market rates at the 75th percentile of the amounts charged. The market rates are clustered into five distinct groupings of counties based on similarities in rates among the counties in each group. As a result, the rates established for rural counties are based on the actual costs of care within the counties.

Social services districts in rural areas will benefit from the increases in the rates. The increases will enable districts to provide temporary assistance recipients and low-income families receiving subsidized child care services with access to additional child care providers. This will assist these districts to enable more temporary assistance and low-income families to work, thereby reducing the number of families in need of temporary assistance. It also should assist the districts in meeting their federal participation rates for Temporary Assistance (TA) recipients because there should be a reduction in the number of TA recipients who are excused from work activities due to a lack of child care.

Child care providers in rural areas also will benefit from the increases in the market rates. The adjustments to the market rates will help address the escalating costs incurred by child care providers in operating their businesses. These providers will also be in a better position to serve low-income families who previously may not have had access to their programs due to their rates.

Social services districts will benefit from the clarification given regarding reimbursement when multiple child care providers are used. These regulations will strengthen the ability of social services districts to monitor payments so that families and child care providers do not receive unwarranted payments in excess of the market rates. Parents and caretakers will be able use multiple child care providers, with payments reflecting the appropriate market rate for each provider, when their employment schedule or the special needs of the children merit it.

5. Rural area participation:

Federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to

the effective date of the currently approved State plan for the Child Care and Development Fund. In accordance with the federal regulatory requirements, OCFS conducted a telephone survey of a sample of regulated providers. The sample drawn was representative of the regions across the State and, therefore, providers located in rural areas were appropriately represented in the survey. Prior to conducting the telephone survey, a letter was sent to all regulated child care providers to inform them that they might be included among the sample of providers called to participate in the market rate survey. A copy of the questions was also sent so that providers could prepare responses. A market research firm conducted the telephone survey in English and in Spanish, as needed, and had resources available to assist providers in other languages, if needed. Rate data was collected from almost 4,800 providers and that information formed the basis for the updated market rates.

Job Impact Statement

Section 201-a of the State Administrative Procedures Act requires a job impact statement to be filed if proposed regulations will have an adverse impact on jobs and employment opportunities in the State.

These regulations will have a positive impact on jobs or employment opportunities as the increased rates will allow child care providers to hire additional staff or improve the compensation they pay existing staff. Individuals who may have been discouraged from starting up new child care programs in low-income communities because the existing rates would not have been sufficient to support their operational costs may be encouraged by the new rates to establish such programs. In addition, by making child care more available and affordable for low-income working families, the regulations will improve the ability of employers to attract and retain employees and the ability of low-income workers to obtain and maintain jobs.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-52-05-00004-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Department of Taxation and Finance.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Taxation and Finance, by increasing the number of positions of Investigator from 10 to 11.

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

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-52-05-00005-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "State Board of Elections," by adding thereto the positions of Assistant Director Operations and Assistant Director Public Information.

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

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-52-05-00006-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To delete positions from and classify positions in the exempt class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Criminal Justice Services," by decreasing the number of positions of Assistant Counsel from 3 to 2 and Director of Internal Audit from 2 to 1 and by increasing the number of positions of Special Assistant from 2 to 4.

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

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-52-05-00007-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To delete positions from and classify positions in the exempt class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "State Board of Elections," by deleting therefrom the positions of Executive Deputy Director and Executive Director and by adding thereto the positions of Co-Executive Director (2).

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

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

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

Jurisdictional Classification

I.D. No. CVS-52-05-00008-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department of Civil Service.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Civil Service, by adding thereto the position of NYSHIP Communications Manager (1).

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

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

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

Jurisdictional Classification

I.D. No. CVS-52-05-00009-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Criminal Justice Services," by adding thereto the position of Supervisor Forensic Services (1).

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

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

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

Jurisdictional Classification

I.D. No. CVS-52-05-00010-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by adding thereto the position of Affirmative Action Administrator 4 (1).

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

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

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

Jurisdictional Classification

I.D. No. CVS-52-05-00011-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Human Rights," by adding thereto the position of Community Outreach Specialist 1 (1).

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

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

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

Jurisdictional Classification

I.D. No. CVS-52-05-00012-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the non-competitive class in the Department of Environmental Conservation.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Environmental Conservation, by deleting therefrom the position of Affirmative Action Administrator 2 (1) and by adding thereto the position of Affirmative Action Administrator 3 (1).

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

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

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

Jurisdictional Classification

I.D. No. CVS-52-05-00013-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the non-competitive class in the Department of Labor.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Labor, by deleting therefrom the position of Director Welfare-to-Work Division (1); and, in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by adding thereto the position of Director Welfare-to-Work Division (1).

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

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

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

Jurisdictional Classification

I.D. No. CVS-52-05-00014-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office for Technology," by deleting therefrom the positions of Radio Technician (3) and by adding thereto the positions of Radio Technician.

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

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

Education Department

**EMERGENCY
RULE MAKING**

Special Education Programs and Services

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

Filing No. 1470

Filing date: Dec. 9, 2005

Effective date: Dec. 12, 2005

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

Action taken: Repeal of Part 101 and amendment of sections 100.2, 200.1, 200.2, 200.3, 200.4, 200.5, 200.6, 200.7, 200.14, 200.16, 201.2, 201.3, 201.4, 201.5, 201.7, 201.8, 201.9, 201.10 and 201.11 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a(1-7) and 4410(13); L. 2005, ch. 119 and 352

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

Specific reasons underlying the finding of necessity: The purpose of the proposed amendment is to conform the Regulations of the Commissioner of Education to the federal Individuals with Disabilities Education Act (IDEA), as amended by Public Law 108-446, and to Chapter 352 of the Laws of 2005. IDEA was reauthorized in December 2004 and most of its provisions became effective July 1, 2005. Chapter 352 of the Laws of 2005, effective July 1, 2005, amended the Education Law to ensure that the State will be in compliance with the provisions of the reauthorized IDEA in the 2005-2006 school year.

A Notice of Proposed Rule Making was published in the *State Register* on June 8, 2005. Since its publication, the proposed amendment has been substantially revised in response to public comment and adopted through emergency action by the Board of Regents, effective September 13, 2005. A Notice of Emergency Adoption and Proposed Rule Making was published in the *State Register* on September 28, 2005.

The proposed amendment was adopted as a permanent rule at the December 8-9, 2005 meeting of the Board of Regents, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act. Pursuant to SAPA section 202(5), the permanent adoption cannot become effective until after

its publication in the *State Register* on December 28, 2005. However, the September emergency adoption will expire on December 11, 2005, 90 days after its filing with the Department of State on September 13, 2005. A second emergency adoption is therefore necessary for the preservation of the general welfare to ensure that the amendment remains continuously in effect until the effective date of its adoption as a permanent rule.

Emergency action to adopt the proposed rule is necessary for the preservation of the general welfare in order to ensure that the amendments previously adopted by emergency action to conform the Commissioner's Regulations to the requirements of the federal IDEA, as amended by Public Law 108-446 and Chapter 352 of the Laws of 2005, remain continuously in effect until the effective date of their adoption as a permanent rule, and thereby ensure the rights of students with disabilities and their parents consistent with federal and State statutes and ensure compliance with requirements for receipt of federal funds.

Subject: Special education programs and services.

Purpose: To conform commissioner's regulations to the Federal Individuals with Disabilities Education Act.

Substance of emergency rule: The Commissioner of Education proposes to repeal Part 101 and amend sections 100.2(x), 100.2(dd), 200.1, 200.2, 200.3, 200.4, 200.5, 200.6, 200.7, 200.14, 200.16, 201.2, 201.3, 201.4, 201.5, 201.7, 201.8, 201.9, 201.10 and 201.11 of the Commissioner's Regulations, effective December 12, 2005, relating to the provision of special education programs and services to students with disabilities. The following is a summary of the substance of the proposed amendments.

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

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

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

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

Section 200.2, as amended, adds child find requirements for students with disabilities who are homeless or wards of the State; adds data requirements consistent with federal law; adds new responsibilities relating to child find, evaluation, data collection and data reporting for students with disabilities placed in private elementary and secondary schools by their parents; requires instructional materials to be in a format that meets the National Instructional Materials Accessibility Standard as published in the Federal Register; ensures that amendments to individualized education programs (IEPs) are disseminated consistent with Chapter 408 of the Laws of 2002; repeals requirements for a comprehensive system of personnel development and requires schools to include personnel development activities for staff working with students with disabilities in the professional development plan pursuant to section 100.2 of the Commissioner's Regulations; requires boards of education and boards of cooperative educational services (BOCES) to establish written policies that identify the measurable steps it will take to recruit, hire, train and retain highly qualified personnel; requires school districts to develop policies and procedures that describe the guidelines for the provision of appropriate accommodations in the administration of district-wide assessments; and requires a school district to identify how, to the extent feasible, it will use universal design principles in developing and administering any district-wide assessments.

Section 200.3, as amended, requires that not less than one regular education teacher and not less than one special education teacher or provider be members of the CSE, a subcommittee thereof, and the committee on preschool special education (CPSE); and adds, consistent with amendments made to section 4402 of the Education Law by Chapter 194 of the Laws of 2004, that the additional parent member on the CSE may be a parent of a student who has been declassified or who has graduated within the past five years.

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

Section 200.5, as amended, conforms State due process requirements to federal law relating to prior written notice, consent, notice of meetings, parent participation in CSE meetings, procedural safeguards notice, mediation, due process complaint notices, resolution sessions, impartial hearings, appeals of the decision of the State review officer and surrogate parents; establishes procedures for the appointment of surrogate parents that require consultation with the local social services district of other agency responsible for the care of the student for students who are wards of the state; and requires the appointment of a surrogate parent a reasonable time following the receipt of a referral for an initial evaluation, reevaluation or services.

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

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

Section 200.14, as amended, makes technical amendments and corrects a cross citation to the requirements for an annual review and reevaluation in section 200.4.

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

Section 201.2, as amended, conforms the definition of interim alternative educational setting to federal law, amends the definition of removal to correct a cross citation and adds a definition of serious bodily injury.

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. EDU-23-05-00018-P, Issue of June 8, 2005. The emergency rule will expire February 6, 2006.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

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

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

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

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

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

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

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

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

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

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

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

LEGISLATIVE OBJECTIVES:

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

NEEDS AND BENEFITS:

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

COSTS:

- a. Costs to State government: None.
- b. Costs to local governments: None.
- c. Costs to regulated parties: None.

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

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

LOCAL GOVERNMENT MANDATES:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PAPERWORK:

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

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

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

DUPLICATION:

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

ALTERNATIVES:

There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

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

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

SMALL BUSINESSES:

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

LOCAL GOVERNMENTS:

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

COMPLIANCE REQUIREMENTS:

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

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

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

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

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

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

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

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

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

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

Section 200.14, as amended, conforms the requirements for evaluations and annual reviews for students in day treatment programs to amended requirements in section 200.4.

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

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

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

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

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

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

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

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

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

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

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

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

ECONOMIC AND TECHNICAL FEASIBILITY:

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

MINIMIZING ADVERSE IMPACT:

The proposed amendments are necessary to conform the Commissioner's Regulations to IDEA (20 U.S.C. 1400 *et. seq.*), as amended by Public Law 108-446 and to changes in State law. School districts and other LEAs are required to comply with IDEA as a condition to their receipt of federal funding. The proposed amendments have been carefully drafted to

meet federal and State statutory requirements and do not impose any additional costs or compliance requirements on these entities beyond those imposed by State and federal law.

LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendments will apply to all public school districts, boards of cooperative educational services (BOCES), State-operated and State-supported schools and approved private schools in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with population density of 150 per square miles or less.

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

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS AND PROFESSIONAL SERVICES:

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

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

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

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

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

Section 200.3, as amended, requires that not less than one regular education teacher and not less than one special education teacher or provider be members of the committee on special education (CSE), a subcom-

mittee thereof, and the committee on preschool special education (CPSE); and allows the additional parent member on a CSE to be a parent of a child who has been declassified or has graduated within a five-year period.

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

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

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

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

Section 200.14, as amended, conforms the requirements for evaluations and annual reviews for students in day treatment programs to amended requirements in section 200.4.

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

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

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

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

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

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

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

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

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

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

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

COSTS:

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

MINIMIZING ADVERSE IMPACT:

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

RURAL AREA PARTICIPATION:

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

Job Impact Statement

The proposed amendments are necessary in order to ensure compliance with federal law and regulations and State law relating to the education of students with disabilities, ages 3-21, and will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

EMERGENCY RULE MAKING

School Health Services

I.D. No. EDU-49-05-00017-E

Filing No. 1472

Filing date: Dec. 9, 2005

Effective date: Dec. 12, 2005

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

Action taken: Amendment of section 136.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 901(1) and (2); 902(1), (2) and (3); 903(1) and (2); 904(1) and (2); 905(1), (2), (3) and (4); 906(1) and (2); 911(1); 913 (not subdivided); 914(1) and L. 2004, ch. 477

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

Specific reasons underlying the finding of necessity: At their September 2005 meeting, the Board of Regents adopted, effective September 29, 2005, amendments to sections 136.1, 136.2 and 136.3 of the Commissioner's Regulations to implement and otherwise conform the Commissioner's Regulations to Chapter 477 of the Laws of 2004.

Included among the amendments is a new section 136.3(f), which provides that no health examinations, health history, examinations for health appraisal, immunizations, screening examinations for sickle cell anemia and/or other health screenings shall be required where a student or the parent or person in parental relation to such student objects to the health services as conflicting with their genuine and sincere religious beliefs. The new section 136.3(f) further provides that a written and signed statement from the student or the student's parents or person in parental relation that such person holds such beliefs shall be submitted to the principal or the principal's designee and shall be deemed to constitute sufficient proof of such beliefs.

Based on comments received from the Department of Health and others after adoption of new section 136.3(f) in September, the Department has determined that the regulation conflicts with statute by including immunizations with the examinations, health histories, appraisals and screening examinations that are subject to the religious exemption language in section 136.3(f). Chapter 477 of the Laws of 2004 amended sections 903, 904 and 905 of the Education Law to provide that examinations for a health certificate or health history or screening examinations for sickle cell anemia, vision, hearing or scoliosis shall not be required where the parent or student objects on the grounds that such examinations conflict with their genuine and sincere religious beliefs. Chapter 477 did not add similar language to section 914 of the Education Law, which relates to immunizations and mandates that schools require proof of immunization in accordance with section 2164 of the Public Health Law. Subdivision 9 of section 2164 of the Public Health Law contains the religious exemption language

that applies to immunizations. Under Public Health Law section 2164(9), the parent, parents or guardians may object to immunization of their child based on their genuine and sincere religious beliefs, but the student may not. Chapter 477 of the Laws of 2004 did not amend Public Health Law section 2164(9), and therefore did not provide statutory authority for extending the religious exemption language from sections 903, 904 and 905 of the Education Law to cover immunizations. Accordingly, the references to immunizations in section 136.3(f) need to be deleted.

In addition, the Department has determined that the provision in section 136.3(f) that would deem submission of a signed, written statement to constitute sufficient proof of genuine and sincere religious beliefs is inconsistent with the Legislative intent of Chapter 477 of the Laws of 2004. Chapter 477 extended the legal standard for religious exemptions that applies to immunizations – a genuine and sincere religious belief – to health examinations, health histories and screening examinations. However, requiring that school districts accept a written statement without being able to question the sincerity of the parent's and student's religious beliefs is inconsistent with the provisions in the Regulations of the Department of Health (10 NYCRR section 66-1.3), and established decisional case law, for determining such beliefs for purposes of obtaining an exemption from the immunization requirements in Public Health Law section 2164.

There is no indication in the language of Chapter 477 that religious exemptions for examinations were intended to be treated differently than religious exemptions for immunizations in this regard. In fact, it is the Department's understanding that the legislative intent was to have the same legal standard apply to both examinations and immunizations. Requiring school officials to accept a written statement as proof of a conflict with genuine and sincere religious beliefs without the ability to request additional proof of the sincerity of those religious beliefs, would not strike an appropriate balance between the state's interest in protecting the health of children by requiring that they submit to examinations and screenings and the rights of parents and students to object to such examinations on religious grounds. As with immunizations, school officials should have discretion to question the sincerity of the religious beliefs asserted by the student or parent, and to deny exemptions where the request is not based on religion but merely on personal preference.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare to immediately conform the Commissioner's Regulations, regarding religious accommodations for school health services required under Chapter 477 of the Laws of 2004, to the Regulations of the Department of Health and thereby ensure consistency with the legislative intent of Chapter 477 of the Laws of 2004.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at their February 13-14, 2006 meeting.

Subject: School health services.

Purpose: To clarify the accommodation for religious beliefs provision to ensure consistency with Public Health Law, section 2164 and the regulations of the Commissioner of Health and chapter 477 of the Laws of 2004.

Text of emergency rule: 1. Paragraph (2) of subdivision (a) of section 136.3 of the Regulations of the Commissioner of Education is amended, effective December 12, 2005, as follows:

(2) *except where otherwise prohibited by law, to advise, in writing, the parent [or guardian] of, or other persons in parental relation to, each student in whom any aspect of the total school health program indicates [a defect, disability] such student has defective sight or hearing, or a physical disability or other condition which may require professional attention with regard to health.*

2. Subdivision (f) of section 136.3 of the Regulations of the Commissioner of Education is amended, effective December 12, 2005, as follows:

(f) Accommodation for religious beliefs. Notwithstanding the provisions of this section, no health examinations, health history, examinations for health appraisal, [immunizations,] screening examinations for sickle cell anemia and/or other health screenings shall be required where a student or the parent or person in parental relation to such student objects thereto on the grounds that such examinations, health history [, immunizations] and/or screenings conflict with their genuine and sincere religious beliefs. A written and signed statement from the student or the student's parent or person in parental relation that such person holds such beliefs shall be submitted to the principal or the principal's designee [and shall be deemed to constitute sufficient proof of such beliefs] , *in which case the principal or principal's designee may require supporting documents.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a

permanent rule, having previously published a notice of proposed rule making, I.D. No. EDU-49-05-00017-P, Issue of December 7, 2005. The emergency rule will expire March 8, 2006.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

Education Law section 901, as amended by Chapter 477 of the Laws of 2004, requires school health services to be provided by each school district for all students attending the public schools in this State, except in the city school districts of the cities of New York, Buffalo and Rochester.

Education Law section 902, as amended by Chapter 477 of the Laws of 2004, provides for the employment of health professionals by school districts, and requires districts to employ a director of school health services to perform and coordinate the provision of health services in the public schools and to provide health appraisals of students attending its schools.

Education Law section 903(1), as amended by Chapter 477 of the Laws of 2004, requires that health certificates be furnished by each student in the public schools upon entrance into the grades prescribed by the Commissioner in regulations.

Education Law section 904, as amended by Chapter 477 of the Laws of 2004, provides that the principal or principal's designee shall report to the director of school health services the names of all students who have not furnished health certificates or who are children with disabilities, and the director shall cause such students to be examined.

Education Law section 905(1), as amended by Chapter 477 of the Laws of 2004, requires screening examinations for vision, hearing and scoliosis at such times and as defined in the regulations of the Commissioner. Section 905(3) provides for a waiver by the Commissioner of such requirement upon specified conditions and upon rules and regulations established by the Commissioner.

Education Law section 906, as amended by Chapter 477 of the Laws of 2004, provides for the exclusion and examination upon readmittance of students showing symptoms of communicable or infectious disease reportable under the Public Health Law, and for the evaluation of teachers and other school employees and school buildings and premises as deemed necessary to protect the health of students and staff.

Education Law section 911(1), as amended by Chapter 477 of the Laws of 2004, provides that it shall be the duty of the Commissioner to enforce the provisions of Article 19 of the Education Law, and the commissioner may adopt rules and regulations not inconsistent herewith, after consultation with the Commissioner of Health, for the purpose of carrying into full force and effect the objects and intent of such Article.

Education Law section 913, as amended by Chapter 477 of the Laws of 2004, provides for medical examinations of teachers and other employees to safeguard the health of children attending public schools.

Education Law section 914, as amended by Chapter 477 of the Laws of 2004, provides that each school shall require every child entering or attending school to submit proof of immunization against certain specified diseases.

Chapter 477 of the Laws of 2004 amended and repealed certain sections in Education Law Article 19, regarding the provision of school health services in New York State schools, to extend the period of time in which students may obtain physical examinations and health certificates for school in order to facilitate and provide flexibility of scheduling for pediatricians and parents, and to update the terminology and standards to be consistent with current medical and health care practice.

LEGISLATIVE OBJECTIVES:

Consistent with the above statutory authority, the proposed amendment is necessary to conform the Commissioner's Regulations to the Regulations of the Department of Health and ensure consistency with the legislative intent of Chapter 477 of the Laws of 2004.

NEEDS AND BENEFITS:

At their September 2005 meeting, the Board of Regents adopted, effective September 29, 2005, amendments to sections 136.1, 136.2 and 136.3 of the Commissioner's Regulations to implement and otherwise conform the Commissioner's Regulations to Chapter 477 of the Laws of 2004.

Included among the amendments is a new section 136.3(f), which provides that no health examinations, health history, examinations for health appraisal, immunizations, screening examinations for sickle cell anemia and/or other health screenings shall be required where a student or the parent or person in parental relation to such student objects to the health services as conflicting with their genuine and sincere religious beliefs. The new section 136.3(f) further provides that a written and signed statement from the student or the student's parents or person in parental relation that such person holds such beliefs shall be submitted to the principal or the principal's designee and shall be deemed to constitute sufficient proof of such beliefs.

Based on comments received from the Department of Health and others after adoption of new section 136.3(f) in September, the Department has determined that the regulation conflicts with statute by including immunizations with the examinations, health histories, appraisals and screening examinations that are subject to the religious exemption language in section 136.3(f). Chapter 477 of the Laws of 2004 amended sections 903, 904 and 905 of the Education Law to provide that examinations for a health certificate or health history or screening examinations for sickle cell anemia, vision, hearing or scoliosis shall not be required where the parent or student objects on the grounds that such examinations conflict with their genuine and sincere religious beliefs. Chapter 477 did not add similar language to section 914 of the Education Law, which relates to immunizations and mandates that schools require proof of immunization in accordance with section 2164 of the Public Health Law. Subdivision 9 of section 2164 of the Public Health Law contains the religious exemption language that applies to immunizations. Under Public Health Law section 2164(9), the parent, parents or guardians may object to immunization of their child based on their genuine and sincere religious beliefs, but the student may not. Chapter 477 of the Laws of 2004 did not amend Public Health Law section 2164(9), and therefore did not provide statutory authority for extending the religious exemption language from sections 903, 904 and 905 of the Education Law to cover immunizations. Accordingly, the references to immunizations in section 136.3(f) need to be deleted.

In addition, the Department has determined that the provision in section 136.3(f) that would deem submission of a signed, written statement to constitute sufficient proof of genuine and sincere religious beliefs is inconsistent with the Legislative intent of Chapter 477 of the Laws of 2004. Chapter 477 extended the legal standard for religious exemptions that applies to immunizations – a genuine and sincere religious belief – to health examinations, health histories and screening examinations. However, requiring that school districts accept a written statement without being able to question the sincerity of the parent's and student's religious beliefs is inconsistent with the provisions in the Regulations of the Department of Health (10 NYCRR section 66-1.3), and established decisional case law, for determining such beliefs for purposes of obtaining an exemption from the immunization requirements in Public Health Law section 2164.

There is no indication in the language of Chapter 477 that religious exemptions for examinations were intended to be treated differently than religious exemptions for immunizations in this regard. In fact, it is the Department's understanding that the legislative intent was to have the same legal standard apply to both examinations and immunizations. Requiring school officials to accept a written statement as proof of a conflict with genuine and sincere religious beliefs without the ability to request additional proof of the sincerity of those religious beliefs, would not strike an appropriate balance between the state's interest in protecting the health of children by requiring that they submit to examinations and screenings and the rights of parents and students to object to such examinations on religious grounds. As with immunizations, school officials should have discretion to question the sincerity of the religious beliefs asserted by the student or parent, and to deny exemptions where the request is not based on religion but merely on personal preference.

Therefore, the proposed amendment is necessary to conform the Commissioner's Regulations to the Regulations of the Department of Health and thereby ensure consistency with the legislative intent of Chapter 477 of the Laws of 2004.

Section 136.3(a)(2) is also amended to ensure conformance to applicable legal requirements regarding disclosure of confidential information by adding the phrase "except where otherwise prohibited by law." In addition, section 136.3(a)(2) was amended to conform its provisions to Education Law section 904(1), as amended by Chapter 477 of the Laws of 2004, which provides for notification of "persons in parental relation" instead of "guardian" and provides for notification of "defective sight or hearing, or other physical disability."

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 ensures consistency with established practice for determining genuine and sincere religious beliefs, for purposes of obtaining an exemption from the school health services required under Chapter 477 of the Laws of 2004, and will not impose any additional costs beyond those imposed by the statute.

LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to implement Chapter 477 of the Laws of 2004 and to otherwise conform the Commissioner's Regulations to the Regulations of the Commissioner of Health, and will not impose any additional program, service, duty or responsibility on school districts or other local governments beyond those imposed by the statute. The proposed amendment conforms the Commissioner's Regulations to existing practice, as provided in decisional case law and the Regulations of the Commissioner of Health, regarding the determination of genuine and sincere religious belief for purposes of obtaining an exemption from required school health services.

PAPERWORK:

The proposed amendment establishes provisions for accommodation of religious beliefs and provides that no health examinations, health history, examinations for health appraisal, screening examinations for sickle cell anemia and/or other health screenings shall be required where a student or the parent or person in parental relation to such student objects on grounds that such examinations, health history and/or screenings conflict with their genuine and sincere religious beliefs. A written and signed statement from the student or the student's parent or person in parental relation that such person holds such beliefs shall be submitted to the principal or principal's designee, in which case the principal or principal's designee may require supporting documents.

DUPLICATION:

The proposed amendment does not duplicate existing State or federal regulations and is necessary to implement Chapter 477 of the Laws of 2004 and conform the Commissioner's Regulations to the Regulations of the Commissioner of Health (10 NYCRR section 66-1.3).

ALTERNATIVES:

The proposed amendment is necessary to implement Chapter 477 of the Laws of 2004 and conform the Commissioner's Regulations to the Regulations of the Commissioner of Health. There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no related federal standards.

COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with proposed amendment by its effective date. The proposed amendment conforms the Commissioner's Regulations to existing practice, as provided in decisional case law and the Regulations of the Commissioner of Health, regarding the determination of genuine and sincere religious belief for purposes of obtaining an exemption from required school health services.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to accommodation for religious beliefs of parents and students regarding school district health services required pursuant to Chapter 477 of the Laws of 2004, and does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed 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 public school districts and boards of cooperative educational services (BOCES) in the State.

COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to the Regulations of the Department of Health and ensure consistency with the legislative intent of Chapter 477 of the Laws of 2004, and will not impose any additional any additional compliance requirements on school districts beyond those imposed by the statute.

The proposed amendment establishes provisions for accommodation of religious beliefs and provides that no health examinations, health history, examinations for health appraisal, screening examinations for sickle cell anemia and/or other health screenings shall be required where a student or the parent or person in parental relation to such student objects on grounds that such examinations, health history and/or screenings conflict with their genuine and sincere religious beliefs. A written and signed statement from the student or the student's parent or person in parental relation that such person holds such beliefs shall be submitted to the principal or principal's designee, in which case the principal or principal's designee may require supporting documents.

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

The proposed amendment ensures consistency with established practice for determining genuine and sincere religious beliefs, for purposes of obtaining an exemption from the school health services required under Chapter 477 of the Laws of 2004, and will not impose any additional costs beyond those imposed by the statute.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to the Regulations of the Department of Health and thereby ensure consistency with the legislative intent of Chapter 477 of the Laws of 2004. The proposed amendment has been carefully drafted to meet these specific statutory requirements. The proposed amendment ensures consistency with established practice for determining genuine and sincere religious beliefs, for purposes of obtaining an exemption from the school health services required under Chapter 477 of the Laws of 2004, and will not impose any additional compliance requirements or costs beyond those imposed by the statute.

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 the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment is necessary to conform the Commissioner's Regulations to the Regulations of the Department of Health and ensure consistency with the legislative intent of Chapter 477 of the Laws of 2004, and will not impose any additional any additional compliance requirements on school districts beyond those imposed by the statute.

The proposed amendment establishes provisions for accommodation of religious beliefs and provides that no health examinations, health history, examinations for health appraisal, screening examinations for sickle cell anemia and/or other health screenings shall be required where a student or the parent or person in parental relation to such student objects on grounds that such examinations, health history and/or screenings conflict with their genuine and sincere religious beliefs. A written and signed statement from the student or the student's parent or person in parental relation that such person holds such beliefs shall be submitted to the principal or principal's designee, in which case the principal or principal's designee may require supporting documents.

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

COMPLIANCE COSTS:

The proposed amendment ensures consistency with established practice for determining genuine and sincere religious beliefs, for purposes of obtaining an exemption from the school health services required under Chapter 477 of the Laws of 2004, and will not impose any additional costs beyond those imposed by the statute.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to the Regulations of the Department of Health and thereby

ensure consistency with the legislative intent of Chapter 477 of the Laws of 2004. The proposed amendment has been carefully drafted to meet these specific statutory requirements. The proposed amendment ensures consistency with established practice for determining genuine and sincere religious beliefs, for purposes of obtaining an exemption from the school health services required under Chapter 477 of the Laws of 2004, and will not impose any additional compliance requirements or costs beyond those imposed by the statute.

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 accommodation for religious beliefs of parents and students regarding school district health services required pursuant to Chapter 477 of the Laws of 2004, and is needed to ensure consistency with regulations of the Department of Health. The proposed amendment 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 impact on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION

Special Education Programs and Services

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

Filing No. 1471

Filing date: Dec. 9, 2005

Effective date: Dec. 29, 2005

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

Action taken: Repeal of Part 101 and amendment of sections 100.2, 200.1, 200.2, 200.3, 200.4, 200.5, 200.6, 200.7, 200.14, 200.16, 201.2, 201.3, 201.4, 201.5, 201.7, 201.8, 201.9, 201.10 and 201.11 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a(1-7) and 4410(13); and L. 2005, ch. 119 and 352

Subject: Special education programs and services.

Purpose: To conform commissioner's regulations to the Federal Individuals with Disabilities Education Act.

Substance of final rule: The Commissioner of Education proposes to repeal Part 101 and amend sections 100.2(x), 100.2(dd), 200.1, 200.2, 200.3, 200.4, 200.5, 200.6, 200.7, 200.14, 200.16, 201.2, 201.3, 201.4, 201.5, 201.7, 201.8, 201.9, 201.10 and 201.11 of the Commissioner's Regulations, effective December 29, 2005, relating to the provision of special education programs and services to students with disabilities. Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on September 28, 2005, nonsubstantial revisions were made to the proposed rule, as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The following is a summary of the substance of the revised proposed rule.

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

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

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

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

amendments to the definitions of guardian ad litem, general curriculum and prior written notice.

Section 200.2, as amended, adds child find requirements for students with disabilities who are homeless or wards of the State; adds data requirements consistent with federal law; adds new responsibilities relating to child find, evaluation, data collection and data reporting for students with disabilities placed in private elementary and secondary schools by their parents; requires instructional materials to be in a format that meets the National Instructional Materials Accessibility Standard as published in the Federal Register; ensures that amendments to individualized education programs (IEPs) are disseminated consistent with Chapter 408 of the Laws of 2002; repeals requirements for a comprehensive system of personnel development and requires schools to include personnel development activities for staff working with students with disabilities in the professional development plan pursuant to section 100.2 of the Commissioner's regulations; requires boards of education and boards of cooperative educational services (BOCES) to establish written policies that identify the measurable steps it will take to recruit, hire, train and retain highly qualified personnel; requires school districts to develop policies and procedures that describe the guidelines for the provision of appropriate accommodations in the administration of district-wide assessments; and requires a school district to identify how, to the extent feasible, it will use universal design principles in developing and administering any district-wide assessments.

Section 200.3, as amended, requires that not less than one regular education teacher and not less than one special education teacher or provider be members of the CSE, a subcommittee thereof, and the committee on preschool special education (CPSE); and adds, consistent with amendments made to section 4402 of the Education Law by Chapter 194 of the Laws of 2004, that the additional parent member on the CSE may be a parent of a student who has been declassified or who has graduated within the past five years.

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

Section 200.5, as amended, conforms State due process requirements to federal law relating to prior written notice, consent, notice of meetings, parent participation in CSE meetings, procedural safeguards notice, mediation, due process complaint notices, resolution sessions, impartial hearings, appeals of the decision of the State review officer and surrogate parents; establishes procedures for the appointment of surrogate parents that require consultation with the local social services district of other agency responsible for the care of the student for students who are wards of the state; and requires the appointment of a surrogate parent a reasonable time following the receipt of a referral for an initial evaluation, reevaluation or services.

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

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

Section 200.14, as amended, makes technical amendments and corrects a cross citation to the requirements for an annual review and reevaluation in section 200.4.

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

Section 201.2, as amended, conforms the definition of interim alternative educational setting to federal law, amends the definition of removal to correct a cross citation and adds a definition of serious bodily injury.

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

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

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

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

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

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

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

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

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

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 100.2(x)(7), 200.2(i), 200.4(b)(6), (c)(2), (d)(2), (f)(1), (g), 200.5(a)(6), (b)(4), (5), (i)(1), (5), (b)(6), (7), (j)(4), 200.14(d)(1), 200.16(h)(1), 201.2(l), 201.3(b), 201.4(d)(2), 201.10(e)(1) and 201.11(d).

Revised rule making(s) were previously published in the State Register on September 28, 2005.

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

Regulatory Impact Statement

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the *State Register* on September 28, 2005, nonsubstantial revisions were made to correct section 100.2(x)(7), relating to homeless youth, to add the inadvertent omission of regulatory language which became effective on July 14, 2005 pursuant to a separate unrelated rule making; to correct numbering in section 200.2(i) and the inadvertent omission of the word "to" in section 200.2(i)(2); to correct numbering in sections 200.4(f)(1) and (2) and 200.4(g); to correct punctuation in sections 200.4(b)(6)(xvi), 200.4(c)(2) and 200.4(d)(2) and 200.5(b)(5); to add current regulatory language inadvertently omitted from section 200.4(d)(2)(iii); to correct capitalization in section 200.5(b)(4)(ii); to correct a cross citation relating aging out notifications in section 200.5(b)(6) and to correct the numbering of subparagraphs (a), (b) and (c) in section 200.5(i)(1); to delete the unnecessary designation of subparagraph (i) in section 200.5(i)(5); to reletter subparagraphs in section 200.5(i)(6); to renumber the subparagraphs in section 200.5(i)(7); to correct the lettering of clauses in section 200.5(i)(7)(i); to renumber subparagraphs (a) and (b) to (i) and (ii) and to correct the cross citation to subparagraph (ii) in subparagraph (i) in section 200.5(j)(4); to delete the first use of the acronym IEP' in section 200.14(d); to designate section 200.16(g)(1)(i) as language to be repealed consistent with new language added in paragraph (2); to add an amendment to section 210.2(l) to correct a cross citation; to correct the inadvertent omission of language relating to behavioral intervention plan review requirements in section 201.3(b); to correct lettering of subparagraphs in section 201.4(d)(2); to delete the repetition of the word "to" in section 201.10(e)(1); and to add the inadvertently repeal of the word "section" in section 201.11(d).

As published, section 100.2(x)(7) did not take into account regulatory language adopted effective July 14, 2005. Therefore, this section has been revised to correct subparagraph (iii), relating to the local education agency liaison for homeless youth, by adding the following language that was inadvertently omitted: "and provides the form petition for commencing an appeal to the Commissioner pursuant to Education Law section 310 of a final determination regarding enrollment." This section is further revised to add subparagraphs (d) and (e) which were inadvertently omitted and renumber (vi) as (iv) and (vii) as (v).

As published, proposed section 200.2(i), relating to the responsibility of boards of cooperative educational services (BOCES), added paragraphs (a) and (b) which should have been (1) and (2) and inadvertently omitted the word "to" in section 200.2(i)(2). Therefore, this section has been corrected to change paragraph (a) to paragraph (1), to renumber subpara-

graphs (1) through (5) as (i) through (v) and to change paragraph (b) to (2) and to add the word “to” to section 200.2(i)(2) to read: “(2) Responsibility to identify and take measurable steps to recruit, hire, train and retain highly qualified personnel. Each BOCES shall identify and take steps to recruit, hire, train and retain highly qualified personnel to provide special education programs and services to students with disabilities served by the BOCES.”

As published, proposed section 200.4(b)(6)(xvi) omitted a semicolon before the word “and.” Therefore, section 200.4(b)(6)(xvi) has been amended to read: “materials and procedures used to assess a student with limited English proficiency are selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measure the student’s English language skills; and”

As published, proposed section 200.4(c)(2) failed to demark the colon as new punctuation. Therefore, section 200.4(c)(2) has been revised to read “A student [may] shall not be determined [to be] eligible for special education if the determinant factor [for that eligibility determination] is:”

As published, proposed section 200.4(d)(2) inadvertently indicated the repeal of the colon. Therefore, this section has been corrected to retain the colon prior to subparagraph (i).

Proposed section 200.4(d)(2)(iii) inadvertently omitted existing regulatory language. Therefore, this section has been revised to read after bracketed language: “The measurable annual goals, including benchmarks and short-term objectives, must relate to:”

Proposed section 200.4(d)(2) incorrectly numbered proposed subparagraph (xiv) which should have been (xii). Therefore, section 200.4(d)(2) has been revised to indicate (xiv) as repealed and to renumber this subparagraph as (xii).

As published, proposed section 200.4(f)(1) incorrectly lettered subparagraphs (a) through (g) and section 200.4(f)(2) incorrectly lettered subparagraphs (a) through (d). Therefore, section 200.4(f)(1) has been revised to number the subparagraphs as (i) through (vii) and section 200.f(2) has been revised to number the subparagraphs as (i) through (iv).

As published, proposed section 200.4(g) incorrectly lettered paragraphs (a) and (b). Therefore, this section has been revised to correct the numbering of the paragraphs as (1) and (2).

As published, proposed section 200.5(a)(6)(iii) failed to correct a cross citation to section 200.4(h)(1) relating to aging out notifications. Therefore, section 200.5(b)(6)(iii) has been corrected to read “For students described in section [200.4(h)(1)] 200.4(i)(1), notice must be provided to the parent and, beginning at age 18 to the student, in accordance with section 200.4(h)(2) and (3).”

As published, proposed section 200.5(b)(4)(ii) failed to capitalize the word “The.” Therefore, section 200.5(b)(4)(ii) has been amended to read “(ii) The school district shall not be required to convene a meeting of the committee on special education or develop an IEP under section 200.4 of this Part for the special education program and services for which the school district requests such consent.”

As published, section 200.5(b)(5) included a comma and a colon at the end of the first paragraph and inadvertently lettered subparagraphs incorrectly. Therefore, section 200.5(b)(5) was revised to delete the unnecessary comma and renumber subparagraphs (a), (b) and (c) as (i), (ii) and (iii).

As published, section 200.5(i)(1) incorrectly lettered subparagraphs (a) through (e). Therefore, this paragraph has been revised to correct the lettering of the subparagraphs as (i) through (v).

As published, section 200.5(i)(5) added an unnecessary subparagraph (i). Therefore, this section was revised to read “(5) *Other party response. Except as provided in paragraph (4) of this subdivision, the noncomplaining party shall, within 10 days of receiving the due process complaint notice, send to the complaining party a response that specifically addresses the issues raised in the notice.*”

As published, section 200.5(i)(6) incorrectly lettered its subparagraphs as (a) and (b). This has been corrected to (i) and (ii). Section 200.5(i)(7) was similarly corrected to letter its subparagraphs as (i) and (ii), and clauses (i) and (ii) of subparagraph (i) have been relettered as (a) and (b).

As published, proposed section 200.5(j)(4) incorrectly included designations of subparagraphs (i) and (ii) as (a) and (b). Therefore, this section has been revised to renumber the subparagraphs as (i) and (ii) and to correct the citation in subparagraph (i).

As published, section 200.14(d)(1) repeated the word IEP. Therefore, this section has been revised to delete the first use of the word IEP.

As published, section 200.16(h)(1) inadvertently omitted brackets around subparagraph (i). The new language added to paragraph (2) that states “The procedural safeguards notice shall be provided to the parent in

accordance with section 200.5(f) of this Part” is in conflict with section 200.16(h)(1)(i). Therefore, to ensure the regulations are internally consistent in their requirements, this section has been revised to add brackets around section 200.16(h)(1)(i).

As published, section 201.2(l) included an incorrect citation to subdivision (q), relating to the definition of suspension. Therefore, an amendment to subdivision (l) in the definition of “removal” has added to replace the cross citation to subdivision (q) with the correct cross citation to subdivision (r) relating to the definition of suspension.

As published, section 201.3 inadvertently omitted subdivision (b), relating to behavioral intervention plan review requirements. Therefore, this section was revised to indicate that subdivision (b) becomes subdivision (c) and this language continues to be in effect.

As published, section 201.4(d)(2) incorrectly numbered the first subparagraph as (a). Therefore, this section was revised to renumber section 200.4(d)(2)(a) as 200.4(d)(2)(i).

As published, section 201.10(e)(1) repeated the word “to”. Therefore this section was revised to read: “(1) [be selected so as to] enable the student to continue to [progress] *participate* in the general *education* curriculum, although in another setting, and [to continue to receive those modifications, including those described in the student’s current IEP, that will enable the child to meet] *to progress* toward meeting the goals set out in that IEP; and”.

As published, section 201.11(d) inadvertently bracketed the word “section” before the cross citation to 201.7. Therefore, this section was revised to delete the bracket before the word section and to insert it before 201.7(e) to read “. . . determined in accordance with section [201.7(e)] 201.7 or [in accordance with] section 201.8 of this Part, as applicable, [but not to exceed 45 days,] whichever occurs first, unless the parents and the school district otherwise agree.”

The above revisions to the proposed rule merely correct inadvertent errors in citations and existing language and do not require any changes to the previously published Regulatory Impact Statement.

Regulatory Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the *State Register* on September 28, 2005, nonsubstantial revisions were made to the proposed rule, as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The revisions to the proposed rule merely correct inadvertent errors in citations and existing regulatory language and do not require any changes to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Rural Area Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the *State Register* on September 28, 2005, nonsubstantial revisions were made to the proposed rule, as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The revisions to the proposed rule merely correct inadvertent errors in citations and existing regulatory language and do not require any changes to the previously published Rural Area Flexibility Analysis.

Job Impact Statement

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the *State Register* on September 28, 2005, nonsubstantial revisions were made to the proposed rule, as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The revisions to the proposed rule merely correct inadvertent errors in citations and omissions of existing regulatory language. The proposed amendment relates to implementation of the special education services to conform to the Individuals with Disabilities Education Act of 2004 and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the *State Register* on September 28, 2005, the State Education Department received the following comments.

1. COMMENTS:

Parent member. The regulations should be revised to require the additional parent member of the Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE) to attend a meeting only when requested by the parent.

DEPARTMENT RESPONSE:

Sections 4402 and 4410 of the Education Law require that the additional parent member of the CSE and CPSE attend the meeting unless the parent of the student declines the participation of the additional parent member. The Regulations of the Commissioner cannot be revised to address this recommendation without statutory authority.

2. COMMENTS:

Related services. Support was noted for the addition of "early identification and assessment of disabling conditions in students" in the proposed definition of related services.

The proposed definition of "health services," should be revised to recognize that mental health services are a critical component in the array of health services schools may offer to their students, especially students with disabilities, in order to ensure that they receive a free appropriate public education in the least restrictive environment.

DEPARTMENT RESPONSE:

Because of the nature of the first comment, no response is necessary. No changes have been made to the definition of "health services" since the current definition of related services includes psychological services.

3. COMMENTS:

Initial evaluation. The addition of a 60 calendar day time period to complete the initial evaluation and eligibility determination should be deleted from the proposed regulations, since this would lengthen the time to evaluate, determine eligibility and provide services, leaving students without the appropriate supports for a longer time frame.

The proposed regulations should be revised to establish a maximum time period not to exceed 15 days beyond the 60 calendar day time period for a student who enrolls in a school served by the school district after the 60 calendar day time period begins.

DEPARTMENT RESPONSE:

Under the proposed regulation, the school must complete the initial evaluation and make the determination of whether the student has a disability within 60 calendar days for a school age student (30 school days for a preschool age child). The requirement that the school age student receive services as recommended on his or her IEP within 60 school days has been retained. Therefore, the proposed timeline to complete the initial evaluation establishes a maximum period of time allowed for the completion of the initial evaluation and should expedite, rather than delay, the provision of services to students. The proposed regulations were not revised to add a maximum extension time period of 15 calendar days beyond the 60 calendar days for transfer students, since federal law allows the parent and school district to reach an agreement on the specific time for the extension.

4. COMMENTS:

Reevaluations. One organization opposed the proposed regulatory amendment to section 200.4(c)(4) stating that the current requirement that an evaluation be done greatly assists the process of coordinating services with the adult system. Many adult services require formal evaluations to determine eligibility. Without this evaluation, the transition to postsecondary goals is much more difficult.

DEPARTMENT RESPONSE:

The regulations that were in effect prior to the revised emergency regulations did not require that a reevaluation be conducted when a student's eligibility for special education services is ending because of graduation or aging out. The proposed regulation, which is consistent with IDEA, does not propose a change to the reevaluation requirement, but does propose to add an additional requirement for a summary of performance.

5. COMMENTS:

Individualized Education Program (IEP). Support was noted for the requirement that present levels of performance and IEP recommendations consider a student's "academic, developmental and functional needs" since many students with social, behavioral and emotional disabilities experience deficits in functional performance and these requirements will assure realistic and meaningful supports and services that will improve educational performance in school and increase students' successful transitions to adult life.

Support was given for proposed language in section 200.4(d), which requires the recommended programs and services on a student's IEP to be, to the extent practicable, based on peer-reviewed research, since research-based practices based on peer review will ensure that children are receiving quality services.

DEPARTMENT RESPONSE:

Because of the nature of these comments, no response is necessary.

6. COMMENTS:

IEP Goals. The Department should not eliminate the requirement for short-term objectives and benchmarks since annual goals on IEPs are often written to require "improvement," which is a subjective term. Special

education teachers need the guidance of short-term objectives in order to design appropriate methods to help students with disabilities.

DEPARTMENT RESPONSE:

The proposed regulations have been written to ensure that the annual goals on a student's IEP be measurable and to require each annual goal to include the evaluative criteria, evaluation procedures and schedules to be used to measure progress toward the annual goal. An annual goal that simply identifies "improvement" without providing a clear statement as to the extent of improvement anticipated would not meet the regulatory requirements in section 200.4(d).

7. COMMENTS:

Transition services. The proposed requirement that transition services be on the IEP to be in effect when the student is age 15 (and at a younger age, if determined appropriate) was supported, since early delivery of transition services is likely to increase successful transitions of youth with disabilities to post school activities.

The Department should consider requiring transition planning and services to begin at the younger age of 13 to precede the student's choice of high school.

Proposed language in section 200.4(d) which would add "appropriate measurable postsecondary goals based upon age appropriate transition assessments relating to training, education, employment and, where appropriate, independent living skills" was supported with the comment that utilizing assessment tools to create appropriate measurable postsecondary goals will ensure that youth have access to meaningful services and supports.

DEPARTMENT RESPONSE:

Because of the nature of the first and third comments, no response is necessary.

No revisions to the proposed regulations were made to lower the age to 13, since the proposed retains the authority of the CSE to determine if transition services should be provided at a younger age.

8. COMMENTS:

Changes to the IEP after the annual review meeting. The regulations should be revised to allow the parent, special education teacher, regular education teacher and local educational agency representative to agree to make changes to an IEP after the annual review. For one school district, this was calculated to result in approximately 867 hours of instructional time that could otherwise be spent with students and approximately \$3,600 annually in costs for substitute teachers.

Section 200.4(g) should be revised to state that "the parent shall receive prior written notice of any CSE meeting to discuss proposed changes to the IEP" rather than requiring prior written notice.

Proposed language in section 200.4(g) suggests that CSEs may amend IEPs without giving parents a chance to attend the meeting. This regulation should be revised to clarify that a CSE meeting is required prior to making changes to the IEP after the annual review meeting.

DEPARTMENT RESPONSE:

The proposed regulation has not been revised to allow the parent and school personnel to amend the IEP without a CSE or CPSE meeting since NYS law continues to require that the IEP recommendations only be made in a meeting of the CSE or CPSE. The regulations cannot be revised without statutory authority.

No changes to the proposed language in section 200.4(g) have been made since the proposed language is intended to reinforce the requirement that the parent be provided written prior notice of any proposed revisions to an IEP that are made after the annual review meeting, irrespective of the CSE's decision to amend the IEP without rewriting it.

9. COMMENTS:

Consent. The proposed regulation implies that the procedures for obtaining consent for a student who is a ward of the State only apply when consent is being sought for an initial evaluation. The procedures for obtaining consent for a ward of the State should apply to all circumstances where parental consent is required, not just to circumstances involving consent for initial evaluations.

There is confusion about the steps that the school district must take to locate a parent or determine whether it is necessary to appoint a surrogate parent for a student who is a ward of the State. The proposed language in section 200.5(b)(5) should be revised to state that reasonable efforts to obtain the informed consent from the parent of a child who is a ward of the State must include consultation with the local department of social services or other agency responsible for the care of the child when the child is a ward of the State.

The proposed regulations should be revised to ensure that a school district consult with the local social services district where appropriate to

determine the need for the appointment of a surrogate parent prior to determining that a student's parent has "failed to respond" to a consent for services.

DEPARTMENT RESPONSE:

No changes to the proposed regulation relating to initial evaluations and parent consent have been made since the regulation conforms to federal requirements to provide an expedited process so as not to delay the initial evaluation of a student who is a ward of the State when the parent of the student cannot be located. Proposed language in section 200.5(n) clearly states that the school district must consult with the local social services district or other agency responsible for the care of the student.

10. COMMENTS:

Surrogate Parents. The proposed language in section 200.5(n) should be revised to state that a foster parent shall not be prohibited from serving as a surrogate parent for a child in his or her care solely because the foster parent is an officer, employee or agency of the local school district of the State Education Department or other agency involved in the education or care of the student.

Children who need surrogate parents often experience inordinate delays during the referral and evaluation process. State regulations should be revised to establish a 10-day timeline within which a board of education must make a determination as to whether a surrogate parent is necessary.

DEPARTMENT RESPONSE:

Section 200.1(ii) states that a foster parent could be the parent of the student. The limitation on the private or public agency individual applies to the individual appointed by judicial decree and to an individual who is appointed as a surrogate parent pursuant to section 200.5(n). Therefore, no changes to the proposed regulations have been made.

11. COMMENTS:

Transfer students. The regulations should be revised to require that a student's records be requested within five days of the student's enrollment and that the prior district respond to that request within five days of receipt of a request for records.

DEPARTMENT RESPONSE:

No changes to the proposed regulations have been made to add a specific time period for schools to request and respond to requests for student records since the proposed regulation is consistent with IDEA by requiring the school district to take reasonable steps to promptly obtain and respond to requests for student records.

12. COMMENTS:

Discipline. New York State should develop procedures that will maintain and strengthen the protections for children with behavioral disabilities in the original Individuals with Disabilities Education Act (IDEA). The changes to the disciplinary regulations put a greater burden on parents and may increase behavior related removals of students. Utilizing proactive approaches such as Children's Systems of Care Initiatives and Family Support Programs will allow children with social, emotional and behavioral disabilities to participate in the communities and schools without risk of removal and exclusion.

DEPARTMENT RESPONSE:

The proposed regulations are consistent with the requirements in IDEA for the discipline of students with disabilities. The proposed regulations do strengthen the protections for students with disabilities by requiring in section 200.6 that the school district identify appropriate interim alternative educational settings and by requiring the individual who represents the school district on the manifestation team to be an individual who is knowledgeable about the student and the interpretation of information about child behavior, which could be a school psychologist or other professional with such qualifications.

NOTICE OF ADOPTION

Unprofessional Conduct, Examination and Continuing Education Requirements in Land Surveying and Engineering

I.D. No. EDU-39-05-00005-A

Filing No. 1468

Filing date: Dec. 9, 2005

Effective date: Dec. 29, 2005

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

Action taken: Amendment of sections 29.3(a), 68.3(e)(4), 68.6(d), 68.11(c)(2)(i)(a), (3)(ii)(b) and 68.12(c)(2)(ii)(b) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 6504 (not subdivided); 6506(1); 6507(2)(a); 6509(9); 7206(1)(4); 7206-a(1)(4); 7211(1)(d) and (4); and 7212(4)

Subject: Unprofessional conduct in land surveying and examination and continuing education requirements in land surveying and engineering.

Purpose: To establish a definition of unprofessional conduct in the profession of land surveying and licensing examination and continuing education requirements in land surveying and engineering.

Text or summary was published in the notice of proposed rule making, I.D. No. EUD-39-05-00005-P, Issue of September 28, 2005.

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

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

Assessment of Public Comment

The proposed rule was published in the *State Register* on September 28, 2005. Below is a summary of written comments received by the State Education Department concerning the proposed rule making and the Department's assessment of issues raised by the comments.

COMMENT: The regulation should prohibit a licensed land surveyor from altering a land survey prepared originally by another licensed land surveyor.

RESPONSE: Education Law section 7209(2) specifically authorizes a land surveyor to alter a land survey, provided that certain conditions are met. It provides, "If an item bearing the seal of an engineer or land surveyor is altered, the altering engineer or land surveyor shall affix to the item his seal and the notation 'altered by' followed by his signature and the date of such alteration, and a specific description of the alteration." In 2004, the Governor vetoed a measure that would have amended this provision of Education Law to prohibit a licensed land surveyor from altering a land survey (Veto Message No. 154). Prohibiting this practice by regulation as suggested by the comment would conflict with the statute. The State Education Department does not have the statutory authority to prohibit this practice through a regulatory change.

COMMENT: The word "update" should be removed from the proposed rule, as it is not defined in statute or regulation and may be interpreted differently. The update of one surveyor's work by another is a source of great concern because it lends legitimacy and official recognition to a practice that is not in the interest of the profession.

RESPONSE: The regulation refers to an "update of any existing boundary survey". The term "update" has a common dictionary meaning, "to bring up to the present time," and that meaning applies in this case. It is unnecessary to define this term further in regulation. As stated above, Education Law section 7209(2) specifically authorizes the alteration of a land survey by another licensed land surveyor, provided that the altering land surveyor affixes to the survey his or her seal, the notation "altered by" followed by his or her signature, the date of such alteration, and a specific description of the alteration. Therefore, the statute specifically permits a survey to be updated through an alteration by a licensed land surveyor, under prescribed conditions.

COMMENT: The proposed language calls for "reasonable field verifications" to ensure accuracy of an alteration of a land survey and this term allows for a great deal of leeway in interpretation. One surveyor's due diligence may not conform to another's and therefore the standard may not afford consistency and reliability within the practice without further guidance. Some field verifications of property by licensed land surveyors may not incorporate any surveying practices in determining if a map being altered has actually changed and should not be acceptable.

RESPONSE: The regulation provides that unprofessional conduct includes "in the profession of land surveying, the revision, alteration or update of any existing boundary survey without adequate confirmation of relevant boundary lines and monuments." In defining "adequate confirmation," the regulation prescribes that the confirmation must include "a reasonable field verification" and states that the confirmation, which includes the field verification, must be "sufficiently extensive to reasonably ensure the accuracy of the revision, alteration, or update, as appropriate to the circumstances of the revision, alteration, or update." Under the proposed regulation, a field verification that does not include any surveying practices to ensure the accuracy of monuments would not be considered a reasonable field verification because it does not constitute the practice of land surveying which entails measurement (See, Education Law section 7203). The regulation sufficiently defines a standard for an adequate confirmation of relevant boundary lines and monuments, without being overly

prescriptive. The Department plans to issue practice guidelines to licensed land surveyors to further explain this requirement.

COMMENT: The regulation should be changed to require that the altered or revised survey must include a "notation on the altered or revised survey to the effect that the use of such altered or revised survey is limited solely to the scope of the revision or alteration."

RESPONSE: Education Law section 7209(2) specifically provides authorization for a licensed land surveyor to alter a land survey and prescribes the notation that must be included on an altered land survey: the altering land surveyor must affix to the survey his or her seal, the notation "altered by" followed by his or her signature, the date of such alteration, and a specific description of the alteration. The comment suggests that the use of the revised or altered survey should be limited solely to the scope of the revision or alteration. Although the suggested language is not totally clear, it appears to limit the use of the altered survey solely to the use contemplated by the alteration. This would require an entirely new survey for any other use thereafter. Education Law section 7209(2) does not limit the use of an altered land survey as suggested by the comment. The suggested change would require a change in the statute. The State Education Department does not have the authority to make the change by regulation.

COMMENT: The list of acceptable subjects for mandatory continuing education for licensed professional engineers, contained in section 68.11(c)(3)(i) of Commissioner's Regulations, should include "procedures which contribute to the professional practice of engineering and the health, safety, and/or welfare of the public."

RESPONSE: This comment does not relate to a provision amended in this rule making. The rule making does not amend the subjects that professional engineers may take to meet the mandatory continuing education requirement, which are specified in section 68.11(c)(3)(i) of Commissioner's Regulations. In any event, the change suggested is not needed because the list of subjects in section 68.11(c)(3)(i) includes, among other topics, "matters of law and/or ethics which contribute to the professional practice of engineering and the health and safety and/or welfare of the public . . . and in other topics which contribute to the professional practice of engineering as such practice is defined 7201 of the Education Law. Therefore, the existing subjects cover procedures contributing to the professional practice of engineering, and no change is needed.

NOTICE OF ADOPTION

Duties and Responsibilities of the Chief Operating Officer

I.D. No. EDU-40-05-00003-A

Filing No. 1467

Filing date: Dec. 9, 2005

Effective date: Dec. 29, 2005

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

Action taken: Amendment of sections 3.8, 3.9 and 3.15 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided) and 305(1) and (6)

Subject: Duties and responsibilities of the Chief Operating Officer of the State Education Department.

Purpose: To repeal provisions relating to the Chief Operating Officer.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-40-05-00003-P, Issue of October 5, 2005.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Licensing Examination and Continuing Education Requirements for Architects

I.D. No. EDU-40-05-00004-A

Filing No. 1469

Filing date: Dec. 9, 2005

Effective date: Dec. 29, 2005

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

Action taken: Amendment of sections 69.1(c), 69.2 and 69.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 6506(1); 6507(2)(a); 7304(4); 7308(2) and (4)

Subject: Licensing examination and continuing education requirements for architects.

Purpose: To establish requirements for the licensing examination in architecture and for continuing education that licensed architects must complete to be registered to practice this profession in New York State.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-40-05-00004-P, Issue of October 5, 2005.

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

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

Assessment of Public Comment

The proposed rule was published in the *State Register* on October 5, 2005. Below is a summary of written comments received by the State Education Department concerning the proposed rule making and the Department's assessment of issues raised by the comments.

COMMENT: We support the proposed amendment as written and the change in Education Law that makes the continuing education requirements for architecture more consistent with those for professional engineers.

RESPONSE: The amendment implements the requirements of section 7308(2) and (4) of the Education Law, as amended by Chapter 706 of the Laws of 2004. The statutory change permits licensed architects to complete educational activities other than course work to meet the mandatory continuing education requirements. The regulation specifies the types of activities that an architect may engage in to meet the continuing education requirement. These types of learning activities are consistent with those prescribed for the other design profession of engineering.

COMMENT: The summary of the proposed regulation published in the *State Register* uses the terms "formal continuing education" and "formal courses of learning" in reference to mandatory continuing education for licensed architects. To be consistent with statutory language, the regulation should not use the term "formal" when referencing continuing education requirements or courses of learning.

RESPONSE: The summary of the proposed regulation provided to the Department of State for publication in the *State Register* did not contain the word "formal." However, through an inadvertent printing error, such term was included in the summary published in the *State Register*. In any case, while the summary of the regulation uses the word "formal" in two places (once modifying "continuing education requirements" and the second time modifying "courses of learning") the regulation itself does not use the word "formal". In addition, the use of the word "formal" in the summary does not alter the accuracy of the summary. The summary makes it clear that continuing education may be in course work and other educational activities, as prescribed in the regulation and within the limitations prescribed in Education Law section 7308(2).

COMMENT: We have no objection to the proposed regulation. However, we note that the proposed regulation permits licensed architects to engage in structured educational tours to meet a portion of their continuing education requirement. This same option should be made available to professional engineers.

RESPONSE: The Department has proposed an amendment to the continuing education requirements for professional engineers to add structured educational tours to the list of acceptable educational activities available to meet the continuing education requirement in that profession. The amendment is scheduled for Regents adoption at their December 2005 Regents meeting and would be effective December 29, 2005, if adopted.

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

Chartering, Incorporation and Registration of Museums, Historical Societies and Cultural Agencies

I.D. No. EDU-28-05-00009-RC

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

Revised action: Repeal of sections 3.27 and 3.30 and addition of new sections 3.27 and 3.30 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 216 (not subdivided) and 217 (not subdivided)

Subject: Chartering, incorporation and registration of museums, historical societies and cultural agencies.

Purpose: To provide chartered museums, historical societies and cultural agencies with criteria they must meet to be incorporated and registered by the Board of Regents; require boards to adopt mission statements and a code of ethics; obtain IRS tax-exempt status; require audit committee reviews; provide new protections for facilities and collections; and allow historical societies without collections to exchange a charter for a Regents certificate of incorporation.

Expiration date: July 13, 2006.

Substance of revised rule: The State Education Department proposes to amend sections 3.27 and 3.30 of the Rules of the Board of Regents, effective March 9, 2006.

Since publication of a Notice of Revised Rule Making in the State Register on October 5, 2005, the proposed rule has been substantially revised to clarify: (1) the general requirements applicable to all museums and historical societies with collections and (2) the registration requirements applicable to museums and historical societies seeking an absolute charter, by reorganizing these respective requirements into separate subdivisions.

The following is a summary of the provisions of the revised proposed rule.

In general, section 3.27 is amended to establish criteria for Regents chartering and registration of museums and historical societies with collections, and section 3.30 is amended to provide criteria for the incorporation and registration of historical societies without collections and cultural agencies.

The substantive amendments are as follows:

Section 3.27(a) provides for definitions of terms used in section 3.27, including an expanded definition of "museum" to also include "halls of fame, zoos, aquariums, botanical gardens and arboretums" and to include among objects ordinarily owned, exhibited or maintained, and utilized, "artifacts, art, and specimens, including non-tangible electronic, video, digital and similar art." Definitions are also provided for "historical society with collections", "institution", "accessible", "accession", "catalogue", "collection", "collection care", "collection management", "deaccession", "diversity", "education/public programs and exhibitions", "hours of operation", "interpretation", "mission statement", "operating budget", an expanded definition of "professional staff" including an exception to the existing requirement for paid staff, for institutions having an operating budget of \$100,000 or less, "public trust", and "research".

Section 3.27(b) prescribes requirements for the provisional and absolute chartering of museums and historical societies with collections.

Section 3.27(c) prescribes general requirements for museums and historical societies with collections, including requirements relating to organization, mission, governance, finance, facilities, collections care and management, and education and interpretation.

Section 3.27(c)(1) establishes general organizational criteria, including requirements relating to being in compliance with all applicable local, state and federal laws and regulations; and maintaining a mailing address within New York State adequate for legal service.

Section 3.27(c)(2) establishes general mission criteria, including requirements for a written mission statement, that the mission statement be reviewed, and revised as necessary, at least every 5 years.

Section 3.27(c)(3) establishes general governance criteria, including requirements that a board of trustees shall have no more than one-third (1/3) of its members related to each other by birth, marriage or domicile; that in any instance where there is a relationship between the institution and another entity, there shall be no more than a one-third (1/3) overlap between the officers and/or directors; and that the museum or historical

society with collections have a written and board-approved code of ethics that applies to trustees, administrators, staff and volunteers and is reviewed each year.

Section 3.27(c)(4) establishes general finance criteria, including requirements for a board-constituted audit committee for all institutions regardless of size of operating budget; for an independent audit by a certified public accountant for institutions whose operating budget exceeds \$250,000; and for an independent review by a certified public accountant if the institution's operating budget is at least \$100,000 but no more than \$250,000. There is no requirement for an independent audit or review if the institution's operating budget is below \$100,000. An institution will conduct its financial affairs in such a way as not to jeopardize the ownership or integrity of its collections; and will obtain and maintain tax-exempt status under section 501(c)(3) or other applicable section of the Internal Revenue Code.

Section 3.27(c)(5) establishes general criteria for facilities, including requirements for accessibility to those with disabilities, emergency action and disaster preparedness plans, and an adequate, working alarm system; and that the institution ensure its physical plant is adequately insured.

Section 3.27(c)(6) establishes general criteria for collections care and management, including a statement that collections or proceeds derived therefrom shall not be used as collateral for a loan, and a requirement that collections shall not be capitalized. The section retains existing language that the acquisition and deaccessioning of collections by a museum shall be consistent with the mission and purposes of the museum; that requires a collection management policy; and requires that all or any part of proceeds from deaccessioning of collections may not be used for any purpose other than acquisition, preservation, protection or care of collections. The section also eliminates an existing provision that the Regents may grant an exception on application by a museum that wishes to apply all or any part of proceeds from deaccessioning of collections to any purpose other than acquisition, preservation, protection or care of collections.

Section 3.27(c)(7) establishes general criteria for education and interpretation.

Section 3.27(d) prescribes requirements for the registration of museums and historical societies with collections, including requirements relating to organization, governance, finance, facilities, and education and interpretation.

Section 3.27(d)(1) establishes additional organizational criteria for registration including requirements that an institution seeking registration be chartered, incorporated or in operation a minimum of 5 years, have sufficient financial and physical resources, and be open and accessible to the public on a regular basis, including a requirement that institutions having an operating budget in excess of \$100,000 per year shall be open to the public a minimum of 1,000 hours per year.

Section 3.27(d)(2) establishes additional governance criteria for registration, including a requirement that an institution organize its governing authority, staff, financial resources, collections, public programs and other activities to effectively achieve its mission statement and fulfill its public trust obligations; and that the institution effectively advances diversity of membership and participation in the institution's mission.

Section 3.27(d)(3) establishes additional finance criteria for registration, including that the institution has obtained and continue to maintain tax-exempt status under section 501(c)(3) or other applicable section of the Internal Revenue Code.

Section 3.27(d)(4) establishes additional registration criteria relating to facilities, including requirements that the institution own or occupy through lease or other legally enforceable agreement safe, well-maintained and accessible facilities; that any lease or agreement be sufficiently long as to be convenient for the public and accommodate the institution's need for operational stability; that ensure the physical plant is adequately maintained; and that historic structures owned by the institution and that are eligible for or listed on the State and/or National Registers of Historic Places, be restored and/or maintained according to accepted historic preservation practices.

Section 3.27(d)(5) establishes additional registration criteria relating to education and interpretation.

Section 3.27(e) requires each museum and historical society with collections to file annual reports with the Commissioner.

Section 3.27(f) provides criteria for the use of corporate names by a museum or historical society with collections, including use of the terms "National," "American," "United States," "World," "International," and similar geographically descriptive terms in a corporate name, and restricts use of the word "library" and "museum" in a corporate name unless the institution's charter provides authority to operate such and the library or

museum operation meets the requirements of the Regents Rules and Commissioner's Regulations.

Section 3.27(g) requires a museum or historical society with collections to comply with State law relating to dissolution and distribution of assets.

Section 3.30 is amended to provide criteria for the incorporation and registration of historical societies without collections and cultural agencies.

Section 3.30(a) provides additional definitions, including a revised definition for "historical society without collections"; a definition for "cultural agency"; new definitions for "corporation", "accessible," "diversity", "education", "mission statement", and "operating budget", and a revised definition for "hours of operation" to replace the existing definition of "regular schedule."

Section 3.30(b) prescribes criteria for incorporation of historical societies without collections and cultural agencies by means of a Regents certificate of incorporation.

Section 3.30(c) prescribes criteria for registration of historical societies without collections and cultural agencies, including those relating to organization, mission, governance, finance, facilities, and education and interpretation.

Section 3.30(c)(1) establishes organizational criteria including requirements that a historical society without collections and a cultural agency be in compliance with all applicable local, state and federal laws and regulations; maintain a mailing address within New York State adequate for legal service, and be open and accessible to the public on a regular basis, including a requirement that corporations having an operating budget in excess of \$100,000 per year shall be open to the public a minimum of 1,000 hours per year.

Section 3.30(c)(2) prescribes requirements relating to the mission of historical societies without collections and cultural agencies, including requirements for a written mission statement and that the mission statement be reviewed, and revised as necessary, at least every 5 years.

Section 3.30(c)(3) prescribes governance criteria of historical societies without collections and cultural agencies, including a statement that the corporation's leadership consist of at least one person, paid or unpaid, who commands an appropriate body of knowledge and the ability to plan and implement programs of educational benefit to the public and which reflect the purpose of the corporation; that a board of trustees shall have no more than one-third (1/3) of its members related to each other by birth, marriage or domicile; that in any instance where there is a relationship between the corporation and another entity, there shall be no more than a one-third (1/3) overlap between the officers and/or directors; that the corporation have a written and board-approved code of ethics that applies to trustees, administrators, staff and volunteers and is reviewed each year; and that the corporation effectively advances diversity of membership and participation in the corporation's mission.

Section 3.30(c)(4) establishes financial criteria of historical societies without collections and cultural agencies, including requirements for a board-constituted audit committee for all corporations regardless of size of operating budget; for an independent audit by a certified public accountant for corporations whose operating budget exceeds \$250,000; and for an independent review by a certified public accountant if the corporation's operating budget is at least \$100,000 but no more than \$250,000. There is no requirement for an independent audit or review if the corporation's operating budget is below \$100,000. A corporation will obtain and maintain tax-exempt status under section 501(c)(3) or other applicable section of the Internal Revenue Code.

Section 3.30(c)(5) establishes criteria for facilities of historical societies without collections and cultural agencies, including requirements for accessibility to those with disabilities, emergency action and disaster preparedness plans, an adequate, working alarm system, and a requirement that a historic structure be restored and/or maintained according to accepted historic preservation practices.

Section 3.30(c)(6) provides that a historical society without collections or a cultural agency shall not be authorized to acquire, accession or own collections, but that in the event such corporation does so, for any reason, the corporation shall be treated and be subject to the provisions of section 3.27 with respect to collections, in particular, but not limited to, section 3.27(c)(6) and any applicable definitions in section 3.27(a).

Section 3.30(c)(7) adds new criteria for education and interpretation conducted by historical societies without collections and cultural agencies.

Section 3.30(d) requires that each historical society without collections and each cultural agency file an annual report with the Commissioner.

Section 3.30(e) prescribes criteria for the use of corporate names by historical societies without collections and cultural agencies.

Section 3.30(f) requires historical societies without collections and cultural agencies to comply with State law relating to dissolution and distribution of assets.

Revised rule compared with proposed rule: Substantial revisions were made in sections 3.27(b), (c) and (d) and 3.30(a) and (c).

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

Data, views or arguments may be submitted to: Clifford A. Siegfried, Assistant Commissioner for Museums, New York State Museum, Rm. 3023, Cultural Education Center, Albany, NY 12230, c/o Museum Chartering Office, (518) 473-3131, e-mail: dpalmqui@mail.nysed.gov

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

Regulatory Impact Statement

Since publication of a Notice of Revised Rule Making in the *State Register* on October 5, 2005, the proposed rule has been substantially revised to clarify: (1) the general requirements applicable to all museums and historical societies with collections and (2) the registration requirements applicable to museums and historical societies seeking an absolute charter, by reorganizing these respective requirements into separate subdivisions, lettered 3.27(c) and 3.27(d), respectively.

Section 3.27(b)(2) has been revised to provide that, to be eligible for an absolute charter, a museum or historical society with collections shall submit a petition for an absolute charter together with evidence in writing establishing, in the judgment of the Board of Regents, the institution's compliance with the provisions of section 3.27, including but not limited to, the general requirements for museums and historical societies with collections under section 3.27(c) and the provisions for registration under section 3.27(d).

Section 3.27(c) prescribes general requirements for museums and historical societies with collections, including requirements relating to organization, mission, governance, finance, facilities, collections care and management, and education and interpretation.

Section 3.27(c)(1) establishes general organizational criteria, including requirements relating to being in compliance with all applicable local, state and federal laws and regulations; and maintaining a mailing address within New York State adequate for legal service.

Section 3.27(c)(2) establishes general mission criteria, including requirements for a written mission statement and that the mission statement be reviewed, and revised as necessary, at least every 5 years.

Section 3.27(c)(3) establishes general governance criteria, including requirements that a board of trustees shall have no more than one-third (1/3) of its members related to each other by birth, marriage or domicile; that in any instance where there is a relationship between the institution and another entity, there shall be no more than a one-third (1/3) overlap between the officers and/or directors; and that the museum or historical society with collections have a written and board-approved code of ethics that applies to trustees, administrators, staff and volunteers and is reviewed each year.

Section 3.27(c)(4) establishes general finance criteria, including requirements for a board-constituted audit committee for all institutions regardless of size of operating budget; for an independent audit by a certified public accountant for institutions whose operating budget exceeds \$250,000; and for an independent review by a certified public accountant if the institution's operating budget is at least \$100,000 but no more than \$250,000. There is no requirement for an independent audit or review if the institution's operating budget is below \$100,000. An institution will conduct its financial affairs in such a way as not to jeopardize the ownership or integrity of its collections; and will obtain and continue to maintain tax-exempt status under section 501(c)(3) or other applicable section of the Internal Revenue Code. The rule has been revised to clarify that the requirement that each institution appoint a board-constituted audit committee shall apply to every institution regardless of size of operating budget and whether the institution has conducted a financial review pursuant to section 3.27(c)(4)(iv).

Section 3.27(c)(5) establishes general criteria for facilities, including requirements for accessibility to those with disabilities, emergency action and disaster preparedness plans, and an adequate, working alarm system; and that the institution ensure its physical plant is adequately insured.

Section 3.27(c)(6) establishes general criteria for collections care and management, including a statement that collections or proceeds derived

therefrom shall not be used as collateral for a loan, and a requirement that collections shall not be capitalized. The section retains existing language that the acquisition and deaccessioning of collections by a museum shall be consistent with the mission and purposes of the museum; that requires a collection management policy; and requires that all or any part of proceeds from deaccessioning of collections may not be used for any purpose other than acquisition, preservation, protection or care of collections. The section also eliminates an existing provision that the Regents may grant an exception on application by a museum that wishes to apply all or any part of proceeds from deaccessioning of collections to any purpose other than acquisition, preservation, protection or care of collections.

Section 3.27(c)(7) establishes general criteria for education and interpretation.

Section 3.27(d) prescribes requirements for the registration of museums and historical societies with collections, including requirements relating to organization, governance, finance, facilities, and education and interpretation. Section 3.27(d), as revised, provides that a museum or historical society with collections shall be deemed registered upon the granting of an absolute charter, and further revised to provide that to be eligible for registration, an institution shall meet the requirements for an absolute charter pursuant to section 3.27(b) and the additional requirements in section 3.27(d)(1) through (6).

Section 3.27(d)(1) establishes additional organizational criteria for registration including requirements that an institution seeking registration be chartered, incorporated or in operation a minimum of 5 years, have sufficient financial and physical resources, and be open and accessible to the public on a regular basis, including a requirement that institutions having an operating budget in excess of \$100,000 per year shall be open to the public a minimum of 1,000 hours per year.

Section 3.27(d)(2) establishes additional governance criteria for registration, including a requirement that an institution organize its governing authority, staff, financial resources, collections, public programs and other activities to effectively achieve its mission statement and fulfill its public trust obligations; and that the institution effectively advances diversity of membership and participation in the institution's mission.

Section 3.27(d)(3) establishes additional finance criteria for registration, including that the institution has obtained and continue to maintain tax-exempt status under section 501(c)(3) or other applicable section of the Internal Revenue Code.

Section 3.27(d)(4) establishes additional registration criteria relating to facilities, including requirements that the institution own or occupy through lease or other legally enforceable agreement safe, well-maintained and accessible facilities; that any lease or agreement be sufficiently long as to be convenient for the public and accommodate the institution's need for operational stability; that ensure the physical plant is adequately maintained; and that historic structures owned by the institution and that are eligible for or listed on the State and/or National Registers of Historic Places, be restored and/or maintained according to accepted historic preservation practices.

Section 3.27(d)(5) establishes additional registration criteria for education and interpretation.

Previous proposed section 3.27(d), relating to annual reports, was relettered as section 3.27(e).

Previous proposed section 3.27(e), relating to the use of corporate names by a museum or historical society with collections, was relettered as section 3.27(f).

Previous section 3.27(f), relating to dissolution, was relettered as section 3.27(g).

Section 3.30(a)(2) was revised to clarify the definition of "cultural agency" by specifying that such agency as defined is not authorized to own or hold collections as defined in section 3.27(a)(7), except to borrow items owned by others for brief periods of time for purposes of study or short-term, temporary exhibition. Section 3.30(a) was also revised to add a paragraph (11) to provide a definition of "public trust."

Section 3.30(c), relating to the registration of historical societies without collections or cultural agencies, was revised to provide that an historical society without collections or a cultural agency shall be deemed registered upon the granting of a certificate of incorporation by the Board of Regents, and further revised to provide that to be eligible for registration, a historical society without collections or a cultural agency shall meet the requirements for incorporation under subdivision (b) of section 3.30 and the requirements in paragraphs (1) through (7) of subdivision (c).

Section 3.30(c)(4)(iv) has been revised to clarify that the requirement that each historical society without collections or cultural agency appoint a board-constituted audit committee shall apply to every corporation regard-

less of size of operating budget and whether the corporation has conducted a financial review pursuant to section 3.27(c)(4)(iv).

Section 3.30(c)(4)(vi) was revised to specify that an historical society without collections or a cultural agency must obtain and continue to maintain tax-exempt status under Internal Revenue Code section 501(c)(3) or other applicable section.

Section 3.30(c)(6) has been revised to clarify that a historical society without collections or a cultural agency shall not be authorized to acquire, accession or own collections, but that in the event such corporation does so, for any reason, the corporation shall be treated and be subject to the provisions of section 3.27 with respect to collections, in particular, but not limited to, section 3.27(c)(6) and any applicable definitions in section 3.27(a).

The above revisions to the proposed rule do not require any further changes to the previously published Regulatory Impact Statement.

Regulatory Flexibility Analysis

Since publication of a Notice of Revised Rule Making in the *State Register* on October 5, 2005 the proposed rule has been substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement.

The proposed rule, as so revised, applies to museums, historical societies and related cultural agencies chartered, or otherwise incorporated by, the Board of Regents and does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse financial impact, on small businesses or local governments. Because it is evident from the nature of the revised rule that it does not affect small businesses or local governments, no further measures 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

Since publication of a Notice of Revised Rule Making in the *State Register* on October 5, 2005, the proposed rule has been substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

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

Job Impact Statement

Since publication of a Notice of Revised Rule Making in the *State Register* on October 5, 2005, the proposed rule has been substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The proposed rule, as so revised, applies to museums, historical societies and related cultural agencies chartered, or otherwise incorporated by, the Board of Regents and will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the revised rule that it will have no impact on jobs or employment opportunities, no further measures were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Revised Rule Making in the *State Register* on October 5, 2005, the State Education Department received the following comment:

COMMENT:

The former Vice-President of the Museum Association of New York (MANY) wrote to ask if language in 3.27(c)(6)(viii) to forbid an institution to acquire title to property known or reasonably suspected of having problematic or unclear provenance had been dropped from the Rule.

DEPARTMENT RESPONSE:

The language in question would have forbidden an institution "to acquire title to any property that is known to the institution, or may reasonably be suspected by the institution, of having problematic or unclear provenance, including but not limited to, actions to recover property allegedly stolen or otherwise misappropriated in areas of Nazi influence during the Nazi period," and provided a definition of "areas under Nazi influence."

This provision was based, in part, upon similar language appearing in 2005 legislation (A.7518/S.4738) passed by the Legislature but subsequently vetoed by the Governor. In view of the veto, the proposed rule was revised to delete this provision and a Notice of Revised Rule Making was published in the *State Register* on October 5, 2005. The Department will consider proposing a similar amendment as a separate rule making in the event that legislation on this subject is subsequently enacted.

Department of Environmental Conservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sportfishing Regulations

I.D. No. ENV-52-05-00027-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 10, 35 and 36 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0305, 11-0317, 11-0319, 11-1301, 11-1303 and 11-1316

Subject: Sportfishing regulations.

Purpose: To revise regulations governing sportfishing and associated activities, and gear license requirements.

Substance of proposed rule (Full text is posted at the following State website: www.dec.state.ny.us): The purpose of this rulemaking is to amend the Department of Environmental Conservation's (Department) general regulations governing sportfishing (6 NYCRR Part 10), licenses (6 NYCRR Part 35) and gear and operation of gear (6 NYCRR Part 36). Following biennial review of the Department's fishing regulations, Department staff have determined that the proposed amendments are necessary to maintain or improve the quality of the State's fisheries resources. Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

The following is a summary of the amendments that the Department is proposing:

Statewide sportfishing regulations:

1. Create a statewide year round season for black bass by adding a catch and release only, artificial lures only, season from December 1 through the Friday preceding the third Saturday in June (hereinafter referred to as "catch and release only season"), except for waters governed by special regulations. This season would be in addition to the current open season for black bass which runs from the third Saturday in June through November 30 (hereinafter referred to as "current open season").

Special sportfishing regulations:

2. Add the catch and release only season referred to in item 1 above, while retaining the existing 10" minimum size limit during the current open season (third Saturday in June through November 30) on rivers and streams in the following counties: Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester and on the following stream segments:

(a) Normans Kill from mouth to Watervliet Reservoir (Albany County);

(b) Schoharie Creek from Route 20 bridge downstream (Montgomery, Schenectady and Schoharie Counties);

(c) Black River, Deer River, West Branch Deer River and Beaver River in Lewis County;

(d) Black River, Oneida County;

(e) Chemung River and tributaries upstream of Rt. 17 west of Corning.

3. Add the catch and release only season referred to in item 1 above, while retaining the existing minimum size limit during the current open season on Schoharie Creek from Schoharie Reservoir downstream to Rt. 20 bridge.

4. Add the catch and release only season referred to in item 1 above on the Otsego River, Tioughnioga River and the East and West Branches of the Tioughnioga River, Cortland County.

5. Add the catch and release only season referred to in item 1 above to the existing slot limit on Cassadaga Lakes, Chautauqua County.

6. Add the catch and release only season referred to in item 1 above to the existing 15" bass limit on Allen Lake, Allegany County.

7. Amend Lake Champlain black bass regulations to add a catch and release only, artificial lures only, season from December 1 through the Friday preceding the second Saturday in June.

8. Add a catch and release black bass season from December 1 through March 31 in Fall Creek above Ithaca Falls, Tompkins County.

9. Create a catch and release black bass season on border water sections of the Delaware River and West Branch Delaware River from the first Saturday after June 11 through the first Saturday preceding the first Saturday in May.

10. Add 12" minimum 5 black bass limit to the special regulations in Hamilton, Franklin, Jefferson and St. Lawrence Counties.

11. Increase the black bass minimum size limit from 15" to 20" during the first Saturday in May through the Friday preceding the third Saturday in June for Lake Erie.

12. Increase the size limit from 12" to 15" on black bass in the Hudson River from the Troy Dam downstream and all tributaries in this section upstream to the first barrier impassible by fish.

13. Extend the existing black bass regulation on Catatunk and Cayuga Creeks to all year, Tioga County.

14. Extend the trout season from September 30 to October 15 on the following stream segments:

(a) Border water sections of the Delaware River and the West Branch Delaware River;

(b) Delaware River tributaries downstream of Hancock, Delaware County;

(c) East Branch Delaware River tributaries between the villages of East Branch and Hancock;

(d) West Branch Delaware River from Cannonsville Dam downstream to the Rt. 17 overpass at Deposit;

(e) West Branch Delaware River from the lower limits of the catch and release only segment downstream to the NY/PA border;

(f) East Branch Delaware River from Pepacton Dam downstream to the Shinhopple bridge;

(g) Basket Creek & tributaries, Callicoon Creek from mouth to Hortonville, Hankins Creek & tributaries from mouth to falls at Mileses, Hoolihan Brook & tributaries, N. Branch Callicoon Creek & tributaries from mouth to Gossweyler Pond above N. Branch, and Pea Brook tributaries, Sullivan County.

15. Extend the no-kill trout season from September 30 to October 15 on the catch and release only section of the West Branch Delaware River.

16. Allow a catch and release, artificial lures only season from October 16 through March 31 to the existing 5/2 trout regulation in the following stream segments:

(a) Cattaraugus Creek upstream of Springville Dam (Cattaraugus, Erie and Wyoming Counties);

(b) Elm Creek, Elton Creek, and Mansfield Creek, Cattaraugus County;

(c) Goose Creek, Chautauqua County;

(d) East Koy Creek, Allegany and Wyoming Counties.

17. Allow a catch and release, artificial lures only trout season from October 16 through March 31 in the following stream segments:

(a) Salmon Creek upstream of Ludlowville Falls, Cayuga and Tompkins Counties;

(b) East Branch Owego Creek, West and East Branch Tioughnioga River, and the Otsego River, Cortland, Madison, and Otsego Counties;

(c) Owego Creek and the East and West Branches of Owego Creek, Tioga and Tompkins Counties.

18. Extend the trout season on the Skaneateles Creek catch and release only stream segment to all year, Onondaga County.

19. Create a catch and release, artificial lures only season for trout and salmon in Fall Creek, Cayuga Lake tributary, from the downstream edge of the railroad bridge below Rt. 13 from January 1 through March 15.

20. Allow a year round trout season and ice fishing is permissible on Blue Lake, Orange County, and Loch Sheldrake, Sullivan County.

21. Allow ice fishing for lake trout and landlocked salmon in Sixberry Lake and Lake-of-the-Woods, Jefferson County.

22. Allow ice fishing for landlocked salmon in Lake Pleasant and Sacandaga Lake, Hamilton County.

23. Create a catch and release artificial lures only section of stream for all trout and salmon on 1.3 miles of Chautauqua Creek and 1.67 miles of the main branch of Eighteen Mile Creek (Erie County).

24. Increase the minimum length for all salmonids from 9" to 12" on Lake Erie and its tributaries and Upper Niagara River and its tributaries.

25. Amend Lake Ontario, St. Lawrence River and Lower Niagara River Trout and Salmon regulations to establish a 21" minimum size regulation for rainbow trout and establish a 2 fish daily lake trout limit with only 1 that may be between 25" and 30".

26. Reduce the lake trout daily possession limit to 1 fish for Sterling Lake, Orange County.

27. Reduce the size limit on lake trout from 21" to 18" on Kensico Reservoir, Westchester County.

28. Increase the size limit on Lake Trout in Otsego Lake, Otsego County, from 21" to 23" and change the 2 fish creel limit in combination for brown trout, lake trout and landlocked salmon to 1 fish each.

29. Create a 10" minimum and 3 trout limit on Holding Pond, Schoharie County.

30. Add a 10" minimum 3 trout limit from April 1 through October 15 and a catch and release only season from October 16 through March 31 on Wiscoy Creek, Allegany County.

31. Create an all year 12" minimum 3 trout limit ice fishing permitted special regulation on Colgate Lake, Greene County.

32. Amend Lake Ozonia trout to a 12" minimum 3 fish limit, St. Lawrence County.

33. Change the daily limit on trout to 5 with no more than 2 longer than 12" on the following waters:

(a) Moose River, Middle and South Branch of Moose River Downstream of Moose River Plains Recreation Area, and West Canada Creek from mouth upstream to Cincinnati Creek in Herkimer County;

(b) Black River, East Branch Fish Creek from Rome Reservoir Dam Downstream and Moose River in Lewis County;

(c) Mohawk River from Barge Canal Upstream to Delta Dam, Mohawk River from Bridge in Westernville Upstream to Lansing Kill, Moose River, Nine Mile Creek, Oneida Creek, Sauquoit Creek from Pinnacle Road in Sauquoit Downstream, and Black River in Oneida County;

(d) St. Regis River from Ft. Jackson to Franklin County line;

(e) Spafford Brook, Cortland County.

34. Amend walleye special fishing regulation on the Lower Niagara River to include a one fish 18" minimum length creel limit from January 1 through March 15.

35. Enact 18 inch minimum 3 fish limit for walleye on Redfield Reservoir, Oswego County.

36. Add Franklin Falls Flow to existing walleye special regulation in Essex County.

37. Eliminate special regulations and revert to statewide regulations for:

(a) Walleye in Lake Erie; Upper Niagara River; Dyken Pond, Rensselaer County; and Moon Lake, Jefferson County;

(b) Lake trout on Paradox Lake;

(c) Lake trout and landlocked salmon for the Indian River in Essex and Hamilton Counties;

(d) Landlocked salmon on Tupper Lake, St. Lawrence County; Abanakee Lake, Hamilton County; and Talyor Pond, Clinton County;

(e) Trout and kokanee on Polliwog Pond, Franklin County;

(f) Trout and lake trout on Grampus lake, Hamilton County;

(g) Black bass in Lower and Upper Niagara Rivers and tributaries; Schroon River, Warren County; Sacandaga River, Saratoga County; Chenango River, Madison County; Unadilla River, Otsego, Madison and Chenango Counties; and the Hudson River from Glens Falls Bridge upstream, Essex, Saratoga, Warren, and Hamilton Counties;

(h) Lake trout in West Pine Pond, Ledge Pond, and Deer Pond, Franklin County;

(i) Special regulations on Floodwood Pond and Lower Chateaugay Lake, Franklin County;

(j) Special regulations for Long Lake and West Canada Lake, Hamilton County;

(k) Black bass on Nicks Lake, Herkimer County;

(l) Black bass in the Finger Lakes.

38. Manage the Buffalo River and its tributaries as a portion of the Lake Erie tributary streams special fishing regulations.

39. Open Fall Creek in Ithaca to fishing for non-trout and salmon during the current closed season (January 1 through March 31).

40. Eliminate the Great Lakes waters and tributaries restriction that prohibits use of "other than a conventional rod, reel and line."

41. Eliminate the addition of weight to the leader in the Salmon River special fly fishing area from May 1 through August 15.

42. General clarifications:

(a) Clarify dividing line of the bass regulations for Lake Ontario and the St. Lawrence River;

(b) Clarify where the special regulation for Saratoga Lake panfish applies;

(c) Clarify section of the Black River where special regulations for black bass and statewide regulations for walleye apply;

(d) Clarify geographical divide between where Great Lakes regulations and inland regulations begin for Cattaraugus Creek, Erie County;

(e) Clarify Finger Lake tributary regulations by substituting a table for existing text;

(f) Correct discrepancies between Part 10 and the Fishing Regulations Guide for Willowemoc Creek, South Branch Grass River, Middle and South Branch Moose River, and Mohawk River stream segments.

43. Remove prohibition that restricts dipnetting smelt in Tupper Lake to only the waters of the lake proper.

44. Close Blue Mountain Lake, Hamilton County, to dipnetting for smelt.

45. Regarding privately owned waters:

(a) Amend existing regulation to allow an all year ice fishing permitted season on salmonids in Brandreth Park, Hamilton County;

(b) Extend the lake trout season on Chatiemac Lake, Warren County, until November 30;

(c) Allow an all year any size 5 fish limit on trout on three trout ponds on the North Woods Club.

46. Remove baitfish prohibition on Basswood Pond, Otsego County.

47. Prohibit use of baitfish on:

(a) Alewife on Canadarago Lake (Otsego County);

(b) Upper Preston Pond, Town of North Elba;

(c) South Creek Lake, Towns of Diana and Fine.

48. Change name of a town from Altamont to Tupper Lake.

Commercial fishing regulations:

49. Provisions for set lines and electrofishing gear are removed from Part 35 and Part 36.

Text of proposed rule and any required statements and analyses may be obtained from: Shaun Keeler, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8920, e-mail: sxkeeler@gw.dec.state.ny.us

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

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

Additional matter required by statute: A programmatic impact statement is on file with the Department of Environmental Conservation.

Summary of Regulatory Impact Statement

1. Statutory Authority

Sections 11-0303 and 11-0305 of the Environmental Conservation Law (ECL) authorize the Department of Environmental Conservation (Department) to provide for the management and protection of the State's fisheries resources, taking into consideration ecological factors, public safety, and the safety and protection of private property. Sections 11-1301 and 11-1303 of the ECL empower the Department to fix by regulation open seasons, size and catch limits, and the manner of taking of all species of fish, except certain species of marine fish (listed in section 13-0339 of the Environmental Conservation Law), in all waters of the state. Section 11-0317 of the ECL empowers the Department to adopt regulations, after consultation with the appropriate agencies of the neighboring states and the Province of Ontario, establishing open seasons, minimum size limits, manner of taking, and creel and seasonal limits for the taking of fish in the waters of Lake Erie, Lake Ontario, the Niagara River, and the St. Lawrence River. Section 11-0319 of the ECL empowers the Department to adopt regulations establishing open seasons, minimum size limits, manner of taking, and daily and seasonal limits for taking fish in the waters of the New York City water supply which are open or may be opened in the future to the public for fishing. Section 11-1316 of the Environmental Conservation Law empowers the Department of Environmental Conservation to designate by regulation waters in which the use of bait fish is prohibited.

2. Legislative Objectives

Open seasons, size restrictions, daily creel limits, and restrictions regarding the manner of taking fish are the basic tools used by the Department in achieving the Legislature's intent. The purpose of setting seasons is to prevent the over-exploitation of fish populations during vulnerable periods, such as spawning, thereby insuring a healthy population. Size limits are necessary to maintain quality fisheries and to insure that adequate numbers survive to spawning age. Creel limits are used to distribute the harvest of fish among many anglers and angling days and to optimize resource benefits. Regulations governing the manner of taking fish upgrade the quality of the recreational experience, provide for a variety of harvest techniques and angler preferences, and limit exploitation. Catch-and-release fishing regulations are used in waters capable of sustaining outstanding growth and survival of fish to reduce fishing mortality to the lowest possible level. Reduction of fishing mortality results in a large population of desirable-sized fish which provides an outstanding recreational opportunity for those anglers willing to forego the opportunity to harvest fish.

3. Needs and Benefits

Most significant fishery resources in New York State are monitored through annual or periodic survey and inventory by Bureau of Fisheries staff. These fisheries surveys identify particular situations where changes

in fishing regulations may be required to maintain the quality of a particular fishery or significant opportunity for improvement or enhancement of the fishery exists. Additional regulation changes are prompted by the recommendation of users groups or the need to correct or clarify existing regulations. Candidate regulations addressing identified needs are developed by Bureau of Fisheries staff and reviewed with sportsmen's groups at the local, regional, or state-wide level, depending upon the significance of the proposal. Proposals may be amended based upon input received through public comment.

In order to facilitate compliance by the angling public, significant revisions of the Department's fishing regulations are currently conducted on a biennial schedule. The schedule for review and filing of proposed amendments to regulations is timed to allow publication of changes to regulations in the annual New York State Fishing Regulations Guide.

The proposed amendments are necessary to maintain or improve the quality of the State's fisheries resources. Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation. The minor amendments to commercial inland fisheries regulations are intended to remove provisions which have become obsolete.

4. Costs

Enactment of the rules and regulations described herein governing fishing will not result in increased expenditures by the State, local governments, or the general public.

5. Local Government Mandates

These amendments of 6 NYCRR will not impose any programs, services, duties, or responsibilities upon any county, city, town, village, school district, or fire district.

6. Paperwork

No additional paperwork will be required as a result of these proposed changes in regulations.

7. Duplication

There are no other state or federal regulations which govern the taking of fish.

8. Alternatives

The alternative to the proposed regulations would be to retain current fishing regulations. In the absence of the proposed changes, opportunities to enhance the quality or public use and enjoyment of fisheries may be deferred or lost. Some fish populations may decline if the proposed regulations are not enacted in a timely manner.

9. Federal Standards

There are no minimum federal standards that apply to the regulation of sportfishing.

10. Compliance Schedule

The emergency regulations will become effective immediately upon filing with Department of State. It is anticipated that regulated persons will be able to immediately comply with these regulations.

Regulatory Flexibility Analysis

The purpose of this rulemaking is to amend and update the Department of Environmental Conservation's (Department) general regulations governing sportfishing, and to make minor amendments to the Department's regulations governing commercial inland fisheries. These amendments were developed as a result of a biennial review of existing regulations by Department staff in the Bureau of Fisheries. Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation. The minor amendments to commercial inland fisheries regulations are intended to remove provisions which have become obsolete.

The Department has determined that the proposed regulations will not impose an adverse impact or any new or additional reporting, recordkeeping or other compliance requirements on small businesses or local governments. All reporting or recordkeeping requirements associated with sportfishing are administered by the Department. The proposed regulations are not anticipated to negatively change the number of participants or the frequency of participation in regulated activities. Since most proposed regulations include an expansion of the season, opportunities to participate in the regulatory activity should increase. Since small businesses and local governments have no management or compliance role in the regulation of sport fisheries, there is no impact upon these entities. Small businesses may, and town or village clerks do issue fishing and sportsman licenses. However, the Department's rulemaking proposal does not change this process.

Based on the above, the Department has determined that a regulatory flexibility analysis is not required.

Rural Area Flexibility Analysis

The purpose of this rulemaking is to amend and update the Department of Environmental Conservation's (Department) general regulations governing sportfishing, and to make minor amendments to the Department's regulations governing commercial inland fisheries. These amendments were developed as a result of a biennial review of existing regulations by Department staff in the Bureau of Fisheries. Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation. The minor amendments to commercial inland fisheries regulations are intended to remove provisions which have become obsolete.

The Department has determined that the proposed rules will not impose an adverse impact or any new or additional reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. All reporting or recordkeeping requirements associated with sportfishing are administered by the Department. The proposed regulations are not anticipated to negatively change the number of participants or the frequency of participation in regulated activities. Since most proposed regulations include an expansion of the season, opportunities to participate in the regulatory activity should increase. Small businesses may, and town or village clerks do issue fishing and sportsman licenses. However, the Department's rulemaking proposal does not change this process.

Since the Department's proposed rulemaking will not impose an adverse impact on public or private entities in rural areas and will have no effect on current reporting, recordkeeping, or other compliance requirements, the Department has concluded that a rural area flexibility analysis is not required for this regulatory proposal.

Job Impact Statement

The purpose of this rulemaking is to amend and update the Department of Environmental Conservation's (Department) general regulations governing sportfishing, and to make minor amendments to the Department's regulations governing commercial inland fisheries. These amendments were developed as a result of a biennial review of existing regulations by Department staff in the Bureau of Fisheries. Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation. The minor amendments to commercial inland fisheries regulations are intended to remove provisions which have become obsolete.

Based upon extensive past experience with such rulemaking efforts, the Department does not anticipate any direct effects from the subject proposed rulemaking on employment opportunities in New York State. The Department's proposed rulemaking is not expected to negatively change the number of participants or the frequency of participation in regulated activities. Since most proposed regulations include an expansion of the season, opportunities to participate in the regulatory activity should increase. Moreover, the proposed regulations would not directly apply to or affect any specific jobs. Some jobs may be indirectly affected, such as fishing guides, but indirect effects are not the subject of this impact statement. Nevertheless, the impacts to guides should be generally positive because the proposed amendments are intended to improve New York's freshwater fisheries, the angling experience associated with these fisheries, and in general create more fishing opportunities. Therefore, the Department has concluded that the proposed regulatory changes will not have an adverse impact on jobs or employment opportunities in New York, and that a job impact statement is not required.

Housing Finance Agency

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Public Access to Information

I.D. No. HFA-52-05-00002-P

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

Proposed action: This is a consensus rule making to amend Part 2150 of Title 21 NYCRR.

Statutory authority: Public Officers Law, section 87(1)(a)

Subject: Public access to information.

Purpose: To update information relating to the address of the New York State Housing Finance Agency, titles of personnel within, and other revisions as dictated by the Public Officers Law.

Text of proposed rule:

PART 2150

“2150.1 Purpose and scope.”

(a) The people’s right to know the process of government decision-making and the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by [shrouding it with the cloak of] secrecy or confidentiality.

(b) This Part provides information concerning the procedures by which records may be obtained from the Agency pursuant to the Freedom of Information Law.

(c) Personnel shall furnish to the public the information and records required by the Freedom of Information Law, as well as records otherwise available by law.

(d) Any conflicts among laws governing public access to records shall be construed in favor of the widest possible availability of public records.

“2150.2 Designation of records access officer[s].”

(a) The *President and Chief Executive* [director] *Officer* is responsible for insuring compliance with this Part, and designates the following person[s] as records access officers: [Associate Administrative Analyst New

Public Information Officer

New York State Housing Finance [Agency Three Park Avenue 33rd Floor New] Agency

641 Lexington Avenue

New York, NY [10016]10022

[Senior Research Analyst New York State Housing Finance Agency Three Park Avenue 33rd Floor New York, NY 10016

(b) Records] (b) *The records* access [officers are] *officer* is responsible for [ensuring] *insuring* appropriate agency response to public requests for access to records. The designation of records access officers shall not be construed to prohibit officials who have in the past been authorized to make records or information available to the public from continuing to do so. Records access officers shall insure that personnel:

(1) maintain an up-to-date subject matter list;

(2) assist the requester in identifying requested records, if necessary;.

(3) upon locating the records, take one of the following actions:

(i) make records available for inspection; or

(ii) deny access to the records in whole or in part, and explain in writing the reasons therefor[;].

(4) [upon request for copies of records: (i)] *upon request for copies of records* make a copy available upon payment or offer to pay established fees, if any[.]; in accordance with section 2150.8 of this Part;[or].

[(ii) permit the requester to copy those records;]

(5) upon request, certify that a record is a true copy; and

(6) upon failure to locate records, certify that:

(i) the New York State Housing Finance Agency is not the custodian for such records; or

(ii) the records of which the New York State Housing Finance Agency is a custodian cannot be found after diligent search.

“2150.3 Location.”

Records shall be available for [public] inspection and copying at [Three Park Avenue, 33rd Floor,] *the offices of the New York*, NY 10016] *State Housing Finance Agency*.

“2150.4 Hours for public inspection.”

[Requests for public access to records shall be accepted and records produced during all hours] *Records of the Agency shall be produced for inspection by appointment during hours and days* regularly open for business. These hours are: Monday through Friday, 9 a.m. to 5 p.m.

“2150.5 Requests for public access to records.”

(a) A written request [may be] *is* required[, but oral requests may be accepted when records are readily available.

(b) A response shall be given regarding any request reasonably describing the record or records sought within five business days of receipt of the request.

(c)]. *Written requests must be received by mail or hand delivery, or facsimile transmission, at the offices of the Agency.*

(b) A request shall reasonably describe the record or records sought. Whenever possible, a person requesting records should supply information regarding dates, file designations or other information that may help to describe the records sought.

(c) *A response shall be given regarding any request reasonably describing the record or records sought within five business days of receipt of the request.*

(d) *When a request is granted in whole or in part, the record shall be delivered within twenty business days from the date of the acknowledgment of receipt of the request. If circumstances prevent disclosure of the record the Agency shall state, in writing, the reason for the inability to grant the request within twenty business days, and, a date certain within a reasonable period when the request will be granted in whole or in part.*

(e) *If the records access officer or his/her designee, does not provide or deny access to the record sought within five business days of receipt of a request, he or she shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied. If access to records is neither granted nor denied within ten business days after the date specified in such written acknowledgment, the request may be construed as a denial of access that may be appealed.*

“2150.6 Subject matter list.”

(a) The records access officer shall maintain a reasonably detailed current list, by subject matter, of all records in its possession, whether or not records are available pursuant to subdivision 2 of section 87 of the Public Officers Law.

(b) The subject matter list shall be sufficiently detailed to permit identification of the category of the record sought.

(c) The subject matter list shall be updated not less than twice per year. The most recent update shall appear on the first page of the subject matter list.

“2150.7 Denial of access to records.”

(a) Denial of access [to records] shall be in writing, stating the reason therefor and advising the requester of the right to appeal to the individual or body established to hear appeals.

(b) If requested records are not provided promptly, as required in section 2150.5(d)(c) of this Part, such failure shall also be deemed a denial of access.

(c) The following person or persons or body shall hear appeals for denial of access to records under the Freedom of Information Law:

Senior Vice President and Counsel

New York State Housing Finance [Agency 3 Park Avenue 33rd Floor New] Agency

641 Lexington Avenue

New York, NY [10016 (212) 736-4949]10022

(d) The time for deciding an appeal by the individual or body designated to hear appeals shall commence upon receipt of a written appeal, identifying:

(1) the date of the appeal;

(2) the date and location of the requests for records;

(3) the records to which the requester was denied access;

(4) whether the denial of access was in writing or due to failure to provide records promptly as required by section 2150.5(c) of this Part; and

(5) the name and return address of the requester.

(e) The individual or body designated to hear appeals shall inform the requester of its decision, in writing, within [seven] *ten* business days of receipt of an appeal.

(f) The person or body designated to hear appeals shall transmit to the Committee on [Public Access to Records] *Open Government* copies of all appeals upon receipt of appeals. Such copies shall be addressed to:

Committee on [Public Access to Records Department] *Open Government*

Department of [State 162 Washington Avenue Albany] *State*

41 State Street

Albany, New York 12231

(g) The person or body designated to hear appeals shall inform [the appellant and] the Committee on Public Access to Records of its determination in writing within [seven] *ten* business days of receipt of an appeal. The determination shall be transmitted to the Committee on Public Access to Records in the same manner as set forth in subdivision (f) [of] *in* this section.

2150.8 Fees.

(a) There shall be no fee charged for the following:

(1) inspection of records;

(2) search for records; or

(3) any certification pursuant to this Part.

(b) The fee for photocopies not exceeding 8 [1/2] ½ by 14 inches is 25 cents per page. The fee for copies of records other than photocopies which are 8 [1/2] ½ by 14 inches or less in size shall be the actual copying cost, excluding fixed agency costs such as salaries.

“2150.9 Public notice.”

[A notice containing] *Information regarding* the title or name and business address of the records access officer[s] and appeals person or body, and the location where records can be seen or copied, shall be [posted in a conspicuous location wherever records are kept and/or published in a local newspaper of general circulation.] *made available by inquiring to the Agency’s general telephone number.*

“2150.10 Severability.”

If any provision of this Part or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons and circumstances.

Text of proposed rule and any required statements and analyses may be obtained from: Jay Ticker, Associate Counsel, Housing Finance Agency, 641 Lexington Ave., New York, NY 10022, (212) 688-4000 ext. 365, e-mail: jayt@nyhomes.org

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

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

Consensus Rule Making Determination

Under Chapter 210 of the Laws of 1998, the New York State Housing Finance Agency’s proposed rule is a consensus rule because no person is likely to object to its adoption, and it brings the current rule in conformity with statutory changes recently passed in regard to the Freedom of Information Law (Public Officers Law §§ 84-92). The statutory change includes the creation of a twenty-day time limit during which time the Agency must deliver information to a member of the public if their request for information was granted. In addition, administrative changes will be made including the update of the Agency’s address, contact information, and titles of personnel. The changes will likely be supported because the regulations will be updated in ways that will make information more accessible to the public. As required, the Agency will withdraw the consensus rule if it receives any comment objecting to the consensus rule.

Job Impact Statement

The proposed amendments to the regulation will not have a substantial impact on jobs or employment opportunities because the rule will not involve the creation of substantial regulatory costs or burdens. A current program exists at the New York State Housing Finance Agency to provide information to the public under the Freedom of Information Law. The amendments only refine the administration of the program.

Insurance Department

NOTICE OF WITHDRAWAL

Claims for Personal Injury Protection Benefits

I.D. No. INS-42-05-00005-W

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

Action taken: Notice of proposed rule making, I.D. No. INS-42-05-00005-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on October 19, 2005.

Subject: Claims for personal injury protection benefits.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Excess Line Placement Governing Standards

I.D. No. INS-52-05-00016-P

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

Proposed action: This is consensus rule making to amend Part 27 of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2105, 2118 and art. 21

Subject: Excess line placement governing standards.

Purpose: To restate section 2118(b)(6) of the Insurance Law regarding the duty of an excess line broker to deliver a stamped declarations page or cover note evidencing insurance that is stamped by the excess line association. Alternatively, the rule also permits a duplicate copy of the aforementioned document to be stamped by the excess line association. The rule updates the language on the notice that is required to be prominently displayed on written confirmations of placement of coverage with excess line insurers and the notice that is required on insurance policies issued by excess line insurers in this State. The two notices currently in use are different. The rule makes minor changes to both notices so that the language is the same on both notices. The rule also deletes the requirement that the notice be in red type and replaces it with the requirement that the notice be conspicuous.

Text of proposed rule: Section 27.6 is hereby amended to read as follows:

(a) Within 45 days after date of procurement of a policy from an unauthorized insurer, the excess line broker shall submit to the excess line association, for recording and stamping, all documents required by section 2118 of the Insurance Law including all affidavits required by section 27.5 of this Part.

(b) *No excess line broker shall deliver, nor provide to any producing broker for delivery, an excess line insurance policy declarations page or cover note unless the first page of the declarations page or cover note bears the stamp applied by the Excess Line Association of New York or a duplicate copy of the declarations page or cover note bearing the stamp is attached to the original.*

Section 27.17(b) is hereby amended to read as follows:

(b) No excess line broker shall deliver, or cause to be delivered by the producing broker to a person or entity requesting coverage from an unauthorized insurer any memorandum, certificate or other document evidencing insurance coverage, unless the document constitutes an insurance policy or contract of insurance actually issued by the insurer, except that the excess line broker or producing broker may deliver written confirmation of placement of coverage with the unauthorized insurer if the confirmation identifies the insurer by name and address, accurately describes the coverage, premium and terms, and bears across its face *conspicuously*, in [no] *not* less than ten point bold [red] type, the following legend:

[THIS IS NOT AN INSURANCE POLICY AND THE INSURER (INSURERS)* HEREIN REFERRED TO IS (ARE) NOT LICENSED BY THE STATE OF NEW YORK AND NOT SUBJECT TO ITS SUPERVISION. THE INSURANCE CONFIRMED HEREIN, IN THE EVENT OF THE INSOLVENCY OF THE INSURER (INSURERS), IS NOT PROTECTED BY THE NEW YORK STATE SECURITY FUNDS. THE POLICY MAY NOT BE SUBJECT TO ALL OF THE REGULATIONS OF THE INSURANCE DEPARTMENT PERTAINING TO POLICY FORMS.]

[*When more than one insurer is involved, the parenthetical material should be substituted as appropriate. Otherwise, the parenthetical material should be deleted.]

THE INSURER(S) NAMED HEREIN IS (ARE) NOT LICENSED BY THE STATE OF NEW YORK, NOT SUBJECT TO ITS SUPERVISION, AND IN THE EVENT OF THE INSOLVENCY OF THE INSURER(S), NOT PROTECTED BY THE NEW YORK STATE SECURITY FUNDS. THE POLICY MAY NOT BE SUBJECT TO ALL OF THE REGULATIONS OF THE INSURANCE DEPARTMENT PERTAINING TO POLICY FORMS.

Section 27.18(a) is hereby amended to read as follows:

(a) The excess line broker or producing broker shall promptly deliver every insurance policy placed with an unauthorized insurer to the insured, and every such policy shall bear across its face *conspicuously*, in not less than ten point bold [red] type, the [following legend:] *language as specified in Section 27.17(b) of this Part.*

[THIS INSURANCE POLICY IS WRITTEN BY AN INSURER (INSURERS)* NOT LICENSED BY THE STATE OF NEW YORK, NOT SUBJECT TO ITS SUPERVISION, AND NOT PROTECTED, IN THE EVENT OF THE INSOLVENCY OF THE INSURER, BY THE NEW YORK STATE SECURITY FUNDS. THE POLICY MAY NOT BE SUBJECT TO ALL OF THE REGULATIONS OF THE INSURANCE DEPARTMENT PERTAINING TO POLICY FORMS.]

[*When more than one insurer is involved, the parenthetical material should be substituted as appropriate. Otherwise, the parenthetical material should be deleted.]

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

Data, views or arguments may be submitted to: Buffy Cheung, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5587, e-mail: bcheung@ins.state.ny.us

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

Consensus Rule Making Determination

No person is likely to object to the rule as the changes reiterates a provision in the law, simplifies the notice requirements, and makes changes to the regulation that will facilitate the eventual conversion of ELANY's (Excess Line Association of New York) affidavit system into an electronic filing system.

The proposed rule restates Section 2118(b)(6) of the Insurance Law regarding the duty of an excess line broker to deliver a stamped declarations page or cover note evidencing insurance that is stamped by the excess line association. Alternatively, the rule also permits a duplicate copy of the aforementioned document to be stamped by the excess line association. The rule updates the language on the notice that is required to be prominently displayed on written confirmations of placement of coverage with excess line insurers and the notice that is required on insurance policies issued by excess line insurers in this state. The two notices currently in use are different. The rule makes minor changes to both notices so that the language is the same on both notices. The rule also deletes the requirement that the notice be in red type and replaces it with the requirement that the notice be conspicuous.

Job Impact Statement

The proposed rule change will have no impact on jobs and employment opportunities in New York State as it reiterates and clarifies a provision in the law, simplifies the notice requirements, and makes changes to the regulation that will facilitate the eventual conversion of ELANY's (Excess Line Association of New York) affidavit system into an electronic filing system.

Office of Mental Health

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Patient Visiting Rights

I.D. No. OMH-27-05-00003-C

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

The notice of proposed rule making, I.D. No. OMH-27-05-00003-P was published in the *State Register* on July 6, 2005.

Subject: Patient visiting rights.

Purpose: To update regulations governing patients' visiting rights and repeal obsolete regulations.

Substance of rule: Regulations were initially enacted in the 1970's at 14 NYCRR Part 21 to establish standards for communications and visits, which were applicable to both the Office of Mental Health and the Office of Mental Retardation and Developmental Disabilities. Subsequently, the Department of Mental Hygiene was split into autonomous offices in 1978. Each office established its own statutory framework in the Mental Hygiene Law, and later legislation expanded upon the rights of patients and the communication needs of patients.

The Office of Mental Retardation and Developmental Disabilities updated its regulations in 14 NYCRR Part 633, which superseded Part 21 since applicable provisions regarding patient visiting rights and communication needs were moved into this section. Similarly, the Office of Mental Health promulgated regulations setting forth the right of patients to communicate freely with visitors, and establishing rules governing communication needs, in 14 NYCRR Part 527. However, OMH did not clarify that the provisions of Part 527 partially superseded Part 21, which has resulted in some unnecessary duplication and confusion, particularly since a number of provisions in Part 21 are outdated. These amendments are therefore designed to specifically repeal Part 21, and to incorporate and update standards governing visiting rights of patients in facilities under the jurisdiction of OMH, so that they are fully contained in 14 NYCRR Part 527.

Changes to rule: No substantive changes.

Expiration date: July 6, 2006.

Text of proposed rule and changes, if any, may be obtained from: Julie Anne Rodak, Director, Bureau of Policy, Regulation and Legislations, Office of Mental Health, 44 Holland Ave., 8th Fl., Albany, NY 12208, (518) 474-1331, e-mail: colejar@omh.state.ny.us

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

Office of Mental Retardation and Developmental Disabilities

NOTICE OF ADOPTION

Reimbursement Methodologies

I.D. No. MRD-42-05-00014-A

Filing No. 1499

Filing date: Dec. 13, 2005

Effective date: Jan. 1, 2006

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

Action taken: Amendment of sections 635-10.5, 671.7, 679.6, 680.12, 681.14, 686.13 and 690.7 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 43.02

Subject: Revision of the reimbursement methodologies for various facilities and services provided under the auspices of OMRDD to include a health benefit funding initiative.

Purpose: To implement a funding initiative that will enable agencies which operate facilities and provide services under the auspices of OMRDD to address the health care costs of their employees.

Substance of final rule: The regulations support and sustain provider agencies and their staff, including direct care staff that are essential to the service delivery system by directly addressing the high cost of employee health care. This funding initiative will enable agencies to address the health care costs of their employees and enhance the ability of providers to hire and retain indispensable direct care staff.

OMRDD surveyed all provider agencies to determine what health insurance they currently offer. A benchmark of health care coverage was established by OMRDD based on the results of the survey data. In recognition of health care costs already incurred, Intermediate Care Facilities (ICF) and providers of certain home and community-based waiver services which have coverage at or above the benchmark will receive a 3.0 percent increase to operating costs. Providers of most OMRDD programs and services, including ICFs and the waiver programs noted above, whose employee health care benefits are below the benchmark may apply for additional funding. Providers below the benchmark which currently offer no health benefits may apply for \$2,500 per employee to establish health benefits or reduce employee out-of-pocket health-related expenses. Providers below the benchmark which currently offer health benefits to some or all employees may apply for \$325 per employee to enhance health benefits or reduce employee out-of-pocket health-related expenses. To ensure that funds granted to providers below the benchmark are expended for their intended purpose, the regulations require that agencies whose funding applications are approved by OMRDD submit a resolution from the agency governing body (Board of Directors) before any health care funds are disbursed to the agency.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 635-10.5(k)(4)(i) and 681.14(j)(4)(i).

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action de-

scribed herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

Regulatory Impact Statement

A revised regulatory impact statement is not being submitted because the nonsubstantial revisions to the originally proposed amendments do not necessitate revisions to the originally published regulatory impact statement. The minor nonsubstantial revisions referenced in this Notice were made only for purposes of clarification and do not materially alter the purpose, meaning, or effect of the rule.

Regulatory Flexibility Analysis

A revised regulatory flexibility analysis for small businesses and local governments is not being submitted because the nonsubstantial revisions to the originally proposed amendments do not necessitate revisions to the originally published regulatory flexibility analysis for small businesses and local governments. The minor nonsubstantial revisions referenced in this Notice were made only for purposes of clarification and do not materially alter the purpose, meaning, or effect of the rule.

Rural Area Flexibility Analysis

A revised rural area flexibility analysis for these amendments is not being submitted because neither the original amendments, nor the minor nonsubstantial revisions, will impose any adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The amendments will only revise the reimbursement methodologies for the referenced facilities and services to implement a funding initiative that will enable agencies which operate facilities and provide services under the auspices of OMRDD to address the health care costs of their employees. The amendments provide additional funding and will only have positive fiscal impacts for providers.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that neither the original amendments, nor the minor nonsubstantial revisions, will have an impact on jobs and/or employment opportunities. This finding is based on the fact that the rule making revises the reimbursement methodology for the referenced facilities and services to implement a funding initiative that will enable agencies which operate facilities and provide services under the auspices of OMRDD to address the health care costs of their employees and enhance their ability to hire and retain indispensable direct care staff. While the amendments do provide additional funding for the stated purposes, they will not result in any changes to current staffing levels of the affected facilities and services. There will therefore be no effect on the numbers of jobs and employment opportunities in New York State.

Assessment of Public Comment

OMRDD received comments from a provider and a member of the public regarding this proposed rule making. The comments/questions and OMRDD's responses are as follows:

1. Comment: The regulations should indicate what the benchmark is and how it was determined.

Response: OMRDD surveyed all providers in the summer of 2005 with respect to employee health care benefits. Responses to each of forty-one of the survey questions were assigned a range of values. Each provider's values on the forty one responses were summed. The benchmark was established at the 98.5 percentile of summed survey values.

The regulations do not have to include the benchmark because each provider is notified of whether it is above, at, or below the benchmark. The regulations do not need to describe how the benchmark was determined.

2. Comment: May the names of the agencies above and below the benchmark be provided without a Freedom of Information request?

Response: This information is available through a Freedom of Information request.

3. Comment: The regulations for waiver and ICF/DD programs indicate that providers above the benchmark will receive an increase equal to 3% of their operating costs in recognition of health care costs already incurred. The commenter notes that there appears to be no regulatory requirement for OMRDD to perform surplus/loss analyses to make sure that providers above the benchmark were incurring operating losses because of health care expenses. Were surplus/loss analyses done on the providers above the benchmark to assure that these funds are not windfalls to providers who already have operating surpluses?

Response: No surplus/loss analyses were calculated for the health care initiative for any provider, whether at, above, or below the benchmark. OMRDD raised the issue of surplus/loss calculations as a possible component of the initiative with the provider group that worked with OMRDD.

The provider group was opposed to the use of surplus/loss calculations in determining provider funding under the initiative.

4. Comment: The commenter states his assumption that providers who were providing health care above the benchmark were able to do so because of reimbursement already provided by OMRDD. If correct, the commenter states that OMRDD is generously increasing these providers' reimbursement by another 3%, or, the 3% is being provided to fund operating losses and OMRDD must have determined this with a surplus loss/analysis. A clarification is requested.

Response: As identified above, no surplus/loss analyses were calculated. Therefore, OMRDD cannot comment on the effect of the health care initiative on any provider's surplus/loss status.

5. Comment: How does the 3% increase to operating costs compare to the \$325 per employee increase to enhance health care benefits or reduce employee out of pocket expenses? Are providers above the benchmark receiving more money per employee than those below the benchmark?

Response: The 3% option for providers at or above the benchmark appears in regulation only for waiver and ICF/DD programs and is not a per employee value. This option is based on each individual provider's operating costs. Because the value of the two options is calculated differently, they cannot be compared.

6. Comment: Why weren't all providers afforded the opportunity to apply for the 3% of operating costs option in lieu of a per employee amount?

Response: OMRDD chose to implement a methodology that is predominantly based on an application procedure but which recognizes the top 1.5% of providers' health care plans.

7. Comment: Did OMRDD's State operated waiver programs participate in the 2005 OMRDD study on health care benefits for full and part time employees? If not, why not, and does the regulation need language to exclude State operated programs? However, if OMRDD's programs did participate in the study, where did OMRDD's programs fall in the benchmark study?

Response: The State as a provider did participate in the 2005 survey on health care benefits. The State as a provider is above the benchmark, along with several voluntary providers, some of whose health care benefits scored equivalent to or higher than the State in the survey.

8. Comment: If a provider were to reach the benchmark at some future date, can they apply for the 3% of their operating costs funding, or is this a one-time proposition.

Response: In order to receive the 3% of operating costs, the provider had to have met or exceeded the benchmark in September of 2005 when providers were notified of their relationship to the benchmark.

9. Comment: A provider commented that \$2,500 barely pays for single coverage in its particular region.

Response: It allows access to the New York State plans such as Healthy NY. These are not comprehensive plans but they do allow the previously uninsured to be insured (at close to the \$2,500 level).

NOTICE OF ADOPTION

HCBS Waiver Day Habilitation Services

I.D. No. MRD-42-05-00015-A

Filing No. 1464

Filing date: Dec. 8, 2005

Effective date: Jan. 1, 2006

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

Action taken: Amendment of section 635-10.5 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), and 43.02

Subject: Fee setting for HCBS waiver day habilitation services provided under the auspices of OMRDD.

Purpose: To implement an efficiency adjustment applicable to the reimbursement of HCBS waiver day habilitation services.

Text or summary was published in the notice of proposed rule making, I.D. No. MRD-42-05-00015-P, Issue of October 19, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

Assessment of Public Comment

OMRDD received one correspondence regarding this proposed rule making. The writer's comments/questions and OMRDD's responses are as follows:

1. Comment: Will providers who have operating losses in 2006 and request price adjustments to address their losses be able to recover the efficiency adjustment reduction as part of their appeal or will they be limited to their loss less the efficiency adjustment?

Response: Providers who request price adjustments for 2006 will be limited to their loss less the efficiency adjustment. It is not intended that the price adjustment process should circumvent the efficiency adjustment regulation.

2. Comment: It is unclear as to why providers with operating losses in 2003 or 2003-2004 were not held harmless from the efficiency adjustment. Has OMRDD reviewed the potential impact on consumer services with these providers?

Response: The efficiency adjustment calculation is structured to impact providers with losses less severely than those with surpluses and it is intended to be applicable to all day habilitation providers. Because this strategy was recommended to OMRDD by the provider group that worked with OMRDD on the day habilitation efficiency adjustment, OMRDD assumes that providers believe they will be able to continue to provide quality day habilitation services after the efficiency adjustment is applied.

3. Comment: Why weren't "new" providers, those that commence operations after 2003, held harmless?

Response: OMRDD did not want to discriminate against existing providers, which would have been the outcome if new providers had been held harmless.

4. Comment: Is the listing of the provider by provider impacts available for review?

Response: Yes, impacts are available if requests are made pursuant to the Freedom of Information Law.

5. Comment: Will the surplus/loss analysis performed by OMRDD be made available to each provider?

Response: Yes, these are available upon request.

6. Comment: In light of the large savings to OMRDD, which occurred from the reduction in capacity created the units of service definition changes, was the efficiency adjustment really necessary?

Response: It is important to clarify that the day habilitation units of service initiative is a program initiative, not a revenue reduction measure. The day habilitation unit of service regulations were designed to achieve revenue neutrality. They will enhance accountability and establish statewide regulatory standards for service duration associated with each billing unit. This was done with input from its providers. The day habilitation efficiency adjustment and units of service changes are not linked, except that they share the same implementation date of January 1, 2006.

7. Comment: How many providers were in each band by region?

Response: In Region 1 there were 13 providers in each band; Region 2, either 8 or 9 providers; and Region 3, 30 or 32 providers.

8. Comment: Were day treatment losses for providers which converted to day habilitation after 2003 included in the surplus/loss calculations? If not, they should have been so as to avoid creating additional work for providers and OMRDD after the fact.

Response: Upon the request of a provider, OMRDD will review the day habilitation surplus/loss calculation of that provider in situations where the conversion of a provider's day treatment site(s) to day habilitation prior to January 1, 2006 has a material impact on the surplus/loss calculation. This procedure was discussed with, and has the support of, the provider group that worked with OMRDD to develop the parameters for the day habilitation efficiency adjustment initiative.

9. Comment: Why didn't OMRDD give providers the option to reinvest surpluses into direct care salaries or health care initiatives, which are important OMRDD agenda items?

Response: Providers always have the option to reinvest surpluses into direct care salaries or health care initiatives, which indeed are issues important to OMRDD.

NOTICE OF ADOPTION

HCBS Day Habilitation and Prevocational Services

I.D. No. MRD-43-05-00017-A

Filing No. 1500

Filing date: Dec. 13, 2005

Effective date: Jan. 1, 2006

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

Action taken: Amendment of section 635-10.5(c) and (e) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 43.02

Subject: Revision of reimbursement methodologies for HCBS day habilitation and prevocational services.

Purpose: To create new definitions of billing units of service, establish statewide regulatory standards for the service duration associated with each billing unit, and enhance provider accountability. In addition, the amendments establish clear standards to document the provision of services. The amendments will also simplify the price setting reimbursement methodologies.

Text of final rule: 635-10.5 (c) Day habilitation services.

(1) *The following shall apply to day habilitation services provided on or after January 1, 2006.*

(2) *Day habilitation services shall be reimbursed as either Individual Day Habilitation, Supplemental Individual Day Habilitation, Group Day Habilitation or Supplemental Group Day Habilitation.*

(i) *Individual Day Habilitation services are services that are provided with a staff-to-consumer ratio of no greater than one consumer per staff member. Individual Day Habilitation services are delivered on weekdays and have a service start time prior to 3:00 p.m. OMRDD will authorize a provider to deliver Individual Day Habilitation services only where at least 90% of the planned schedule of activities involves one-on-one service provision. There will be one Individual Day Habilitation price for each agency that OMRDD authorizes to deliver the service.*

(ii) *Supplemental Individual Day Habilitation services are services that are provided with a staff-to-consumer ratio of no greater than one consumer per staff member. Services are delivered on weekdays with a start time at 3:00 p.m. or later or anytime on weekends. OMRDD will authorize a provider to deliver Supplemental Individual Day Habilitation services only where at least 90% of the planned schedule of activities involves one-on-one service provision. There will be one Supplemental Individual Day Habilitation price for each agency that OMRDD authorizes to deliver the service.*

(iii) *Group Day Habilitation services are services that are typically provided to two or more enrolled consumers. Group Day Habilitation services are delivered on weekdays and have a service start time prior to 3:00 p.m. There will be one Group Day Habilitation price for each agency that OMRDD authorizes to deliver the service.*

(iv) *Supplemental Group Day Habilitation services are services that are typically provided to two or more enrolled consumers. Group Day Habilitation services are delivered on weekdays with a start time at 3:00 p.m. or later or anytime on weekends. There will be one Supplemental Group Day Habilitation price for each agency that OMRDD authorizes to deliver the service.*

(3) *An annual price period is a 12-month period as follows:*

(i) *for providers in the counties of New York, Bronx, Queens, Kings and Richmond, July 1st to June 30th;*

(ii) *for providers in all other counties, January 1st to December 31st;*

(iii) *for day habilitation providers defined in subparagraph (i) of this paragraph, there will be a one-time, six-month price period from January 1, 2006 to June 30, 2006.*

(1)(4) *Day habilitation service costs are those costs related to the aggregate of all services selected and identified in the individualized service plan (ISP) and Day Habilitation Plan for each person participating in the program.*

Note: Current subparagraphs (i) and (ii) remain unchanged.

(iii) *Reimbursement shall be contingent upon prior OMRDD approval and documentation that those participating in the program have received the services as specified in each person's individualized service plan (ISP) and Day Habilitation Plan.*

(iv) *For Individual Day Habilitation and Supplemental Individual Day Habilitation services, total annual reimbursable costs derived*

through the application of the above methodology shall be trended in accordance with subdivision (i) of this section and divided by the total annual projected hours of utilization.

(iv)(v) For Group Day Habilitation and Supplemental Group Day Habilitation services, [T] total annual reimbursable costs derived through the application of the above methodology shall be trended in accordance with subdivision (i) of this section and divided by total [person days] annual projected full and half units. [Total person days shall be the higher of reported person days or computed person days as defined pursuant to either clause (a) or (b)(1) or (2) of this subparagraph.]

Note: Rest of current subparagraph (iv) is deleted.

(vi) The capital cost portion of the unit price for all four types of non-state-operated Day Habilitation shall be determined by dividing the approved annual budgeted capital costs by 12 and shall be paid monthly.

(5) The unit of service for Individual Day Habilitation and Supplemental Individual Day Habilitation services shall be one hour equaling 60 minutes and is reimbursed in 15-minute increments. When there is a break in the service delivery during a single day, for billing purposes, the provider may combine the duration of each non-continuous period of service provision (or "session") that is provided during the day, when at least one service/staff action delivered in accordance with the individual's Day Habilitation Plan is documented for each session.

(i) Only time when Individual Day Habilitation or Supplemental Individual Day Habilitation staff are present with the consumer and providing services may be counted toward the billable service time (see subparagraph (iii) of this paragraph).

(ii) For each continuous service delivery period or session, the Individual Day Habilitation or Supplemental Individual Day Habilitation provider must document the service start time and the service stop time and the provision of at least one service/staff action delivered in accordance with the individual's Day Habilitation Plan.

(iii) Billable service time is time when staff are providing face-to-face Individual Day Habilitation or Supplemental Individual Day Habilitation services to an individual in accordance with the individual's Day Habilitation Plan. The following cannot be counted toward the Individual Day Habilitation or Supplemental Individual Day Habilitation billable service time:

(a) Time spent in group activities may not be counted as billable service time;

(b) Where Individual Day Habilitation or Supplemental Individual Day Habilitation staff accompany the consumer to any other separately reimbursed service, the time spent at the separately reimbursed service cannot be counted as billable service time. Travel time to and from the separately reimbursed service also cannot be counted as billable service time;

(c) Time spent traveling to the first Individual Day Habilitation or Supplemental Individual Day Habilitation activity of the day and time spent traveling home or to another service at the conclusion of the Individual Day Habilitation or Supplemental Individual Day Habilitation service may not be counted as billable service time, with an exception made for time-limited travel training services (see subparagraph (iv) of this paragraph).

(iv) When Individual Day Habilitation or Supplemental Individual Day Habilitation staff provide time-limited travel training services to a consumer who is traveling to the first Individual Day Habilitation or Supplemental Individual Day Habilitation activity of the day and traveling home or to another service at the conclusion of the Individual Day Habilitation or Supplemental Individual Day Habilitation service, the time spent receiving travel training services may be counted as billable service time as long as:

(a) the travel training service is provided on a time-limited basis, and;

(b) travel training is specifically identified in the consumer's Day Habilitation Plan.

(v) Supplemental Individual Day Habilitation services may not be billed to Medicaid for consumers who live in residential settings with 24-hour staffing; for example, Supervised Individual Residential Alternatives (IRAs) and Supervised Community Residences (CRs).

(6) Unit of service for reimbursement of Group Day Habilitation and Supplemental Group Day Habilitation.

(i) Group Day Habilitation and Supplemental Group Day Habilitation services are reimbursed in full or half units of service:

(a) The agency may bill a full unit of service when the agency delivers and documents at least two face-to-face services delivered in accordance with the individual's Day Habilitation Plan and provides a

program day duration of four to six hours (see subparagraph (ii) of this paragraph).

(b) The agency may bill a half unit of service when the agency delivers and documents at least one face-to-face service delivered in accordance with the individual's Day Habilitation Plan and provides a program day duration of at least two hours.

(ii) The program day duration for both Group Day Habilitation and Supplemental Group Day Habilitation is the length of time that the person is participating in the Group Day Habilitation or Supplemental Group Day Habilitation services. The following cannot be counted as part of the program day duration:

(a) Time spent at any other separately reimbursed service that occurs during the Group Day Habilitation or Supplemental Group Day Habilitation program day, e.g., clinic services;

(b) Time spent traveling from the Group Day Habilitation or Supplemental Group Day Habilitation service to any other separately reimbursed service and returning from the separately reimbursed service;

(c) Time spent traveling to the first Group Day Habilitation or Supplemental Group Day Habilitation activity of the day and time spent traveling home or to another service at the conclusion of the Group Day Habilitation or Supplemental Group Day Habilitation program day; and

(d) Mealtime.

(iii) Supplemental Group Day Habilitation services may not be billed to Medicaid for consumers who live in residential settings with 24-hour staffing; for example, Supervised Individualized Residential Alternatives (IRAs) and Supervised Community Residences (CRs).

(7) Billing limits for Group Day Habilitation and Supplemental Group Day Habilitation.

(i) On a given day, a maximum of one and a half units per consumer, either one full unit and one half unit, or three half units, may be reimbursed for:

(a) Group Day Habilitation only, or

(b) Any combination of Group Day Habilitation or Prevocational Services (see subdivision 635-10.5(e)).

(ii) On a given day, a maximum of one full unit per consumer, either one full unit or two half units, may be reimbursed for Supplemental Group Day Habilitation.

(8) If OMRDD determines that there has been, or will be, a deviation between the actual units of service paid to a provider and the projected units of services used in determining the price, OMRDD may recalculate the price using the actual units of service paid. In deciding whether to recalculate a price using actual units of service, OMRDD will consider the material difference between projected and actual units of service, the effect that the recalculation would have on the provider's reimbursement for day habilitation services, the provider's financial position, and changes in the provider's programs or services.

Note: Rest of subdivision (c), i.e. paragraph (2), is renumbered accordingly.

635-10.5 (e) Prevocational [s]Services.

(1) The following shall apply to Prevocational Services provided on or after January 1, 2006.

(2) An annual price period is a 12-month period as follows:

(i) for providers in the counties of New York, Bronx, Queens, Kings and Richmond, July 1st to June 30th;

(ii) for providers in all other counties, January 1st to December 31st;

(iii) for Prevocational Services providers defined in subparagraph (i) of this paragraph, there will be a one-time, six-month price period from January 1, 2006 to June 30, 2006.

[(1)](3) Prevocational Services costs are those costs related to the aggregate of all services selected and identified in the individualized service plan (ISP) and Prevocational Services Plan for each person receiving prevocational services.

[(2)](4) Allowable prevocational costs shall be based on allowable [p]Prevocational [s]Services as identified in section 635-10.4(c) of this Subpart, and Subpart 635-6 of this Part, and incurred by an approved provider of service responsible for the delivery of such services.

[(3)](5) Reimbursement for [p]Prevocational [s]Services shall be determined through a budget review process.

Note: Current subparagraphs (3)(i) and (ii) remain unchanged, subparagraph (iii) is deleted and subparagraph (iv) is renumbered as (iii) and amended as follows:

[(iv)](iii) The [hourly] price for [p]Prevocational [s]Services shall be determined by dividing the approved budgeted costs for all individuals

included in the budget by the total [projected hours of service specified in ISPs of said persons] *annual projected full and half units.*

(iv) *The capital portion of the unit price for non-state-operated Prevocational Services shall be determined by dividing the approved annual budgeted capital costs by 12 and shall be paid monthly.*

[(4)](6) Reimbursement shall be contingent upon prior OMRDD approval and documentation that [p]Prevocational [s]Services are specified in each person's ISP and Prevocational Services Plan.

Note: Rest of current paragraph (e)(4) is deleted.

(7) *Unit of service for reimbursement for Prevocational Services.*

(i) *Reimbursement for Prevocational Services shall be claimed on an individual basis. Prevocational Services shall be billed on a full and half unit basis.*

(a) *The agency may bill a full unit of service when the agency delivers and documents at least two face-to-face services delivered in accordance with the individual's Prevocational Services Plan and provides a program day duration of at least four hours (see subparagraph (ii) of this paragraph).*

(b) *The agency may bill a half unit when the agency delivers and documents at least one face-to-face service delivered in accordance with the individual's Prevocational Services Plan and provides a program day duration of at least two hours.*

(ii) *The program day duration for Prevocational Services is the length of time that the person is present at the provider's "vocational/work program" where Prevocational Services are provided. The following cannot be counted as part of the program day duration:*

(a) *Time spent at any other separately reimbursed service that occurs during the Prevocational Services program day, e.g., clinic services;*

(b) *Time spent traveling from the Prevocational Service to the separately reimbursed service and returning from the separately reimbursed service;*

(c) *Time spent traveling to the first Prevocational Services activity of the day and time spent traveling home or to another service at the conclusion of the Prevocational Services program day; and*

(d) *Mealtime.*

(8) *Billing limits for Prevocational Services.*

(i) *On a given day, a maximum of one and a half units per consumer, either one full unit and one half unit, or three half units, may be reimbursed for:*

(a) *Prevocational Services only, or*

(b) *any combination of Prevocational Services or Group Day Habilitation.*

(ii) *Where more than one agency delivers services on a given day to the same consumer, the total number of units billed for that day by all agencies may not exceed the maximum allowed daily units described in subparagraph (i) of this paragraph.*

(9) *If OMRDD determines that there has been, or will be, a deviation between the actual units of service paid to a provider and the projected units of services used in determining the price, OMRDD may recalculate the price using the actual units of service paid. In deciding whether to recalculate a price using actual units of service, OMRDD will consider the material difference between projected and annual units of service, the effect that the recalculation would have on the provider's reimbursement for prevocational services, the provider's financial position, and changes in the provider's programs or services.*

Note: Current paragraphs (e)(5) and (e)(6) are renumbered as (e)(10) and (e)(11).

Final rule as compared with last published rule: Nonsubstantive changes were made in section 635-10.5(c)(4)(iv) and (vi); (c)(6)(i)(a) and (b); (iii), (e)(5)(iv), and (7)(i)(a) and (b).

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

Regulatory Impact Statement

A revised regulatory impact statement is not being submitted because the nonsubstantial revisions to the originally proposed amendments do not necessitate revisions to the originally published regulatory impact statement. The minor nonsubstantial revisions referenced in this Notice were made only for purposes of clarification and do not materially alter the purpose, meaning, or effect of the rule.

Regulatory Flexibility Analysis

A revised regulatory flexibility analysis for small businesses and local governments is not being submitted because the nonsubstantial revisions to the originally proposed amendments do not necessitate revisions to the originally published regulatory flexibility analysis for small businesses and local governments. The minor nonsubstantial revisions referenced in this Notice were made only for purposes of clarification and do not materially alter the purpose, meaning, or effect of the rule.

Rural Area Flexibility Analysis

A revised rural area flexibility analysis for these amendments is not being submitted because neither the original amendments, nor the minor nonsubstantial revisions, will impose any adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The amendments only provide necessary revisions to the reimbursement methodology for HCBS waiver services. Specifically, these amendments revise the reimbursement methodologies for HCBS Waiver Day Habilitation and Prevocational Services by creating new definitions of billing units of service, establishing statewide regulatory standards for the service duration associated with each billing unit, and enhancing accountability. In addition, the amendments establish clear standards for documenting the provision of services. The amendments will also simplify the price setting reimbursement methodologies.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that neither the original amendments, nor the minor nonsubstantial revisions, will have an impact on jobs and/or employment opportunities. This finding is based on the fact that the rule making revises the reimbursement methodology for HCBS waiver Day Habilitation and Prevocational Services by creating new definitions of billing units of service, establishing statewide regulatory standards for the service duration associated with each billing unit, and enhancing accountability. In addition, the amendments establish clear standards for documenting the provision of services. The amendments will also simplify the price setting reimbursement methodologies.

The amendments, including the minor nonsubstantial revisions referenced in this Notice, will have no fiscal effect on providers of these services. Since services are not being increased or reduced by this proposal, there will be no effect on the staffing patterns of regulated service providers and no effect on jobs and employment opportunities in New York State.

Assessment of Public Comment

OMRDD received one correspondence regarding this proposed rule making. The writer's comments/questions and OMRDD's responses are as follows:

1. Comment: In section 635-10.5(c)(7)(i) the proposed regulation limits group day habilitation and prevocational services billed on a given day to one and one half units of service, in any combination. It also limits supplemental group day habilitation to one full unit or two half units per day, which appears to be in addition to the one and one half unit maximum for group day habilitation and prevocational services. If this is so, then 635-10.5(e)(8)(i) or (ii) should have a clarifying sentence which would allow one full unit or two half units of supplemental group day habilitation in addition to the one and a half unit maximum of the combination of prevoc and group day habilitation.

Response: The commenter is correct that the daily limit for group day habilitation and prevocational services is independent of the daily limit for supplemental group day habilitation. Since the commenter correctly interpreted the regulation, there is no need for a clarifying sentence.

2. Comment: The methodology used to establish the per unit fees should be in the regulation. For example, there is no mention of the OMRDD day hab utilization study, the rolling up of price sheets or how the new programs will be reimbursed.

Response: There is no requirement for a regulation to include the study data that went into its development. As to the rolling up of prices, in the proposed 635-10.5(c), subparagraphs (i) through (iv) indicate that one price per authorized provider will be established for each of the four services types: individual day habilitation, supplemental individual day habilitation, group day habilitation and supplemental group day habilitation. Because there is one price per authorized provider for each type of

service, new programs providing that service will bill the provider's established price.

As for a new provider who has never before delivered day habilitation services, existing language at 635-10.5(c)(1)(i) and (ii), which will be retained in the regulation, describes the budget process that would be used for a new provider.

3. Comment: The provision that allows for the monthly payment of property costs irrespective of units of service should be in the regulation.

Response: The provision for the monthly payment has been added.

New York State Mortgage Agency

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Public Access to Information

I.D. No. MTG-52-05-00003-P

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

Proposed action: This is a consensus rule making to amend Part 2250 of Title 21 NYCRR.

Statutory authority: Public Officers Law, section 87(1)(a)

Subject: Public access to information.

Purpose: To update information relating to the address of the State of New York Mortgage Agency, titles of personnel within, and other revisions as dictated by the Public Officers Law.

Text of proposed rule:

PART 2250 PUBLIC ACCESS TO RECORDS

"2250.1 Purpose and scope."

(a) The people's right to know the process of government decision-making and the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by [shrouding it with the cloak of] secrecy or confidentiality.

(b) This Part provides information concerning the procedures by which records may be [obtained]. *obtained from the Agency pursuant to the Freedom of Information Law.*

(c) Personnel shall furnish to the public the information and records required by the Freedom of Information Law [and those which were furnished to the public prior to its enactment], *as well as records otherwise available by law.*

(d) Any conflicts among laws governing public access to records shall be construed in favor of the widest possible availability of public records.

"2250.2 Designation of records access officer."

(a) The [chairman] *President* and [c] *Chief* [e] *Executive* [o] *Officer* is responsible for insuring compliance with this Part, and designates the following person as records access officer: [Treasurer, 405]

Public Information Officer

State of New York Mortgage Agency

641 Lexington Avenue,

New York, NY 10017.]22

(b) The records access officer is responsible for insuring appropriate agency response to public requests for access to records. [However, the public shall not be denied access to records through] *The designation of records access officers shall not be construed to prohibit officials who have in the past been authorized to make records or information available [.] T] to the [r]public from continuing to do so.* Records access officers shall [assure] insure that personnel:

(1) maintain an up-to-date subject matter list;

(2) assist the requester in identifying requested records, if necessary;

(3) upon locating the records, take one of the following actions [in accordance with section 2250.6(b) of this Part]:

(i) make records [promptly] available for inspection; or

(ii) deny access to the records in whole or in part, and explain in writing the reasons therefor[.].

(4) upon request for copies of records[:

(i) make *a* copy available upon payment or offer to pay established fees, if any,; in accordance with section 2250.8 of this Part; [or.

(ii) permit the requester to copy those records;]

(5) upon request, certify that a [transcript] *record* is a true copy [of records copied;]; *and*

(6) upon failure to locate records, certify that:

(i) the State of New York Mortgage Agency is not the [legal] custodian for such records; or

(ii) the records of which the State of New York Mortgage Agency is a [legal] custodian[,] *cannot be found* after diligent search[, cannot be found.]

[Section 2250.3 Designation of fiscal officer.

(a) The Treasurer, 405 Lexington Avenue, New York, NY 10017 is designated the fiscal officer, who shall certify the payroll and respond to requests, in accordance with section 2250.6(b) of this Part, for an itemized record setting forth the name, address, title and salary of every officer or employee of the agency.

(b) The fiscal officer shall make the payroll items listed previously, available to any person including bona fide members of the news media as required under section 88(1)(g), (1)(i) and (10) of the Freedom of Information Law.]

[Section 2250.4 Location.]

"2250.3 Location."

Records shall be [made] available for [public] inspection and copying at: 405 Lexington Avenue, New York, NY 10017, or at the location where they are kept.

Section 2250.5] *the offices of the State of New York Mortgage Agency.*

"2250.4 Hours for public inspection."

[Requests for public access to records shall be accepted and records produced during all hours]

Records of the Agency shall be produced for inspection by appointment during hours and days regularly open for business. These hours are: Monday through Friday, 9 a.m. to 5 p.m.

"2250.6]5 Requests for public access to records."

[(a) Where a request for records is required, such request may be oral or in writing. However,]

(a) A written [requests shall not be] *request is* required [for records that have been customarily available without written request].

[(b) (1) Except under extraordinary circumstances, officials shall respond to a request for records no more than five business days after receipt of the request, whether the request is oral or in writing.

(2) If, because of extraordinary circumstances, more than five business days are required to respond to a request, receipt of the request shall be acknowledged within five business days after the request is received. The acknowledgment shall state the reason for delay and estimate the date when a reply will be made.

(c) A request for access to records should be sufficiently detailed to identify the records. Where possible, the requester.] *Written requests must be received by mail or hand delivery, or facsimile transmission, at the offices of the Agency.*

(b) *A request shall reasonably describe the record or records sought. Whenever possible, a person requesting records should supply information regarding dates, [titles,] file designations or other information [which] that may help [identify the records. However, a request for any or all records falling within a specific category conforms to the standards that records be identifiable.] [(d)(1) A] to describe the records sought.*

(c) *A response shall be given regarding any request reasonably describing the record or records sought within five business days of receipt of the request.*

(d) *When a request is granted in whole or in part, the record shall be delivered within twenty business days from the date of the acknowledgment of receipt of the request. If circumstances prevent disclosure of the record the Agency shall state, in writing, the reason for the inability to grant the request within twenty business days, and, a date certain within a reasonable period when the request will be granted in whole or in part.*

(e) *If the records access officer or his/her designee, does not provide or deny access to the record sought within five business days of receipt of a request, he or she shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied. If access to records is neither granted nor denied within ten business days after the date specified in such written acknowledgment, the request may be construed as a denial of access that may be appealed.*

"2250.6 Subject matter list."

(a) *The records access officer shall maintain a reasonably detailed current list, by subject matter, of all records [produced, filed, or first kept or promulgated after September 1, 1974 shall be available for public inspection and copying. The]in its possession, whether or not records are available pursuant to subdivision 2 of section 87 of the Public Officers Law.*

(b) *The subject matter list shall be sufficiently detailed to permit [the requester to identify]identification of the [file] category of the record[s] sought.*

(2)(c) *The subject matter list shall be updated [periodically and the date of t]not less than twice per year. The most recent [updating] update shall appear on the first page[. The updating] of the subject matter list. [shall not be less than semiannual.]*

(e) *No records may be removed by the requester from the office where the record is located without the permission of the records access officer.[* “2250.7 Denial of access to records.”

(a) *Denial of access [to records] shall be in writing, stating the reason therefor and advising the requester of the right to appeal to the individual or body established to hear appeals.*

(b) *If requested records are not provided promptly, as required in section 2250.[6]5 [(b)(c) of this Part, such failure shall also be deemed a denial of access.*

(c) *The following person or persons or body shall hear appeals for denial of access to records under the Freedom of Information Law: [Chairman]*

*Senior Vice President and [Chief Executive Officer,] Counsel
State of New York Mortgage Agency[, 405]
641 Lexington Avenue,
New York, NY [10017, telephone (212) 682-1043.]10022*

(d) *The time for deciding an appeal by the individual or body designated to hear appeals shall commence upon receipt of a written appeal, identifying:*

- (1) the date of the appeal;
- (2) the date and location of the requests for records;
- (3) the records to which the requester was denied access;
- (4) whether the denial of access was in writing or [was by] due to failure to provide records promptly as required by section 2250.[6]5[(b)(c) of this Part; and
- (5) the name and return address of the requester.

(e) *The individual or body designated to hear appeals shall inform the requester of [his]its decision, in writing, within [seven] ten business days of receipt of an appeal.*

(f) *[A final denial of access to a requested record, as provided for] The person or body designated to hear appeals shall transmit to the Committee on Open Government copies of all appeals upon receipt of appeals. Such copies shall be addressed to:*

*Committee on Open Government
Department of State
41 State Street
Albany, NY 12231*

(g) *The person or body designated to hear appeals shall inform the Committee on Public Access to Records of its determination in writing within ten business days of receipt of an appeal. The determination shall be transmitted to the Committee on Public Access to Records in the same manner as set forth in subdivision [(e) of this section, shall be subject to court review, as provided for in article 78 of the Civil Practice Law and Rules. Section 2250.8 Fees.(a)] (f) in this section.* “2250.8 Fees.”

- (a) *There shall be no fee charged for the following:*
 - (1) inspection of records;
 - (2) search for records; or
 - (3) any certification pursuant to this Part.

(b) *[(1)] The fee for photocopies not exceeding 8 [1/2]1/2 by 14 inches is 25 cents per page. [(2)] The fee for copies of records other than photocopies which are 8 [1/2]1/2 by 14 inches or less in size shall be the actual copying cost, excluding fixed agency costs such as salaries.*

“2250.9 Public notice.” [A notice — containing] *Information regarding the [job] title or name and business address of the records access officer and [fiscal officer; the name, job title, business address and telephone number of the] appeals person or body, and the location where records can be seen or [copied — shall]copied, shall be [posted in a conspicuous location wherever records are kept and/or pub-*

lished in a local newspaper of general circulation.] made available by inquiring to the Agency’s general telephone number.

“2250.10 Severability.”

If any provision of this Part or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part; or the application thereof to other persons and circumstances.

Text of proposed rule and any required statements and analyses may be obtained from: Jay Ticker, Associate Counsel, State of New York Mortgage Agency, 641 Lexington Ave., New York, NY 10022, (212) 688-4000 ext. 365, e-mail: jayt@nyhomes.org

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

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

Consensus Rule Making Determination

Under Chapter 210 of the Laws of 1998, the State of New York Mortgage Agency’s proposed rule is a consensus rule because no person is likely to object to its adoption, and it brings the current rule in conformity with statutory changes recently passed in regard to the Freedom of Information Law (Public Officers Law ’’ 84 – 92). The statutory change includes the creation of a twenty-day time limit during which time the Agency must deliver information to a member of the public if their request for information was granted. In addition, administrative changes will be made including the update of the Agency’s address, contact information, and titles of personnel. The changes will likely be supported because the regulations will be updated in ways that will make information more accessible to the public. As required, the Agency will withdraw the consensus rule if it receives any comment objecting to the consensus rule.

Job Impact Statement

The proposed amendments to the regulation will not have a substantial impact on jobs or employment opportunities because the rule will not involve the creation of substantial regulatory costs or burdens. A current program exists at the State of New York Mortgage Agency to provide information to the public under the Freedom of Information Law. The amendments only refine the administration of the program.

Department of Motor Vehicles

NOTICE OF ADOPTION

All Terrain Vehicle Registration

I.D. No. MTV-42-05-00006-A

Filing No. 1473

Filing date: Dec. 12, 2005

Effective date: Dec. 28, 2005

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

Action taken: Amendment of Part 103 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 2290

Subject: All terrain vehicle registration.

Purpose: To comply with chapter 59 of the Laws of 2005.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-42-05-00006-P, Issue of October 19, 2005.

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

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

Assessment of Public Comment

The New York Farm Bureau wrote in support of the proposed amendment, stating that the regulation’s provisions regarding a separate fund for registration fee income dedicated to ATV trail maintenance will serve to help minimize damage to farm fields and crops. The Department appreciates the Bureau’s support.

Municipal Bond Bank Agency

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Public Access to Information

I.D. No. MBB-52-05-00026-P

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

Proposed action: This is a consensus rule making to add Part 2225 to Title 21 NYCRR.

Statutory authority: Public Officers Law, section 87(1)(a)

Subject: Public access to information.

Purpose: To adopt regulations regarding freedom of information as dictated by the Public Officers Law.

Text of proposed rule: PART 2225

PUBLIC ACCESS TO RECORDS

2225.1 Purpose and scope.

(a) The people's right to know the process of government decision-making and the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by secrecy or confidentiality.

(b) This Part provides information concerning the procedures by which records may be obtained from the Agency pursuant to the Freedom of Information Law.

(c) Personnel shall furnish to the public the information and records required by the Freedom of Information Law, as well as records otherwise available by law.

(d) Any conflicts among laws governing public access to records shall be construed in favor of the widest possible availability of public records.

2225.2 Designation of records access officer.

(a) The President and Chief Executive Officer is responsible for insuring compliance with this Part, and designates the following person as records access officer:

Public Information Officer
State of New York Municipal Bond Bank Agency
641 Lexington Avenue
New York, NY 10022

(b) The records access officer is responsible for insuring appropriate agency response to public requests for access to records. The designation of records access officers shall not be construed to prohibit officials who have in the past been authorized to make records or information available to the public from continuing to do so. Records access officers shall insure that personnel:

- (1) maintain an up-to-date subject matter list.
- (2) assist the requester in identifying requested records, if necessary.
- (3) upon locating the records, take one of the following actions:

(i) make records available for inspection; or

(ii) deny access to the records in whole or in part, and explain in writing the reasons therefor.

(4) upon request for copies of records make a copy available upon payment or offer to pay established fees, if any; in accordance with section 2225.8 of this Part.

(5) upon request, certify that a record is a true copy; and

(6) upon failure to locate records, certify that:

(i) the State of New York Municipal Bond Bank Agency is not the custodian for such records; or

(ii) the records of which the State of New York Municipal Bond Bank Agency is a custodian cannot be found after diligent search.

2225.3 Location.

Records shall be available for inspection and copying at the offices of the Municipal Bond Bank Agency.

2225.4 Hours for public inspection.

Records of the Agency shall be produced for inspection by appointment during hours and days regularly open for business. These hours are: Monday through Friday, 9 a.m. to 5 p.m.

2225.5 Requests for public access to records.

(a) A written request is required. Written requests must be received by mail or hand delivery, or facsimile transmission, at the offices of the Agency.

(b) A request shall reasonably describe the record or records sought. Whenever possible, a person requesting records should supply information regarding dates, file designations or other information that may help to describe the records sought.

(c) A response shall be given regarding any request reasonably describing the record or records sought within five business days of receipt of the request.

(d) When a request is granted in whole or in part, the record shall be delivered within twenty business days from the date of the acknowledgment of receipt of the request. If circumstances prevent disclosure of the record the Agency shall state, in writing, the reason for the inability to grant the request within twenty business days, and, a date certain within a reasonable period when the request will be granted in whole or in part.

(e) If the records access officer or his/her designee, does not provide or deny access to the record sought within five business days of receipt of a request, he or she shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied. If access to records is neither granted nor denied within ten business days after the date specified in such written acknowledgment, the request may be construed as a denial of access that may be appealed.

2225.6 Subject matter list.

(a) The records access officer shall maintain a reasonably detailed current list, by subject matter, of all records in its possession, whether or not records are available pursuant to subdivision 2 of section 87 of the Public Officers Law.

(b) The subject matter list shall be sufficiently detailed to permit identification of the category of the record sought.

(c) The subject matter list shall be updated not less than twice per year. The most recent update shall appear on the first page of the subject matter list.

2225.7 Denial of access to records.

(a) Denial of access shall be in writing, stating the reason therefor and advising the requester of the right to appeal to the individual or body established to hear appeals.

(b) If requested records are not provided promptly, as required in section 2225.5(c) of this Part, such failure shall also be deemed a denial of access.

(c) The following person or persons or body shall hear appeals for denial of access to records under the Freedom of Information Law:

Senior Vice President and Counsel
State of New York Municipal Bond Bank Agency
641 Lexington Avenue
New York, NY 10022

(d) The time for deciding an appeal by the individual or body designated to hear appeals shall commence upon receipt of a written appeal, identifying:

- (1) the date of the appeal;
- (2) the date and location of the requests for records;
- (3) the records to which the requester was denied access;

(4) whether the denial of access was in writing or due to failure to provided records promptly as required by section 2225.5(c) of this Part; and

(5) the name and return address of the requester.

(e) The individual or body designated to hear appeals shall inform the requester of its decision, in writing, within ten business days of receipt of an appeal.

(f) The person or body designated to hear appeals shall transmit to the Committee on Open Government copies of all appeals upon receipt of appeals. Such copies shall be addressed to:

Committee on Open Government
Department of State
41 State Street
Albany, NY 12231

(g) The person or body designated to hear appeals shall inform the Committee on Public Access to Records of its determination in writing within ten business days of receipt of an appeal. The determination shall be transmitted to the Committee on Public Access to Records in the same manner as set forth in subdivision (f) in this section.

2225.8 Fees.

(a) There shall be no fee charged for the following:

- (1) inspection of records;
- (2) search for records; or
- (3) any certification pursuant to this Part.

(b) The fee for photocopies not exceeding 8½ by 14 inches is 25 cents per page. The fee for copies of records other than photocopies which are

8 1/2 by 14 inches or less in size shall be the actual copying cost, excluding fixed agency costs such as salaries.

2225.9 Public notice.

Information regarding the title or name and business address of the records access officer and appeals person or body, and the location where records can be seen or copied, shall be made available by inquiring to the Agency's general telephone number.

2225.10 Severability.

If any provision of this Part or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons and circumstances.

Text of proposed rule and any required statements and analyses may be obtained from: Jay Ticker, Associate Counsel, Municipal Bond Bank Agency, 641 Lexington Ave., New York, NY 10022, (212) 688-4000 ext. 365, e-mail: jayt@nyhomes.org

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

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

Consensus Rule Making Determination

Under Chapter 210 of the Laws of 1998, the New York State Municipal Bond Bank Agency's proposed rule is a consensus rule because no person is likely to object to its adoption, and it conforms with statutory changes recently passed in regard to the Freedom of Information Law (Public Officers Law §§ 84 — 92). The statutory change includes the creation of a twenty-day time limit during which time the Agency must deliver information to a member of the public if their request for information was granted. The adoption will likely be supported because the regulations will provide, in writing, a process that makes information more accessible to the public. As required, the Agency will withdraw the consensus rule if it receives any comment objecting to the consensus rule.

Job Impact Statement

The proposed amendments to the regulation will not have a substantial impact on jobs or employment opportunities because the rule will not involve the creation of substantial regulatory costs or burdens. A current program exists at the New York State Municipal Bond Bank Agency, despite the lack of a regulation, to provide information to the public under the Freedom of Information Law. This program will not be substantially altered by the adoption of regulations.

Office of Parks, Recreation and Historic Preservation

NOTICE OF ADOPTION

Authorized Vehicles on Certain Long Island Parkways

I.D. No. PKR-42-05-00002-A

Filing No. 1494

Filing date: Dec. 13, 2005

Effective date: Dec. 28, 2005

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

Action taken: Amendment of section 415.6 of Title 9 NYCRR.

Statutory authority: Parks, Recreation And Historic Preservation Law, section 3.09(8)

Subject: Authorized vehicles on certain Long Island Parkways.

Purpose: To re-route truck traffic so that it avoids a stretch of parkway that has low height clearance.

Text or summary was published in the notice of proposed rule making, I.D. No. PKR-42-05-00002-P, Issue of October 19, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Jeffrey A. Meyers, Associate Attorney, Office of Parks, Recreation and Historic Preservation, Agency Bldg. 1, 19th Fl., Empire State Plaza, Albany, NY 12238, (518) 486-2921, e-mail: jefrey.meyers@oprhp.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Power Authority of the State of New York

NOTICE OF ADOPTION

Rates for Power and Energy

I.D. No. PAS-43-05-00002-A

Filing date: Dec. 13, 2005

Effective date: Jan. 1, 2006

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

Action taken: Revisions to fixed costs includable in rate for NYC government customers under new long-term agreements ("LTA") and rates applicable to NYC government customers not under new LTAs.

Statutory authority: Public Authorities Law, section 1005

Subject: Rates for power and energy.

Purpose: To recover costs incurred to provide service and maintain system's fiscal integrity.

Final rule as compared with last published rule: This is a "rate making" as defined in SAPA § 102(2)(a)(ii) and, pursuant to SAPA § 202(7)(b), the agency elected to submit an original copy of a description of the substance. Non-Substantial revisions were made.

Substance of final rule: Pursuant to the New York Public Authorities Law, Section 1005, and upon review of all public comments submitted, the Power Authority of the State of New York (the "Authority") proposes to adopt increased rates for the New York City Governmental Customers ("NYC Governmental Customers" or "Customers") for Rate Year 2006.

The Authority proposes to adopt an increase in the "Fixed Costs" component which will result in an increase of the overall (production and delivery) rates by 0.7% on average compared to 2005 rates charged to the Customers who are signatories to the new supplemental Long Term Agreements ("LTAs"). For any Customer who is a non-signatory to an LTA, the Authority proposes to adopt a 13.5% increase in the production rates ("Non-Signatory Rates") compared to 2005 rates.

Power Authority of the State of New York

New York City Governmental Customers

2006 Estimated Customer Impacts

	Bill Impact In Thousands	Electric Bill (2005 Rates) In		Bill Impact % (a)/(b)
		(a)	(b)	
Signatories				
City of New York	\$17,610	\$408,574		4.3%
Metropolitan Transportation Authority	\$12,774	\$252,322		5.1%
New York City Housing Authority	\$4,777	\$111,421		4.3%
The Port Authority of New York & New Jersey	\$2,348	\$49,874		4.7%
New York State Office of General Services	\$1,278	\$30,133		4.2%
New York Convention Center Operating Corporation*	\$203	\$4,890		4.2%
United Nations Development Corporation	\$125	\$3,051		4.1%
Empire State Development Corporation	\$34	\$821		4.1%
Hudson River Park Trust	\$28	\$583		4.9%
Roosevelt Island Operating Corporation	\$19	\$472		3.9%
Battery Park City Authority	\$9	\$238		3.7%

* Indicated to the Authority its intention to execute, pending appropriate formal approvals.

Based on current delivery charges.

Rates become effective with the January 2006 billing period.

LTA Signatories

NEW YORK CITY GOVERNMENT CUSTOMERS
CONVENTIONAL PRODUCTION RATES

Service Class		Demand Rates \$/kW-mo.		Base Energy Rates Cents/k Wh*	
		2006		2006	
		Current	Proposed Final	Current	Proposed Final
62	General Small	**	**	8.346	8.881
64	Commercial & Industrial Redistribution	11.38	12.11	4.296	4.571
65	Electric Traction Systems	8.40	8.94	4.958	5.276
85s	NYC Transit Authority Substation	9.36	9.96	4.565	4.858
68/82	Multiple Dwellings Redistribution	10.05	10.69	4.432	4.716
69	General Large	8.30	8.83	4.642	4.940
80	NYC Street Lighting	9.15	9.74	4.419	4.702
91/93/98	NYC Public Buildings	8.48	9.02	4.912	5.227

* In addition to the indicated base energy rates, there is a stabilized energy charge adjustment that varies annually and is applied on a monthly basis.
** Service classes 62 and 66 do not have demand metering. Accordingly, the base energy rates reflect total demand as well as energy-related costs.

LTA Signatories

NEW YORK CITY GOVERNMENT CUSTOMERS
TIME-OF-DAY PRODUCTION RATES

Service Class		Demand Rates \$/kW-mo.		On-Peak Base Energy Rates Cents/k Wh		Off-Peak Base Energy Rate Cents/k Wh	
		2006		2006		2006	
		Current	Proposed Final	Current	Proposed Final	Current	Proposed Final
64	Commercial & Industrial Redistribution	9.35	9.95	6.195	6.592	3.426	3.646
68/82	Multiple Dwellings Redistribution	9.02	9.60	6.404	6.815	3.507	3.732
69	General Large	6.86	7.30	6.623	7.048	3.450	3.671
91/93/98	NYC Public Buildings	6.95	7.40	7.112	7.568	3.477	3.700

Notes:
(1) The on-peak period for demand is weekdays from 8AM to 6PM, including holidays.
(2) The on-peak period for energy is weekdays from 8AM to 10PM, including holidays.
(3) The off-peak period for demand and energy is all other hours.
(4) Demand rates apply to peak demand occurring during the on-peak period. In addition to the indicated base energy rates, there is a stabilized energy charge adjustment that varies annually and is applied on a monthly basis.

Non-Signatories

NEW YORK CITY GOVERNMENTAL CUSTOMERS
2006 PROPOSED FINAL PRODUCTION RATES

CONVENTIONAL

Service Class		Demand Rates \$/kW-mo.	Base Energy Rates Cents/k Wh
62	General Small	-	9.473
64	Commercial & Industrial Redistribution	12.92	4.876
65	Electric Traction Systems	9.53	5.628
85s	NYC Transit Authority Substation	10.62	5.182
68/82	Multiple Dwellings Redistribution	11.41	5.031
69	General Large	9.42	5.269
80	NYC Street Lighting	10.39	5.016
91/93/98	NYC Public Buildings	9.63	5.575

TIME-OF-DAY (TOD)

Service Class		Demand Rates \$/kW-mo.	On-Peak Base Energy Rates Cents/k Wh	Off-Peak Base Energy Rate Cents/k Wh
64	Commercial & Industrial Redistribution	10.61	7.032	3.889
68/82	Multiple Dwellings Redistribution	10.24	7.269	3.981
69	General Large	7.79	7.518	3.916
91/93/98	NYC Public Buildings	7.89	8.073	3.947

Notes:

- (1) In addition to the base energy rates, there is a stabilized energy charge adjustment that varies annually and is applied on a monthly basis.
- (2) The on-peak period for demand is weekdays from 8AM to 6PM, including holidays.
- (3) The on-peak period for energy is weekdays from 8AM to 10PM, including holidays.
- (4) The off-peak period for demand and energy is all other hours.
- (5) Demand rates apply to peak demand occurring during the on-peak period.

The Authority adopts nonsubstantive changes to revise the Fixed Costs to lower the proposed overall rate increase applicable to the Customers under LTAs from 1.1% to 0.7%. The Non-Signatory production-only rate increase is lowered from 14.1% to 13.5%.

Text of rule and any required statements and analyses may be obtained from: Angela D. Graves, Power Authority of the State of New York, 123 Main St., 15-M, White Plains, NY 10601, (914) 287-3092, e-mail: angela.graves@nypa.gov

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.

Public Service Commission

NOTICE OF ADOPTION

Reversal of Herbert E. Hirschfeld Petition by Janis J. Graham

I.D. No. PSC-03-05-00020-A

Filing date: Dec. 12, 2005

Effective date: Dec. 12, 2005

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

Action taken: The commission, on Oct. 27, 2005, adopted an order granting a petition for rehearing in part of commission's order issued Dec. 10, 2001 regarding the submetering proposal at Ebbets Field Apartments.

Statutory authority: Public Service Law, sections 25 and 65(1)

Subject: Rehearing of commission's order issued on Dec. 10, 2001.

Purpose: To reconsider the commission's decision regarding the submetering proposal submitted by Herbert E. Hirschfeld on behalf of the owner, Ebbets Field Apartments Corporation.

Substance of final rule: The Commission adopted an Order granting the petition for rehearing filed by Ms. Janis J. Graham, in part and directed Fieldbridge Associates LLC to provide a copy of the submetering plan to tenants of Ebbets Field Apartments, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(01-E-1290SA2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Intercarrier Agreements by Verizon New York Inc. and Warwick Valley Telephone Company

I.D. No. PSC-52-05-00019-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 Verizon New York Inc. and Warwick Valley Telephone Company to revise the interconnection agreement effective on Sept. 5, 2001.

Statutory authority: Public Service Law, section 94(2)
Subject: Inter-carrier 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 Verizon New York Inc. and Warwick Valley Telephone Company in September 2001. The companies subsequently have jointly filed amendments to clarify Verizon's standard pricing schedule for interconnection agreements. The Commission is considering these changes.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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-C-0062SA2)

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

Submetering of Electricity by Hudson Street Associates, LLC

I.D. No. PSC-52-05-00020-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Hudson Street Associates, LLC to submeter electricity at 255 Hudson St., New York, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12), (14)

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Hudson Street Associates, LLC to submeter electricity at 255 Hudson St., New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Hudson Street Associates, LLC to submeter electricity at 255 Hudson Street., New York, New York.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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-E-1515SA1)

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

Submetering of Electricity by The Lofts at City Center

I.D. No. PSC-52-05-00021-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by The Lofts at City Center to submeter electricity at 23, 25, and 27 City Place, White Plains, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of The Lofts at City Center to submeter electricity at 23, 25, and 27 City Place, White Plains, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by The Lofts at City Center to submeter electricity at 23, 25, and 27 City Place, White Plains, NY.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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-E-1550SA1)

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

Transfer of Certain Cable System Facilities by Carmel Cable Television, Inc.

I.D. No. PSC-52-05-00022-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, an application by Carmel Cable Television, Inc. ("Carmel Cable") and Comcast of Danbury, Inc. ("Comcast") for approval of the transfer of certain assets.

Statutory authority: Public Service Law, section 222

Subject: Transfer certain cable system facilities in Dutchess, Putnam and Westchester Counties, New York, currently owned and operated by Carmel Cable Television, Inc. to Comcast.

Purpose: To approve the transfer.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, an application by Carmel Cable Television, Inc. ("Carmel Cable") and Comcast of Danbury, Inc. ("Comcast") for approval of the transfer of certain assets. Susquehanna Cable Company, the parent of Carmel Cable, and Comcast Corporation have entered into an agreement to transfer ownership and control of the cable television system owned and operated by Carmel Cable in Dutchess, Putnam and Westchester Counties, New York ("the Transaction"). Upon completion of the Transaction, the system currently operated by Carmel Cable will become owned and operated by Comcast of New York, LLC, which will be transferred to Comcast.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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-V-1533SA1)

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

Water Service by the Estate of Helen J. Binder

I.D. No. PCS-52-05-00023-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a petition filed by the Estate of Helen J. Binder to abandon its water system.

Statutory authority: Public Service Law, section 89-h

Subject: Water service.

Purpose: To abandon the water system.

Substance of proposed rule: On October 28, 2005, the Estate of Helen J. Binder, owner of the Helen J. Binder water system, filed a petition requesting the New York State Public Service Commission's approval to abandon its water system. The company currently serves approximately 26 customers and is located in the Town of Binghamton, Broome County. The Commission may approve or reject, in whole or in part, or modify the company's request.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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-W-1456SA1)

(3) payment of fees for the registration and parking of vehicles, *provided, however, that a campus may exempt from payment of any such fees, any veteran, as defined in section 360 of the New York State Education Law, attending the university.* Such registration and parking fees must be approved by the campus president or designee, or if directed by the Board of Trustees, by the Board of Trustees, and when collected shall be deposited in the State University income fund. Approval by the president or designee, or by the Board of Trustees, as the case may be, shall be based upon a determination that the amount of the fee is substantially based on an analysis of the costs attributable to the operation and maintenance of the parking facilities owned and operated by the university;

(4) assessment of fines upon the owner or operator of such vehicles for each violation of traffic and parking regulations, in accordance with the procedures outlined in subdivision (d) of this section. Fines for violation of campus parking regulations may be set for each campus, not exceeding \$[25] 50 for each violation, except that an escalation of fines to a sum not exceeding \$[40] 75 may be provided for a second and subsequent violation(s) within the same academic year. Fines for violation of campus parking regulations which prohibit unauthorized parking in fire zones or handicapped parking spaces may be set for each campus not exceeding \$[50] 150 for each violation. The prosecution and collection of fines involving visitors shall be in accordance with applicable law. Fines may be deducted from the salary or wages of an offending officer or employee of the university. In the case of students, grades and transcripts may be withheld until all fines are paid. Fines shall be deposited in the State University income fund;

(5) revocation of a campus motor vehicle registration and a loss of parking privileges for the balance of the academic year upon a finding that 10 or more campus parking violations have been incurred during an academic year;

(6) establishment of traffic and parking control lights, signs, signals or markings on its campus affecting vehicles and pedestrians. Where local law permits, a college council may enlist the aid and cooperation of municipal law enforcement authorities in enforcing regulations promulgated pursuant to this section.

Text of proposed rule and any required statements and analyses may be obtained from: Marti Anne Ellermann, Senior Managing Campus Counsel, State University of New York, State University Plaza, Albany, NY 12246, (518) 443-5400, e-mail: marti.ellermann@suny.edu

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

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

Regulatory Impact Statement

1. Statutory Authority: Education Law, Section 360 authorizes the State University Trustees to make rules and regulations relating to parking, vehicular and pedestrian traffic and safety on the State-operated campuses of the State University of New York.

2. Legislative Objectives: The present measure will bring the parking and traffic regulations applicable to the State-operated campuses into compliance with Chapter 699 of the Laws of 2005 by authorizing campuses to exempt veterans from applicable parking and registration fees and also will increase allowable fines for violation of parking regulations.

3. Needs and Benefits: New York State Education Law was amended to authorize exemption of veterans from State University parking and registration fees. This amendment is needed to conform to the change in law. Additionally, parking fine thresholds applicable to violation of campus parking regulations have not changed since 1990. In the meantime, many municipalities have increased parking fines for violation of local parking ordinances, particularly for violation of handicapped parking rules. The increase proposed here will allow campuses in such areas to have their fines increased to levels comparable to municipal rules, thus strengthening incentives to avoid violation of campus parking rules.

4. Costs: Veterans enrolled at State-operated campuses of the State University will have exemptions from parking and registration fees and thus incur savings. Parking violators will experience higher fines on certain campuses of the State University.

5. Local Government Mandates: None.

6. Paperwork: None.

7. Duplication: None.

8. Alternatives: There is no alternative to providing a veteran's exemption. Campus parking fines could be kept constant, however, this reduces the efficacy of such parking rules.

9. Federal Standards: None.

10. Compliance Schedule: Chapter 699, Laws of 2005 was effective on November 3, 2005. Upon completion of this rule making, State-operated

State University of New York

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

Vehicle and Pedestrian Traffic and Parking Regulations

I.D. No. SUN-52-05-00017-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 560.3 of Title 8 NYCRR.

Statutory authority: Education Law, section 560.3

Subject: Vehicle and pedestrian traffic and parking regulations.

Purpose: To bring the State University vehicle and pedestrian traffic and parking regulations into conformity with L. 2005, ch. 699, by authorizing campuses to exempt veterans from parking and registration fees and also to increase the allowable amount of parking fines.

Text of proposed rule:

Section 560.3 Campus Rules and Regulations

(c) Such rules and regulations may provide for the:

(1) disposition of abandoned vehicles;

(2) attachment of a vehicle immobilizer and/or the removal by towing or otherwise of vehicles parked in violation of such rules, at the expense of the owner;

campuses that choose to provide the veteran’s exemption and increased parking fines, will have to initiate rule making to amend their local traffic and parking regulations.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on rural areas. The rule will not impose any adverse economic impact on rural areas or impose any reporting, record keeping, professional services or other compliance requirements on rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs fees and fines for violation of State University of New York traffic and parking regulations and will not have any adverse impact on the number of jobs or employment.

Action taken: Amendment of sections 152.12, 152.13, 157.1(a)-(b), 157.4(b), 157.5(a), and (b)(1)-(2); repeal of sections 157.2, 157.3 and 157.6; and addition of new sections 157.2 and 157.3 to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 652(a); 657(a); and 697(a)

Subject: Extensions of time to file.

Purpose: To allow taxpayers that file a proper application for an extension of time to file their New York State income tax returns and automatic six-month extension of time, rather than the previously allowed four-month automatic extension period.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-43-05-00010-P, Issue of October 26, 2005.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Director, Taxpayer Services Division, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: John_Bartlett@tax.state.ny.us

Assessment of Public Comment

The agency received no public comment.

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

Timely Electronic Filing and Electronic Paying

I.D. No. TAF-52-05-00018-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 2399.1, 2399.2(a)(1) and (d); addition of sections 2399.2(e) and (f); amendment of the titles of Part 2399 and sections 2399.2 and 2399.3 of Title 20 NYCRR.

Statutory authority: Tax Law, section 171, subds. First and Fourteenth

Subject: Timely electronic filing and electronic paying.

Purpose: To update the department’s procedural regulations concerning the timeliness of documents and payments that are filed and remitted by electronic means.

Text of proposed rule: Section 1. The statutory authority cited in the heading of Part 2399 of the regulations is REPEALED, and a new citation is added to read as follows:

(Statutory authority: Tax Law, section 171)

Section 2. Section 2399.1 of the regulations is amended to read as follows:

Section 2399.1 Application. Except as otherwise provided by law or this Title, the provisions of this Part [shall] apply to any tax [which] that is administered by the commissioner and [which] that is imposed by or authorized to be imposed pursuant to the Tax Law, [article 2-E of the General City Law, or section 27-0923 of] the Environmental Conservation Law, the County Law, or any other applicable laws concerning matters under the jurisdiction of the commissioner. Any reference to tax or taxes in this Part shall include special assessments, fees, and other impositions [which] that are administered by the commissioner. This Part does not apply to the Division of Tax Appeals or to the Bureau of Conciliation and Mediation Services within the Division of Taxation. (See Parts 3000 and 4000 of this Title for mailing rules applicable to petitions in the Division of Tax Appeals and requests for conciliation conferences in the Bureau of Conciliation and Mediation Services of the Division of Taxation, respectively.)

Section 3. The heading of section 2399.2 of the regulations is amended to read as follows:

Section 2399.2 Timely mailing, filing, and paying. (Tax Law, sections 171, 289-d, 434-a[(1), 475], 514-a[(1)], 691(a), [962,] 1091(a), 1147(a)[(2)], 1419(b), art. 11[, art. 31-B])

Section 4. Paragraph (1) of subdivision (a) of section 2399.2 of the regulations is amended to read as follows:

(a)(1)(i) In general, where any document required to be filed with, or payment required to be made to, the Department of Taxation and Finance (or, for purposes of article 11 of the Tax Law, the appropriate recording officer) within a prescribed period or on or before a prescribed date is delivered in the manner and time provided in this section by United States mail to the appropriate address after the prescribed period or date, the date of the United States postmark as stamped on the envelope or other wrapper in which such document or payment is contained will be deemed to be the date of filing or paying.

**Department of Taxation and
Finance**

NOTICE OF ADOPTION

Credit for Personal Income Tax

I.D. No. TAF-43-05-00009-A

Filing No. 1495

Filing date: Dec. 13, 2005

Effective date: Dec. 28, 2005

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

Action taken: Amendment of Part 120 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; and 697(a)

Subject: Credit for personal income tax imposed by another state, a political subdivision of another state, the District of Columbia, or a province of Canada.

Purpose: To change department policy concerning the submission of a copy of the tax return of another political jurisdiction when a taxpayer claims a credit for income tax paid to such political jurisdiction and amend regulations to reflect legislative changes.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-43-05-00009-P, Issue of October 26, 2005.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Director, Taxpayer Services Division, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: John_Bartlett@tax.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Extensions of Time to File

I.D. No. TAF-43-05-00010-A

Filing No. 1496

Filing date: Dec. 13, 2005

Effective date: Dec. 28, 2005

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

(ii) Any reference in this section to the United States mail shall be treated as including a reference to any delivery service that has been designated by the commissioner or by the Secretary of the Treasury of the United States pursuant to section 7502 of the Internal Revenue Code (unless the commissioner determines such delivery service is not adequate to meet the needs of the State), and any reference to a postmark by the United States mail shall be treated as including a reference to any date recorded or marked in the manner described in such section of the Internal Revenue Code by a designated delivery service. Where delivery is made by courier, delivery messenger, or similar service that has not been so designated, the date of receipt by the department will be deemed to be the date of filing or paying.

Section 5. Subdivision (d) of section 2399.2 of the regulations is amended to read as follows:

(d)(1) The term "document," as used in this section, means any return, report, declaration of estimated tax, claim, statement, notice, application, affidavit, or other document required to be filed within a prescribed period or on or before a prescribed date under the authority of any provision of the applicable [tax] article of the Tax Law or other applicable laws concerning matters under the jurisdiction of the commissioner. [(P]rovided, however, [the provisions of this section shall not be applicable to questionnaires and attachments filed by transferors and transferees in accordance with the pre-audit procedure set forth in section 1447(2) of the Tax Law. These questionnaires must be received by the Department of Taxation and Finance at least 20 days prior to the date of transfer.) Furthermore,] such term does not include any document that is permitted or required [under any provision] in conjunction with an electronic funds transfer pursuant to section 9 or section 10 of the Tax Law [or this Title to be filed or delivered by any method other than mailing. (See] — see Part [537] 2396 and Part 2397, respectively, of this Title [for mailing rules with respect to bulk sales].)]

(2) The term "payment," as used in this section, means any payment (or fee) required to be made (or paid over) within a prescribed period or on or before a prescribed date under the authority of any provision of the applicable article of the Tax Law or other applicable laws concerning matters under the jurisdiction of the commissioner. However, the term does not include any remittance unless the amount thereof is actually received by the Department of Taxation and Finance (or appropriate recording officer, where applicable). For example, if a check is used as a form of payment, this section does not apply if such check is not received[,] or, if received, is not honored upon presentment. Furthermore, such term does not include any [payment that is required under any provision of the Tax Law or this Title to be made by any method other than mailing. (Accordingly, this section does not apply to any] electronic [fund] funds transfer pursuant to section 9 or section 10 of the Tax Law — see Part 2396 and Part 2397, respectively, of this Title.)]

Section 6. A new subdivision (e) is added to section 2399.2 of the regulations to read as follows:

(e) "Timely filed electronic documents." (1) Notwithstanding any other provision of this Title and except in the case of an electronic funds transfer pursuant to section 9 or 10 of the Tax Law, any document that is filed electronically with the department (or with the department's designee) in the manner and time provided by the commissioner is deemed to be filed on the date of the electronic postmark. Thus, if the electronic postmark is timely, the document is considered filed timely although it is received after the last date prescribed for filing.

(2) (i) For purposes of this subdivision and except as provided in paragraph (3), the term "electronic postmark" means a record of the date and time (in a particular time zone) that an authorized electronic return transmitter receives the transmission of a taxpayer's electronically filed document on its host system. However, if the taxpayer and the electronic return transmitter are located in different time zones, it is the taxpayer's time zone that controls the timeliness of the electronically filed document. That is, the date and time that the transmitter receives the transmission are converted to the date and time in the taxpayer's time zone.

(ii) An "electronic return transmitter" is a person or other entity that transmits electronic documents directly to this department or directly to the Internal Revenue Service for forwarding to this department. A tax preparation service, electronic return originator, software developer, or other person or entity that does not transmit documents directly to this department or directly to the Internal Revenue Service for forwarding to this department is not an electronic return transmitter. The commissioner or the Commissioner of the Internal Revenue Service (as the case may be) may enter into an agreement with an electronic return transmitter or prescribe in forms, instructions, or other appropriate guidance the proce-

dures under which the electronic return transmitter is authorized to provide taxpayers with an electronic postmark to acknowledge the date and time that the electronic return transmitter received the electronically filed document.

(3) If a taxpayer electronically files a document directly with this department, directly with the Internal Revenue Service for forwarding to this department, or directly or indirectly with an electronic return transmitter and no electronic postmark is assigned by the transmitter, the electronic postmark is deemed to be the record of the date and time that the department receives the transmission of the taxpayer's electronically filed document. If it can be established by the taxpayer or otherwise that the Internal Revenue Service received the transmission of a New York State document at an earlier date and time, the electronic postmark will be considered such earlier date and time. In either case, it is the taxpayer's time zone that controls the timeliness of the electronically filed document.

Section 7. A new subdivision (f) is added to section 2399.2 of the regulations to read as follows:

(f) "Timely payments by electronic funds withdrawal, credit card, and debit card." (1)(i) Notwithstanding any other provision of this Title and except in the case of an electronic funds transfer pursuant to section 9 or 10 of the Tax Law, any payment that is made by electronic funds withdrawal in the manner provided by the commissioner is deemed to be made on the date that the taxpayer specifies as the date for withdrawal provided that the date specified is not beyond the last date prescribed for payment, the funds are available for withdrawal on such date, and the document to which the funds apply is filed timely in accordance with this Part. Therefore, if a document is filed on or before the prescribed due date, any applicable payment by electronic funds withdrawal is considered to be timely made if the funds are available and the taxpayer specifies any date up to and including the due date as the date for withdrawal of the funds. If no date for withdrawal of the funds is specified by the taxpayer, payment is deemed to be made on the last date prescribed for such payment.

(ii) If the document to which the funds apply is not filed timely in accordance with this Part, any prior payment that is made by electronic funds withdrawal in the manner provided by the commissioner on or before the last date prescribed for paying is deemed to be timely made provided such payment can be associated with the proper tax liability, as evidenced by the taxpayer.

(2) Notwithstanding any other provision of this Title, any payment that is made by credit card or debit card in the manner provided by the commissioner is deemed to be made on the date that the issuer of the card properly authorizes the transaction provided that the payment is actually received by the department in the ordinary course of business and is not returned due to correction of errors relating to the credit card account or debit card account. Accordingly, a payment made by credit or debit card is considered to be timely if the issuer properly authorizes the payment on or before the last date prescribed for paying and such payment is received by the department in the ordinary course of business for such a transaction and is not returned.

Section 8. The heading of section 2399.3 of the regulations is amended to read as follows:

Section 2399.3 Saturdays, Sundays, and legal holidays. (Tax Law, sections 171, 289-d(3), 434-a(3), [475] 514-a(2), 691(c), [962,] 1091(c), 1147(a)(3), 1419(c))

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Director, Taxpayer Services Division, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: john_bartlett@tax.state.ny.us

Data, views or arguments may be submitted to: Marilyn Kaltenborn, Director, Taxpayer Services Division, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-1153

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

Regulatory Impact Statement

1. Statutory authority: Subdivisions First and Fourteenth of section 171 of the Tax Law. Section 171, First of this statutory authority provides for the Commissioner of Taxation and Finance to make reasonable rules and regulations, which are consistent with law, that may be necessary for the exercise of the Commissioner's powers and the performance of the Commissioner's duties under the Tax Law. Section 171, Fourteenth also provides that the Commissioner shall perform other powers and duties conferred upon him by law.

2. Legislative objectives: The rule is being proposed pursuant to such authority and in accordance with the legislative objectives that the Com-

missioner equitably administer the provisions of the Tax Law and other applicable provisions of law under his jurisdiction. (For example, the State wireless communications service surcharge [County Law, section 309], the special assessments on hazardous wastes [Environmental Conservation Law, section 27-0923], and the waste tire management and recycling fees [Environmental Conservation Law, section 27-1913] are reported and paid to this Department.) With the advent of electronic commerce and electronic government, documents and payments are no longer exclusively filed or remitted in a traditional, tangible manner. The Commissioner, pursuant to such legislative objectives, is providing guidance with the promulgation of this rule as to when electronic documents and electronic payments are considered to be timely filed and timely paid to this Department.

3. Needs and benefits: The purpose of this rule is to update section 2399.2, "Timely mailing," of the Department's Procedural Regulations to take into account documents that are filed by electronic means and payments that are made by electronic funds withdrawal, credit cards, and debit cards. As do the Internal Revenue Service (IRS) and many state and local taxing authorities, this Department encourages taxpayers to file certain documents and to pay certain taxes pursuant to its E-File/E-Pay programs. (See, for example, www.tax.state.ny.us/elf/, www.irs.gov/efile/, and www.taxadmin.org/fta/edi/.) In addition, beginning with the calendar year 2006, electronic filing of State and New York City personal income tax returns by preparers will be required in many instances (L. 2005, ch. 61, part Q). This rule generally conforms to IRS regulations and procedures, and establishes when these documents and payments are regarded as being timely. The rule is beneficial, for example, in that it provides taxpayers a safe harbor, similar to 26 CFR 301.7502-1(d), for documents that are assigned electronic postmarks by authorized electronic return transmitters. Like a United States postmark that is printed on a paper envelope, if an electronic document is assigned an electronic postmark on or prior to a due date, the document is considered to be timely filed, even if it is not received by the Department until sometime thereafter. The rule also makes technical and editorial changes to the affected sections of Part 2399, including a technical amendment to the existing delivery-messenger-service rule to reflect Chapter 577 of the Laws of 1997.

4. Costs: There are no quantifiable costs to regulated parties associated with the implementation of and continued compliance with this rule nor are there any costs to this agency, New York State, or its local governments for the implementation and continued administration of the rule. As indicated, the rule provides guidance to taxpayers who file returns or pay taxes by electronic means and sets forth in the regulations the information they need to know in order to comply with the Department's policies for timely electronic filing and timely electronic paying of their taxes. The rule, per se, does not impose any new filing or paying requirements (which are prescribed by law) and, consequently, does not result in any related costs in this respect. To the extent that the Department may assess penalties and interest under the rule's electronic postmark provisions in situations where it previously did not because of the lack of a clearly established rule, costs (if any) to regulated parties cannot be determined with any degree of certainty. Generally, the amount of penalty and interest is driven by the amount of tax remitted late with a late filed return and the number of days the payment is late. Certain taxpayers may have serendipitously benefited while the Department was in transition to an electronic environment. However, the fact that some of these taxpayers may no longer benefit cannot be viewed as a true cost to regulated parties. The rule removes any potential for confusion as to when electronic documents and electronic payments are deemed timely. This analysis is based upon discussions among personnel from the Department's Office of Counsel, Taxpayer Services and Revenue Division, Office of Tax Policy Analysis, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: The rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork: The rule imposes no new reporting requirements, forms, or other paperwork upon regulated parties beyond those required by law and existing regulations.

7. Duplication: There are no relevant rules or other legal requirements of the Federal or State governments that conflict with this rule. This rule duplicates, or is otherwise in accord with, IRS regulations and policies in

these regards. See 26 CFR 301.6311-2(b) and 301.7502-1(d), as well as www.irs.gov/efile/.

8. Alternatives: No significant alternatives to the rule were considered by this Department. In many instances, New York State tax returns are first transmitted to the IRS and then forwarded to this Department. Conforming the Department's timely e-filing and e-paying rules to that of the IRS leaves little discretion for alternatives, nor would alternatives serve any constructive purpose.

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

10. Compliance schedule: The rule will take effect on the date that the Notice of Adoption is published in the *State Register*. No additional time is needed in order for regulated parties to comply with this rule.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this rule because it will not impose any adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses or local governments. The rule does not distinguish between different types and sizes of regulated parties. This rule merely amends the Department's Procedural Regulations to take into account documents that are considered to be timely filed by electronic means and payments that are considered to be timely made by electronic funds withdrawal, credit cards, and debit cards. The rule also makes technical and editorial changes to the affected sections of such regulations, including a technical amendment to the existing delivery-messenger-service rule to reflect Chapter 577 of the Laws of 1997.

The following organizations were notified that the Department was in the process of developing this rule and were given an opportunity to participate in its development: the Small Business Council of the New York State Business Council, the Division for Small Business of New York State Empire State Development, the National Federation of Independent Businesses, the Retail Council of New York State, the New York State Association of Counties, the Association of Towns of New York State, the New York State Conference of Mayors and Municipal Officials, and the Office of Local Government and Community Services of the New York State Department of State. In addition, drafts of this rule were sent to the following: the Business Council of New York State; the New York State Bar Association; the Association of the Bar of the City of New York; the New York State Society of CPA's; the National Tax Committee for the National Conference of CPA Practitioners; the National Association of Tax Practitioners; the National Association of Computerized Tax Processors; the New York City Department of Finance; and this Department's Taxpayer Advisory Council, which is a consulting group of practitioners and taxpayers. We received no substantive comments from any of these groups.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this rule because it will not impose any adverse impact on rural areas or impose any additional reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The rule does not distinguish between regulated parties located in different geographical areas. This rule merely amends the Department's Procedural Regulations to take into account documents that are considered to be timely filed by electronic means and payments that are considered to be timely made by electronic funds withdrawal, credit cards, and debit cards. The rule also makes technical and editorial changes to the affected sections of such regulations, including a technical amendment to the existing delivery-messenger-service rule to reflect Chapter 577 of the Laws of 1997.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter that the rule will have no impact on jobs and employment opportunities. This rule merely amends the Department's Procedural Regulations to take into account documents that are considered to be timely filed by electronic means and payments that are considered to be timely made by electronic funds withdrawal, credit cards, and debit cards. The rule also makes technical and editorial changes to the affected sections of such regulations, including a technical amendment to the existing delivery-messenger-service rule to reflect Chapter 577 of the Laws of 1997.

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Child Support Standards Chart

I.D. No. TDA-40-05-00021-A

Filing No. 1498

Filing date: Dec. 13, 2005

Effective date: Dec. 28, 2005

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

Action taken: Amendment of section 347.10(a)(9), (b) and (c) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 111-a and 111-i(2)

Subject: Child support standards chart.

Purpose: To update child support calculations formula as reflected in the child support standards chart.

Text or summary was published in the notice of proposed rule making, I.D. No. TDA-40-05-00021-P, Issue of October 5, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Ann Grace, Office of Temporary and Disability Assistance, 40 N. Pearl St., Albany, NY 12243, (518) 474-9498

Assessment of Public Comment

The agency received no public comment.

“2100.2 Designation of records access officer.”

(a) The President and Chief Executive Officer is responsible for insuring compliance with this Part, and designates the following person as records access officer:

Public Information Officer
Tobacco Settlement Financing Corporation
641 Lexington Avenue
New York, NY 10022

(b) The records access officer is responsible for insuring appropriate corporation response to public requests for access to records. The designation of records access officers shall not be construed to prohibit officials who have in the past been authorized to make records or information available to the public from continuing to do so. Records access officers shall insure that personnel:

- (1) maintain an up-to-date subject matter list.
- (2) assist the requester in identifying requested records, if necessary.
- (3) upon locating the records, take one of the following actions:
 - (i) make records available for inspection; or
 - (ii) deny access to the records in whole or in part, and explain in writing the reasons therefor.
- (4) upon request for copies of records make a copy available upon payment or offer to pay established fees, if any; in accordance with section 2100.8 of this Part.

(5) upon request, certify that a record is a true copy; and

(6) upon failure to locate records, certify that:

- (i) the Tobacco Settlement Financing Corporation is not the custodian for such records; or
- (ii) the records of which the Tobacco Settlement Financing Corporation is a custodian cannot be found after diligent search.

“2100.3 Location.”

Records shall be available for inspection and copying at the offices of the Tobacco Settlement Financing Corporation.

“2100.4 Hours for public inspection.”

Records of the Corporation shall be produced for inspection by appointment during hours and days regularly open for business. These hours are: Monday through Friday, 9 a.m. to 5 p.m.

“2100.5 Requests for public access to records.”

(a) A written request is required. Written requests must be received by mail or hand delivery, or facsimile transmission, at the offices of the Corporation.

(b) A request shall reasonably describe the record or records sought. Whenever possible, a person requesting records should supply information regarding dates, file designations or other information that may help to describe the records sought.

(c) A response shall be given regarding any request reasonably describing the record or records sought within five business days of receipt of the request.

(d) When a request is granted in whole or in part, the record shall be delivered within twenty business days from the date of the acknowledgment of receipt of the request. If circumstances prevent disclosure of the record the Corporation shall state, in writing, the reason for the inability to grant the request within twenty business days, and, a date certain within a reasonable period when the request will be granted in whole or in part.

(e) If the records access officer or his/her designee, does not provide or deny access to the record sought within five business days of receipt of a request, he or she shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied. If access to records is neither granted nor denied within ten business days after the date specified in such written acknowledgment, the request may be construed as a denial of access that may be appealed.

“2100.6 Subject matter list.”

(a) The records access officer shall maintain a reasonably detailed current list, by subject matter, of all records in its possession, whether or not records are available pursuant to subdivision 2 of section 87 of the Public Officers Law.

(b) The subject matter list shall be sufficiently detailed to permit identification of the category of the record sought.

(c) The subject matter list shall be updated not less than twice per year. The most recent update shall appear on the first page of the subject matter list.

“2100.7 Denial of access to records.”

(a) Denial of access shall be in writing, stating the reason therefor and advising the requester of the right to appeal to the individual or body established to hear appeals.

Tobacco Settlement Financing Corporation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Public Access to Information

I.D. No. TSF-52-05-00024-P

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

Proposed action: This is a consensus rule making to add Part 2100 to Title 21 NYCRR.

Statutory authority: Public Officers Law, section 87(1)(a)

Subject: Public access to information.

Purpose: To adopt regulations regarding freedom of information as dictated by the Public Officers Law.

Text of proposed rule:

PART 2100 PUBLIC ACCESS TO RECORDS

“2100.1 Purpose and scope.”

(a) The people’s right to know the process of government decision-making and the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by secrecy or confidentiality.

(b) This Part provides information concerning the procedures by which records may be obtained from the Corporation pursuant to the Freedom of Information Law.

(c) Personnel shall furnish to the public the information and records required by the Freedom of Information Law, as well as records otherwise available by law.

(d) Any conflicts among laws governing public access to records shall be construed in favor of the widest possible availability of public records.

(b) If requested records are not provided promptly, as required in section 2100.5(c) of this Part, such failure shall also be deemed a denial of access.

(c) The following person or persons or body shall hear appeals for denial of access to records under the Freedom of Information Law:

Senior Vice President and Counsel
Tobacco Settlement Financing Corporation
641 Lexington Avenue
New York, NY 10022

(d) The time for deciding an appeal by the individual or body designated to hear appeals shall commence upon receipt of a written appeal, identifying:

- (1) the date of the appeal;
- (2) the date and location of the requests for records;
- (3) the records to which the requester was denied access;
- (4) whether the denial of access was in writing or due to failure to provide records promptly as required by section 2100.5(c) of this Part;

and

- (5) the name and return address of the requester.

(e) The individual or body designated to hear appeals shall inform the requester of its decision, in writing, within ten business days of receipt of an appeal.

(f) The person or body designated to hear appeals shall transmit to the Committee on Open Government copies of all appeals upon receipt of appeals. Such copies shall be addressed to:

Committee on Open Government
Department of State
41 State Street
Albany, NY 12231

(g) The person or body designated to hear appeals shall inform the Committee on Public Access to Records of its determination in writing within ten business days of receipt of an appeal. The determination shall be transmitted to the Committee on Public Access to Records in the same manner as set forth in subdivision (f) in this section.

“2100.8 Fees.”

(a) There shall be no fee charged for the following:

- (1) inspection of records;
- (2) search for records; or
- (3) any certification pursuant to this Part.

(b) The fee for photocopies not exceeding 8½ by 14 inches is 25 cents per page. The fee for copies of records other than photocopies which are 8½ by 14 inches or less in size shall be the actual copying cost, excluding fixed corporation costs such as salaries.

“2100.9 Public notice.”

Information regarding the title or name and business address of the records access officer and appeals person or body, and the location where records can be seen or copied, shall be made available by inquiring to the Corporation’s general telephone number.

“2100.10 Severability.”

If any provision of this Part or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons and circumstances.

Text of proposed rule and any required statements and analyses may be obtained from: Jay Ticker, Associate Counsel, Tobacco Settlement Financing Corporation, 641 Lexington Ave., New York, NY 10022, (212) 688-4000, ext. 365, e-mail: jayt@nyhomes.org

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

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

Consensus Rule Making Determination

Under Chapter 210 of the Laws of 1998, the New York State Tobacco Settlement Financing Corporation’s proposed rule is a consensus rule because no person is likely to object to its adoption, and it conforms with statutory changes recently passed in regard to the Freedom of Information Law (Public Officers Law §§ 84 – 92). The statutory change includes the creation of a twenty-day time limit during which time the Corporation must deliver information to a member of the public if their request for information was granted. The adoption will likely be supported because the regulations will provide, in writing, a process that makes information more accessible to the public. As required, the Agency will withdraw the consensus rule if it receives any comment objecting to the consensus rule.

Job Impact Statement

The proposed amendments to the regulation will not have a substantial impact on jobs or employment opportunities because the rule will not

involve the creation of substantial regulatory costs or burdens. A current program exists at the New York State Tobacco Settlement Financing Corporation, despite the lack of a regulation, to provide information to the public under the Freedom of Information Law. This program will not be substantially altered by the adoption of regulations.