RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing; or C for first Continuation.)

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

Department of Civil Service

NOTICE OF ADOPTION

Probationary Terms

I.D. No. CVS-25-05-00001-A
Filing No. 1031
Filing date: Sept. 7, 2005
Effective date: Sept. 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 4.5(b)(1) of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 63(2)

Subject: Probationary terms for positions of University Police Officer 1 and University Police Officer 1 (Spanish Language).

Purpose: To provide for a probationary term for positions of University Police Officer 1 and University Police Officers 1 (Spanish Language) of no less than 52 weeks nor more than 78 weeks.

Text or summary was published in the notice of proposed rule making, I.D. No. CVS-25-05-00001-P, Issue of June 22, 2005.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-26-05-00003-A
Filing No. 1035
Filing date: Sept. 12, 2005
Effective date: Sept. 28, 2005

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

Action taken: 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 was published in the notice of proposed rule making, I.D. No. CVS-26-05-00003-P, Issue of June 29, 2005.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-26-05-00004-A
Filing No. 1036
Filing date: Sept. 12, 2005
Effective date: Sept. 28, 2005

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

Action taken: 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 Executive Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-26-05-00004-P, Issue of June 29, 2005.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

The agency received no public comment.

Department of Correctional Services

NOTICE OF ADOPTION

Inmate Correspondence Program

I.D. No. COR-27-05-00006-A

Filing No. 1032

Filing date: Sept. 8, 2005

Effective date: Sept. 28, 2005

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

Action taken: Amendment of sections 720.3(a)(1), 720.4(c) and 720.6(d)(2) of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Inmate Correspondence Program.

Purpose: To update provisions on the negative correspondence list, on receipt of printed or photcopied legal papers and on withdrawal of authorization for inmate-to-inmate correspondence.

Text or summary was published in the notice of proposed rule making, I.D. No. COR-27-05-00006-P, Issue of July 6, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 457-4951

Assessment of Public Comment

Comment

It is unclear what type of showing is necessary in order to prove that the legal papers cannot be obtained via the facility law library or through privileged correspondence (*e.g.*, from a court, attorney, or the New York State Law Library). Making such a showing may create serious problems considering time constraints associated with many legal matters. This requirement should be removed.

Response

The proposed rule only requires the inmate to "state why" the legal papers cannot be obtained via the facility law library or privileged correspondence. Of course, the validity of the stated reason can be assessed and the Superintendent may, if the stated reason appears to be erroneous or implausible, request additional information. This requirement was created to limit the administrative burden and accompanying security risks associated with the processing of correspondence that includes a large number of printed pages within a single piece of regular correspondence to those circumstances where the inmate does not have a ready alternative means of obtaining the legal papers.

Comment

The proposed rule does not provide criteria to determine whether the requested papers are specifically related to the inmate's current legal matter. Cases with similar facts and issues should be included.

Comment

Inmates generally have access to relevant case law within the comprehensive collection of legal materials, especially case law reporters, available in most inmate law libraries and the New York State Law Library. Additionally, the regulation does provide examples of legal papers specifically related to an inmate's current legal matter. Finally, Superintendents and their staff have the ability to consult, at any time, with Department counsel regarding the proper implementation of this or any other aspect of the proposed rule.

Education Department

EMERGENCY RULE MAKING

Special Act School Districts

I.D. No. EDU-25-05-00003-E
Filing No. 1043
Filing date: Sept. 13, 2005
Effective date: Sept. 13, 2005

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

Action taken: Addition of Part 105 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1) and (2), 308 (not subdivided) and 309 (not subdivided); and L. 2004, chs. 628, 629

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary to implement Chapters 628 and 629 of the Laws of 2004 by adding a new Part 105 that establishes requirements for the appointment by the Commissioner of two public members to the board of education of each special act school district. Proposed section 105.1 provides for definitions of terms used in the new Part. Proposed section 105.2 establishes eligibility requirements for appointment as a public member. Proposed section 105.3 establishes appointment procedures, term lengths, procedures to fill vacancies, and provides that public members, upon appointment, shall have all the rights, privileges, powers, duties and responsibilities of members of the board of education of a union free school district.

The proposed amendment was adopted as a permanent rule at the September 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 September 29, 2005. However, delaying until that date the implementation of the process to appoint public members to the boards of education of special act school districts will adversely affect special act boards of education by resulting in the appointment of their public members in October or possibly later in the 2005-2006 school year.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to immediately establish a process for the appointment of qualified public members to boards of education of each special act school district, so that they may timely assume their duties during the 2005-2006 school year, and thereby ensure public accountability for educational services and use of public funds, consistent with Chapters 628 and 629 of the Laws of 2004.

Subject: Composition of boards of education of Special Act school districts.

Purpose: To establish procedures for the appointment by the Commissioner of Education of public members to the board of education of each Special Act school district.

Text of emergency rule: Part 105 of the Regulations of the Commissioner of Education is added, effective September 13, 2005, as follows:

PART 105

APPOINTMENT OF PUBLIC MEMBERS OF BOARDS OF EDUCATION OF SPECIAL ACT SCHOOL DISTRICTS

§ 105.1 Definitions. Except as otherwise provided herein, as used in this Part, the following terms shall have the following meanings:

(a) Board of education means the board of education of a special act school district.

(b) Child care agency means an authorized agency, as defined in subdivision 1 of section 4001 of the Education Law that operates a child care institution affiliated with a special act school district.

(c) Public member means a member of a board of education appointed by the Commissioner pursuant to this Part.

(d) Special act school district means a special act school district as defined in subdivision 8 of section 4001 of the Education Law.

(e) Supervisory district means the supervisory district of a board of cooperative educational services established pursuant to section 2201 of the Education Law.

§ 105.2 Eligibility for appointment as public member. (a) Any person shall be eligible to apply for appointment by the Commissioner as a public member who:

(i) is eligible to vote in a general election;

(ii) is a resident of a component school district of the supervisory district in which the special act school district is located, of a contiguous supervisory district or of a school district that is not a component school district of any supervisory district but is contiguous to a component school district of the supervisory district in which the special act school district is located;

(iii) submits a letter of intent to the department, in the manner and by the date prescribed by the Commissioner, that specifies the boards of education to which he or she is seeking appointment, with a resume and an application in a form and containing such information as the Commissioner may prescribe; and

(iv) is not disqualified from serving as a public member under subdivision (b) of this section.

(b) A person shall be disqualified from serving as a public member of a special act school district if he or she:

(i) is an officer or employee of the child care agency that appoints members to the board of education of the special act school district;

(ii) serves as an officer or employee of the special act school district other than as a public member;

(ii) has a prohibited interest in a contract with the special act school district within the meaning of Article 18 of the General Municipal Law;

(iii) is an officer or employee of a school district, or a board of cooperative educational services, or a public agency as defined in subdivision 6 of section 4001 of the Education Law that contracts with the special act school district; or

(iv) is an officer or employee of an employee organization that represents employees of the special act school district pursuant to article 14 of the Civil Service Law or its parent employee organization.

(c) In appointing public members, preference shall be given to eligible persons with one or more of the following characteristics:

(i) a background and experience in corporate or school finance;

(ii) experience as a member of the governing board of an education corporation, another not-for-profit corporation or a school district; and/or

(iii) a background in the education or treatment of troubled youth.

§ 105.3 Appointment of public members. (a) The Commissioner shall appoint two public members to the board of education of each special act school district pursuant to the provisions of this Part. Appointments shall be made from candidates recommended by a regional interview team appointed by the Commissioner. A district superintendent of schools shall coordinate the activities of the team. Such regional interview team may include, but need not be limited to, a duly licensed certified public accountant or public accountant and individuals recommended by organizations representing superintendents of schools, boards of education, teachers, and individuals with disabilities and/or parents of individuals with disabilities.

(b) The full term of office of a public member shall be 4 school years, provided that the public members initially appointed in the 2005-06 school year shall be appointed for the balance of the term commencing on July 1, 2005 and ending on June 30, 2009, and provided further that after such initial appointments, the term of public members may be changed in accordance with subdivision 3 of section 2105 of the Education Law upon at least sixty days advance notice to the Commissioner.

(c) In the event a public member vacates his or her office during its term pursuant to section 2112 of the Education Law, the Commissioner may appoint an eligible person in the manner prescribed in this section for the remaining balance of the term of office or may fill such position by appointment for a full term commencing on July 1 next succeeding the date on which the vacancy occurred.

(d) Upon appointment, the public members shall have all the rights, privileges, powers, duties and responsibilities of members of the board of education of a union free school district under the Education Law and other laws pertaining to such school districts.

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-25-05-00003-P, Issue of June 22, 2005. The emergency rule will expire December 11, 2005.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

Education Law section 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education, and authorizes the Commissioner to enforce laws relating to the educational system and to execute the Regents' educational policies. Section 305(20) provides that the Commissioner shall have and execute such further powers and duties as he shall be charged with by the Regents.

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

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

Chapter 628 of the Laws of 2004, as amended by Chapter 629 of the Laws of 2004, requires the Commissioner of Education to appoint, pursuant to regulations promulgated by the Commissioner, two public members to the board of education of each special act school district for four-year terms, from candidates that submit a letter of intent to the Department.

LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above statutory authority and is necessary to implement Chapters 628 and 629 of the Laws of 2004.

NEEDS AND BENEFITS:

The proposed rule is necessary to implement Chapters 628 and 629 of the Laws of 2004 by adding a new Part 105 that establishes requirements for the appointment by the Commissioner of two public members to the board of education of each special act school district. Proposed section 105.1 provides for definitions of terms used in the new Part. Proposed section 105.2 establishes eligibility requirements for appointment as a public member. Proposed section 105.3 establishes appointment procedures, term lengths, procedures to fill vacancies, and provides that public members, upon appointment, shall have all the rights, privileges, powers, duties and responsibilities of members of the board of education of a union free school district.

Consistent with Chapters 628 and 629 of the Laws of 2004, the proposed rule will provide for the appointment of qualified public members to boards of education of each special act school district to ensure public accountability for educational services and use of public funds.

COSTS:

(a) Costs to the State: none.

(b) Costs to local government: none.

(c) Cost to private regulated parties: none.

(d) Cost to regulating agency for implementation and continued administration of this rule: the proposed rule is necessary to implement Chapters 628 and 629 of the Laws of 2004 and will not impose any costs beyond those inherent in such statutes. It is anticipated that any implementation costs will be absorbed using existing staff and resources.

LOCAL GOVERNMENT MANDATES:

The proposed rule does not impose any additional program, service, duty or responsibility on school districts or other local governments. Consistent with Chapters 628 and 629 of the Laws of 2004, the proposed rule establishes requirements for the appointment by the Commissioner of two public members to the board of education of each special act school district. Proposed section 105.1 provides for definitions of terms used in the new Part. Proposed section 105.2 establishes eligibility requirements for appointment as a public member. Proposed section 105.3 establishes appointment procedures, term lengths, procedures to fill vacancies, and provides that public members, upon appointment, shall have all the rights,

privileges, powers, duties and responsibilities of members of the board of education of a union free school district. The Commissioner shall appoint two public members to the board of education of each special act school district. Appointment shall be made from candidates recommended by a regional interview team appointed by the Commissioner. A district superintendent of schools shall coordinate the activities of the team.

PAPERWORK:

An eligible person, as described in proposed section 105.2, may submit a letter of intent to the State Education Department, in the manner and by a date prescribed by the Commissioner, that specifies the boards of education to which he or she is seeking appointment as a public member, with a resume and an application in a form and containing such information as the Commissioner may prescribe.

DUPLICATION:

The proposed rule does not duplicate existing State or federal requirements and is necessary to implement Chapters 628 and 629 of the Laws of 2004.

ALTERNATIVES:

There were no significant alternatives and none were considered. The proposed rule is necessary to implement Chapters 628 and 629 of the Laws of 2004. Those statutes require the Commissioner of Education to appoint, pursuant to regulations promulgated by the Commissioner, two public members to the board of education of each special act school district for four-year terms, from candidates that submit a letter of intent to the Department.

FEDERAL STANDARDS:

There are no related federal standards.

COMPLIANCE SCHEDULE:

It is anticipated that regulated parties can achieve compliance with the proposed rule by its effective date. The proposed rule is necessary to implement Chapters 628 and 629 of the Laws of 2004 and does not impose any additional costs or compliance requirements. Consistent with those statutes, the proposed rule establishes requirements for the appointment by the Commissioner of two public members to the board of education of each special act school district, including eligibility requirements, appointment procedures, term lengths and procedures to fill vacancies. An eligible person, as described in proposed section 105.2, may submit a letter of intent to the State Education Department, in the manner and by a date prescribed by the Commissioner, that specifies the boards of education to which he or she is seeking appointment as a public member, with a resume and an application in a form and containing such information as the Commissioner may prescribe. The Commissioner shall appoint two public members to the board of education of each special act school district. Appointment shall be made from candidates recommended by a regional interview team appointed by the Commissioner. A district superintendent of schools shall coordinate the activities of the team. Public members initially appointed in the 2005-06 school year shall be appointed for the balance of the term commencing on July 1, 2005 and ending on June 30, 2009.

Regulatory Flexibility Analysis

Small Businesses:

The proposed rule establishes procedures for the appointment of public members to the boards of education of special act school districts pursuant to Chapters 628 and 629 of the Laws of 2004, and will not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on small businesses. Because it is evident from the nature of the proposed rule that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

EFFECT OF RULE:

The proposed rule applies to each of the special act school districts in the State. There are currently fourteen special act school districts.

COMPLIANCE REQUIREMENTS:

The proposed rule does not impose any compliance requirements on school districts or other local governments. Consistent with Chapters 628 and 629 of the Laws of 2004, the proposed rule establishes requirements for the appointment by the Commissioner of two public members to the board of education of each special act school district. Proposed section 105.1 provides for definitions of terms used in the new Part. Proposed section 105.2 establishes eligibility requirements for appointment as a public member. Proposed section 105.3 establishes appointment procedures, term lengths, procedures to fill vacancies, and provides that public members, upon appointment, shall have all the rights, privileges, powers, duties and responsibilities of members of the board of education of a union free school district. An eligible person, as described in proposed section 105.2, may submit a letter of intent to the State Education Department, in the manner and by a date prescribed by the Commissioner, that specifies the boards of education to which he or she is seeking appointment as a public member, with a resume and an application in a form and containing such information as the Commissioner may prescribe. The Commissioner shall appoint two public members to the board of education of each special act school district. Appointment shall be made from candidates recommended by a regional interview team appointed by the Commissioner. A district superintendent of schools shall coordinate the activities of the team.

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

The proposed rule will not impose any additional costs on local governments.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement Chapters 628 and 629 of the Laws of 2004 and does not impose any additional costs or compliance requirements on local governments. Consistent with Chapters 628 and 629 of the Laws of 2004, the proposed rule establishes requirements for the appointment by the Commissioner of two public members to the board of education of each special act school district, including eligibility requirements, appointment procedures, term lengths and procedures to fill vacancies.

LOCAL GOVERNMENT PARTICIPATION:

The State Education Department provided copies of the draft regulation for review and comment to a consultant firm representing special act school districts, the New York State School Boards Association, the New York State Council of School Superintendents and teacher unions representing teaching staff employed by special act school districts. The proposed rule incorporates revisions to the draft regulation made in response to comments received by the Department.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed rule applies to each of the special act school districts in the State. There are currently fourteen special act school districts, four of which are located in rural areas.

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

The proposed rule does not impose any compliance requirements on school districts or other local governments in rural areas. Consistent with Chapters 628 and 629 of the Laws of 2004, the proposed rule establishes requirements for the appointment by the Commissioner of two public members to the board of education of each special act school district. Proposed section 105.1 provides for definitions of terms used in the new Part. Proposed section 105.2 establishes eligibility requirements for appointment as a public member. Proposed section 105.3 establishes appointment procedures, term lengths, procedures to fill vacancies, and provides that public members, upon appointment, shall have all the rights, privileges, powers, duties and responsibilities of members of the board of education of a union free school district. An eligible person, as described in proposed section 105.2, may submit a letter of intent to the State Education Department, in the manner and by a date prescribed by the Commissioner, that specifies the boards of education to which he or she is seeking appointment as a public member, with a resume and an application in a form and containing such information as the Commissioner may prescribe. The Commissioner shall appoint two public members to the board of education of each special act school district. Appointment shall be made from candidates recommended by a regional interview team appointed by the Commissioner. A district superintendent of schools shall coordinate the activities of the team.

The proposed rule does not impose any additional professional services requirements on local governments in rural areas.

COSTS:

The proposed rule will not impose any additional costs on local governments in rural areas.

MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement Chapters 628 and 629 of the Laws of 2004 and does not impose any additional costs or compliance requirements on local governments in rural areas. Consistent with Chap-

ters 628 and 629 of the Laws of 2004, the proposed rule establishes requirements for the appointment by the Commissioner of two public members to the board of education of each special act school district, including eligibility requirements, appointment procedures, term lengths and procedures to fill vacancies.

RURAL AREA PARTICIPATION:

The State Education Department provided copies of the draft regulation for review and comment to a consultant firm representing special act school districts, the New York State School Boards Association, the New York State Council of School Superintendents and teacher unions representing teaching staff employed by special act school districts. The proposed rule incorporates revisions to the draft regulation made in response to comments received by the Department.

Job Impact Statement

The proposed rule establishes procedures for the appointment of public members to the boards of education of special act school districts pursuant to Chapters 628 and 629 of the Laws of 2004, and will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

EMERGENCY RULE MAKING

Duties and Responsibilities of the Chief of Staff and Counsel

I.D. No. EDU-36-05-00013-E
Filing No. 1040
Filing date: Sept. 13, 2005
Effective date: Sept. 13, 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 and 3.9 of Title 8 NYCRR.

Statutory authority: Education Law, section 101 (not subdivided)

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to conform the Rules of the Board of Regents to changes made in the internal organization of the State Education Department, resulting in the elimination of the position of Chief of Staff. The proposed amendment repeals provisions relating to the Chief of Staff, and designates the Counsel as the deputy commissioner of education as specified in Education Law section 101, who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties of the Commissioner.

The recommended action is being proposed as an emergency measure because such action is necessary for the preservation of the general welfare in order to ensure that the Rules of the Board of Regents are immediately brought into conformance with changes in the Department's internal organization, so as to ensure that the Counsel may carry out her duties and responsibilities in a timely and efficient manner, including those relating to Counsel's designation as the deputy commissioner of education under Education Law section 101.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at their November 2-3, 2005 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: Duties and responsibilities of the Chief of Staff and Counsel of the State Education Department.

Purpose: To repeal provisions relating to the Chief of Staff; and designate the counsel as the Deputy Commissioner of Education as specified in Education Law, section 101, who, in the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, shall exercise and perform the functions, powers and duties of the commissioner.

Text of emergency rule: 1. Section 3.8 of the Rules of the Board of Regents is amended, effective September 13, 2005, as follows:

§ 3.8 [Chief of staff, chief] *Chief* operating officer, counsel and other personnel.

(a) There shall be [a chief of staff,] a chief operating officer, a counsel to the Education Department and the University and such other personnel as may be appointed from time to time by the commissioner.

(b) The [chief of staff] *counsel* shall be the deputy commissioner of education as specified in section 101 of the Education Law [and shall advise the commissioner on policy, coordinate action across the department on policy issues, facilitate internal and external communications in support of policy, and perform special assignments as directed by the commissioner]. In the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, the [chief of staff] *counsel* shall exercise and perform the functions, powers and duties conferred or imposed on the commissioner by statute and by rule of the Regents.

(c) . . .

(d) . . .

2. Section 3.9 of the Rules of the Board of Regents is amended, effective September 13, 2005, as follows:

§ 3.9 Appointments.

The commissioner shall appoint all officers and employees of the department [, except the chief of staff]. Appointments to the positions of chief operating officer, deputy commissioner, associate commissioner, assistant commissioner and director of the Office of Professional Discipline shall be made with approval of the Board of Regents.

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-36-05-00013-P, Issue of September 7, 2005. The emergency rule will expire December 11, 2005.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section 101 of the Education Law designates the Board of Regents as the head of the State Education Department and the Commissioner of Education as Chief administrative officer. The statute provides that the Regents may also appoint and, at pleasure, remove a deputy commissioner of education, who shall perform such duties as the Regents may assign by rule and who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties conferred or imposed on the Commissioner by the Education Law.

LEGISLATIVE OBJECTIVES:

Consistent with the authority granted to the Board of Regents pursuant to Education Law section 101, the proposed amendment repeals provisions relating to the appointment, duties and responsibilities of the position of Chief of Staff, and designates the Counsel of the State Education Department as the deputy commissioner of education as specified in Education Law section 101: ". . . who shall perform such duties as the regents may assign to him by rule and who, in the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, shall exercise and perform the functions, powers and duties conferred or imposed on the commissioner by this chapter."

NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Rules of the Board of Regents to changes made in the internal organization of the State Education Department, resulting in the elimination of the position of Chief of Staff.

COSTS:

(a) Costs to State: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None.

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

The proposed amendment is necessary to conform the Rules of the Board of Regents to changes in the internal organization of the State Education Department, and will not impose any costs on the State, local government, private regulated parties or the regulating agency.

PAPERWORK:

The proposed amendment does not impose any reporting or other paperwork requirements.

LOCAL GOVERNMENT MANDATES:

The proposed amendment relates solely to the internal administration of the State Education Department and does not impose any program,

service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

DUPLICATION:

The proposed amendment relates solely to the internal administration of the State Education Department. There are no relevant statutes, rules or other legal requirements of the State and Federal governments, including those which may duplicate, overlap or conflict with the rule.

ALTERNATIVES:

The proposed amendment is necessary to conform the Rules of the Board of Regents to changes in the internal organization of the State Education Department, resulting in the elimination of the position of Chief of Staff. There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no applicable standards of the Federal government for the subject area of the proposed amendment, which relates solely to the internal administration of the State Education Department.

COMPLIANCE SCHEDULE:

The proposed amendment relates solely to the internal administration of the State Education Department and does not impose any compliance requirements on any regulated parties.

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

The proposed amendment relates solely to the internal organization of the State Education Department and does not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on public and private sector interests in rural areas. Because it is evident from the nature of the proposed amendment that it does not affect such interests, no further steps were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed amendment relates solely to the internal organization of the State Education Department and will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the proposed amendment that no substantial impact will occur, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF EMERGENCY ADOPTION AND REVISED RULE MAKING NO HEARING(S) SCHEDULED

Special Education Programs and Services

I.D. No. EDU-23-05-00018-ERP
Filing No. 1041
Filing date: Sept. 13, 2005
Effective date: Sept. 13, 2005

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

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

Statutory authority: Education Law, sections 207 (not subdivided), 3208(1)-(5), 3209(7), 3602-c(2), 4002(1)-(3), 4308(3), 4355(3), 4402(1)-(7), 4403(3), 4404(1)-(5), 4404-a(1)-(7) and 4410(13); and L. 2005, chs. 119, 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. The 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, pursuant to the State Administrative Procedure Act section 202(4-a), cannot be adopted by regular (non-emergency) action until at least 30 days after publication of the revised rule in the *State Register*. Accordingly, the proposed amendment cannot be adopted by regular action until the November or possibly December Regents meeting. However, the failure to conform the Commissioner's regulations to federal and State requirements could expose both the State and school districts to liability and affect their eligibility for federal funding under the IDEA, and could deny students with disabilities, parents and school districts the benefits they are intended to receive under the IDEA.

Emergency action to adopt the proposed rule is necessary for the preservation of the general welfare in order to immediately conform the Commissioner's Regulations regarding the provision of special education services to the requirements of the federal Individuals with Disabilities Education Act (IDEA), as amended by Public Law 108-446, and Chapter 352 of the Laws of 2005, so that such requirements may be timely implemented during the 2005-2006 school year, 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, as amended by Pub L. 108-446, relating to: the education of students with disabilities who are homeless youth; school district professional development plans; attendance, mandatory medications and new entrant screenings; definitions; board of education responsibilities; membership of the committee on special education, subcommittee and committee on preschool special education; procedures for referral, evaluation, IEP development, placement and review; due process procedures; continuum of services; students being educated in private schools and State-operated and State-supported schools; day treatment programs; educational programs for preschool students with disabilities; and due process procedures for students with disabilities subject to discipline removals.

Substance of emergency/revised 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 September 13, 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 education setting to federal law and adds a definition of serious bodily injury.

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

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

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

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

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

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

Section 201.10, as amended, defines 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 as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on June 8, 2005, I.D. No. EDU-23-05-00018-P. The emergency rule will expire December 11, 2005.

Emergency rule compared with proposed rule: Substantial revisions were made in sections 200.1(ii), (qq), (zz)(6), (ccc), (kkk), 200.2(a)(7), (b)(11)(i), (13), (d)(1) and (2), 200.3(e), 200.4(b)(4), (5)(ii)(*b*), (6)(i)(*a*), (xiv), (d)(2)(i), (iii), (iv), (v), (ix), (4)(i), (g), 200.5(b)(1)(iv), (5), (c)(2), (f)(3)(iv), (h)(1)(v), (i), (j)(1)(i), (3)(i)(*b*), (iii), (n)(3), 200.6(m), 200.7(d)(1)(iii), 200.14(d)(2), 200.16(e)(4), 201.2(k), 201.3, 201.4(b), 201.7(e)(ii) and (iii), 201.10(c), (d) and (e) and 201.11(b).

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

Data, views or arguments may be submitted to: Rebecca H. Cort, Deputy Commissioner, Office of Vocational and Educational Services for Individuals with Disabilities, Education Department, Albany, NY 12234, (518) 474-2714, e-mail: vesidspe@mail.nysed.gov, Subject: Regulatory Comments

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

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the *State Register* on June 8, 2005, the following substantial revisions were made to the proposed rule:

Section 200.1(ii), relating to the definition of parent, was revised to: add reference to individuals designated as a person in parental relation pursuant to Title 15-A of the General Obligations Law, as added by Chapter 119 of the Laws of 2005; to clarify when a foster parent may serve as the parent of the student; to add that when one or more party meets the definition of parent, the birth or adoptive parent must presumed to be the parent; and to add that a person in parental relation may be designated pursuant to a judicial decree or order, except that a public agency that provides education or care for the student or a private agency that contracts with a public agency for such purposes may not act as the parent.

Section 200.1(qq), relating to the definition of related services, was revised to add that the term does not include a medical device that is surgically implanted, or the replacement of such device, to ensure consistency with federal law and Chapter 352 of the Laws of 2005.

Section 200.1(zz)(6), relating to the definition of a student with a learning disability, was revised for purposes of clarification to add a cross citation to section 200.4(c)(6), relating to the identification of a student with a learning disability.

Section 200.1(ccc), relating to the definition of surrogate parent, was revised to clarify when a student who is a ward of the State may need appointment of a surrogate parent.

Section 200.1(kkk), relating to the definition of ward of the State, was revised, in response to public comment and in consultation with the Office of Children and Family Services, to include all children in foster care, all children in custody of the Commissioner of Social Services or the Office of Children and Families and all children who are destitute and to make other technical language changes.

Section 200.2(a)(7), relating to procedures to locate, identify and evaluate all nonpublic private elementary and secondary school students with disabilities, was revised to require child find activities similar to activities undertaken for students with disabilities in public schools, to implement and otherwise ensure consistency with IDEA.

Section 200.2(b)(13) was revised, in response to public comment and consistent with State policy for State assessments, to require the board of education (BOE) to have policies that describe guidelines for the provision

of appropriate accommodations necessary to measure the academic and functional performance of the student in the administration of districtwide assessments.

Sections 200.2(b)(11)(i) and 200.2(d)(1) and (2) were revised to correct the cross citation from section 200.4(g)(2) to 200.4(g).

Proposed section 200.3(e), relating to attendance at committee on special education (CSE), subcommittee or Committee on Preschool Special Education (CPSE) meetings has been deleted to ensure consistency with Chapter 352 of the Laws of 2005.

Section 200.4(b), relating to initial and reevaluations, has been revised, to ensure consistency with Chapter 352 of the Laws of 2005, to delete that a parent and school could agree that a reevaluation is not necessary; to retain, in response to public comment, language that an assessment be provided and administered in the student's native language or other mode of communication; and to retain, to ensure consistency with federal regulations, current language in section 200.4(b)(6)(xiv) which cross references federal regulations for procedures for evaluating students suspected of having a learning disability.

Section 200.4(d), relating to a student's individualized education program (IEP), been revised in response to public comment to add that the IEP must include present levels of academic achievement and functional performance; to clarify that each annual goal must include evaluative criteria, evaluation procedures and schedules to measure progress toward meeting the annual goal; to clarify that an alternate assessment aligned with alternate achievement standards means the New York State Alternate Assessment; to clarify that the recommended program and services must, to the extent practicable, be based on peer-reviewed research; to clarify that the statement of the student's needs relating to transition must be documented on the IEP under present levels of performance; and to delete an unnecessary bracket and a cross citation to subdivision (g) of this section.

Section 200.4(g) has been revised to ensure consistency with Chapter 352 of the Laws of 2005 to delete that changes may be made to an IEP after the annual review without a meeting if parents and school districts agree. This section has been further revised in response to public comment to clarify that when an IEP is amended by the CSE without rewriting the IEP, the parent must receive a copy of the document that amends or revises the IEP or, upon request, the parent must be given a revised copy of the IEP with the amendments incorporated.

Section 200.5(b) has been revised to ensure consistency with Chapter 352 of the Laws of 2005 to delete that parent consent is needed prior to excusing a member of the CSE or CPSE from attending a meeting, since such excusal is not authorized; and, to ensure consistency with federal regulations implementing IDEA, to delete that consent for the initial evaluation of an unaccompanied homeless youth may be provided by an employee of a homeless shelter or facility.

Section 200.5(c) has been revised to ensure consistency with Chapter 352 of the Laws of 2005 to delete that the meeting notice must state that the parents and school district can agree that the attendance of a CSE member is not necessary or that a member may be excused.

Section 200.5(f) has been revised, consistent with Chapter 352 of the Laws of 2005, to change "due process hearing request notice" to "due process complaint notice."

Section 200.5(h) has been revised to ensure consistency with federal regulations to retain that the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the mediation process.

Section 200.5(i) has been revised, consistent with Chapter 352 of the Laws of 2005, to change "due process hearing request notice" to "due process complaint notice" throughout.

Section 200.5(j) has been revised, consistent with Chapter 352 of the Laws of 2005, to change "due process hearing request notice" to "due process complaint notice" throughout; and to clarify, in response to public comment, that the timeline for appointment of an impartial hearing officer (IHO) and the commencement of an impartial hearing are triggered by the date upon which the IHO receives the parties' written waiver of the resolution session, or the date the IHO receives the parties' written confirmation that a resolution session was held but no agreement could be reached, or the expiration of the 30-day period beginning with the receipt of the due process complaint notice, whichever occurs first.

Section 200.5(n) has been revised in response to public comment to clarify when a student who is a ward of the State would need a surrogate parent appointed; to delete that the determination of the need for a surrogate parent must be completed within a reasonable time following the receipt of the original request for a surrogate parent and replace it with the requirement to determine the need for a surrogate parent within a reasonable time following the receipt of a referral for an initial evaluation, reevaluation or services; and to add that the surrogate parent may alternatively be appointed by a judge overseeing the child's case.

Section 200.6(m) has been revised, consistent with IDEA, to clarify that a student placed in an interim alternative educational setting (IAES) must receive certain services.

Section 200.7(d)(1)(f)(ii), consistent with IDEA, has been revised to add that a parent could request mediation and/or an impartial hearing.

Section 200.14(d)(2) has been revised to delete the cross reference to section 200.4(g), since the proposed revision to this section makes a cross reference no longer necessary.

Section 200.16(d)(4) has been revised to delete the exception provided in section 200.4(g), since the proposed revision to this section makes a cross reference no longer necessary.

Section 201.2(k) has been revised, consistent with IDEA, to clarify that a student placed in an interim alternative educational setting (IAES) must receive certain services.

Section 201.3 was revised to correct a citation by deleting (2) and replace it with (b).

Section 201.4(b) has been revised for purposes of consistency to change committee on special education to CSE.

Section 201.7(e)(ii) and (iii) has been revised in response to public comment to add "under the jurisdiction of the educational agency."

Sections 201.10(c), (d) and (e) have been revised to track the federal language regarding the services a student must receive to be those that enable the student to continue to participate, as opposed to 'appropriately progress' in the general education curriculum and to progress, as opposed to 'achieve', the goals set out in the student's IEP; and to delete that the CSE shall determine the extent to which services are necessary.

Section 201.11(b) has been revised for purposes of clarification and consistency to delete the reference to federal regulations and replace it with a cross citation to section 200.5(j) of the Commissioner's Regulations.

The above revisions to the proposed rule require that the seventh, ninth and thirteenth paragraphs of the Local Government Mandates section of the previously published Regulatory Impact Statement be revised to read as follows:

Paragraph seventh:

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.

Paragraph ninth:

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.

Paragraph thirteenth:

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.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the *State Register* on June 8, 2005, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The revisions to the proposed rule require that the Compliance Requirement section of the previously published Regulatory Flexibility Analysis be revised to read as follows:

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 education setting to federal law and adds a definition of serious bodily injury.

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

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

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

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

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

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

Section 201.10, as amended, defines 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.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the *State Register* on June 8, 2005, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The revisions to the proposed rule require that the Reporting, Recordkeeping and Other Compliance Requirements section of the previously published Regulatory Flexibility Analysis be revised to read as follows:

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 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 definition of interim alternative education setting to federal law and adds a definition of serious bodily injury.

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

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

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

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

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

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

Section 201.10, as amended, defines 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.

Job Impact Statement

The proposed amendments, as revised, 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 revised 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.

Summary of Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the *State Register* on June 8, 2005, the State Education Department received the following comments.

1. COMMENTS:

General comments were received both in support and opposition to the Department proposing regulations at this time to conform to the new Individuals with Disabilities Education Act (IDEA) requirements.

DEPARTMENT RESPONSE:

Failure to conform State regulations to IDEA 2004 would result in a conflict between State regulations and federal law that could expose both the State and school districts to liability, adversely affect their eligibility for funding under the IDEA, and deny students with disabilities, parents and school districts the benefits that they are intended to receive from the reforms made by IDEA 2004.

2. COMMENTS:

Comments were received relating to the Paperwork Reduction Pilot Program and early intervention services.

DEPARTMENT RESPONSE:

No changes were made because the comments were beyond the scope of the proposed rule making.

Section 100.2(x) – Homeless Youth

3. COMMENTS:

One comment in support of the proposed regulation was received.

DEPARTMENT RESPONSE:

Because of the nature of the comment, no response is necessary.

Section 100.2(dd) – Professional Development Plan

4. COMMENTS:

Comment supported the repeal of the Comprehensive System of Personnel Development Plan (CSPD); others recommended personnel development plans for special educators be a separate document.

DEPARTMENT RESPONSE:

The proposed amendment is consistent with IDEA 2004's intent that personal development activities be integrated and aligned to the maximum extent possible with plans developed under the Elementary and Secondary Education Act.

Section 200.1 – Definitions

8. COMMENTS:

Comments were received relating to the proposed definitions of "assistive technology device", "impartial hearing officer", "mediator", "limited English proficient", "parent", "related services", "school health services", "learning disabilities", "surrogate parent", and "ward of the State".

DEPARTMENT RESPONSE:

No changes were made to the definitions of "assistive technology device", "impartial hearing officer", "mediator", "limited English proficient", "school health services" and "universal design." The definitions of "related services", "parent", "learning disabilities", "surrogate parent" and "ward of the State" have been revised.

Section 200.2 – Board of Education Responsibilities

20. COMMENTS:

Comments were received relating to nonpublic school child find requirements, testing accommodation guidelines for districtwide assessments, highly qualified teachers and district plans.

DEPARTMENT RESPONSE:

Proposed regulations have been revised relating to child find activities for nonpublic schools; and board of education (BOE) written policy regarding testing accommodations, as described in the Revised Regulatory Impact Statement.

Section 200.3 – Committee on Special Education:

24. COMMENTS:

Comments were received relating to required CSE Members, including the comments both in support and opposition to the additional parent member.

DEPARTMENT RESPONSE:

The required members of the CSE, Subcommittee and CPSE are established in Education Law and are not subject to changes by Commissioner's Regulations without corresponding statutory authority.

25. COMMENTS:

A large number of comments provided both support and opposition to the proposed amendment that would authorize the parent and school district to agree that the attendance of a CSE or CPSE member is not necessary or that a member could be excused.

DEPARTMENT RESPONSE:

NYS Education Law continues to require the entire CSE or CPSE member to attend a meeting. Therefore, the proposed regulations have been revised to delete proposed section 200.3(e), which would have authorized the parent and the school district to agree that the attendance of a CSE or CPSE member was not necessary or that a member could be excused from attending the meeting.

Section 200.4 – Referral, Evaluations and IEP, Placement and Review

26. COMMENTS:

Comments were received relating to evaluation procedures; testing accommodations for students with limited English proficiency (LEP); transfer students; timelines to complete the initial evaluation; reevaluations; summary of performance; entitlement to services; identification of students with learning disabilities; alternate assessments; individualized education programs (IEP), including comments in support and opposition to the proposed repeal of short-term objectives and benchmarks and the age and IEP requirements for transition services; changes to the IEP after the annual review; alternative means of meeting participation; reports to parents; consolidation of IEP meetings and timelines for IEP implementation.

DEPARTMENT RESPONSE:

Evaluation procedures: Section 200.4(b)(6) has been revised to require assessments and other evaluation materials be provided and administered in the student's native language or mode of communication.

Testing Accommodations: Only those testing accommodations recommended by the CSE as needed by the student as a result of his or her disability should be indicated on the IEP.

Timeline to Complete the Initial Evaluation: The proposed timeline is a federal requirement. No limit to the extension is necessary since an extension must consider the need to ensure IEP implementation within 60 school days.

Entitlement to Services: Education law establishes the age of entitlement to education services and therefore there are no changes to the proposed regulations to address this comment.

Learning disabilities: Further changes to the Commissioner's Regulations to conform to the final federal regulations and to establish State criteria for the determination of learning disabilities will be proposed at a later date. The proposed regulations have been revised for clarity purposes and to retain the current cross-reference to federal regulations.

Alternate Assessments: The Department is awaiting federal regulations before proposing amendments relating to the development of additional alternate assessments.

IEP: Proposed regulations have been revised to provide more clarity on IEP requirements.

Multi-year IEP: There are no proposed regulations to adopt a multi-year IEP.

Reports to Parents: IDEA 2004 repealed the specific requirement that periodic reports identify the extent to which the student's progress is sufficient to attain the goal by the end of the year.

Changes to the IEP without a Meeting: Since NYS Education Law continues to require a meeting of the CSE or CPSE to make a change to a student's IEP, section 200.4(g) has been revised to delete the language that would have authorized a parent and a school district to agree to change the IEP without a meeting when the IEP needs to be amended or revised after the annual review.

Copy of the IEP to Parents: Section 200.4(g) has been revised to clarify that, when an IEP has been amended or modified after the annual review meeting without rewriting the IEP, the parent must receive a copy of the document that amends or modifies the IEP. However, if the parent requests the IEP be rewritten, then the school district must rewrite the IEP with the changes incorporated and provide the parent with the copy of the revised IEP.

Reevaluations: Because NYS Education Law continues to require that a reevaluation be conducted at least once every three years, section 200.4(b)(4) has been revised to delete language that would have authorized the parent and the school district to agree that a three-year reevaluation is not necessary.

Timeline for IEP implementation: No revisions to the proposed regulations have been made to extend the 60 school day requirement for implementation of a student's IEP.

Transfer Students: The proposed amendment is consistent with IDEA 2004.

Consolidation of meetings: The proposed amendment is consistent with federal law.

Alternative means of meeting participation: The proposed amendment is consistent with IDEA 2004.

Section 200.5 - Due Process Procedures

49. COMMENTS:

Comments were received relating to meeting notice, prior notice, parental consent, BOE notice, procedural safeguards notice, mediation, due process complaint notice, resolution sessions, impartial hearings, attorneys' fees, and surrogate parents.

DEPARTMENT RESPONSE:

Revisions were made to regulations relating to meeting notice, prior notice, parental consent to delete references to parent and school district agreements about CSE member participation. Proposed section 200.5(b)(5), regarding consent for an unaccompanied homeless youth, has been deleted in the revised regulations. Proposed section 200.5(j)(3)(i)(b) and (iii) has been revised relating to the timelines to commence an impartial hearing. Consistent with Education Law section 4404, as amended by Chapter 352 of the Laws of 2005, the proposed regulation has been revised to establish a two-year statute of limitations, with exceptions, for a request for an impartial hearing. No change has been made to the timeline to appeal an administrative decision to court.

There are no proposed regulations relating to reimbursement of attorney's fees. The proposed regulations have been revised relating to the appointment of a surrogate parent for a student who is a ward of the State; to require a determination of a student's need for a surrogate parent within a reasonable time following the receipt of a referral for an initial, reevaluation or services; and to add that a surrogate parent may alternatively be appointed by the judge overseeing the child's case.

Section 200.6 – Continuum of Services

61. COMMENTS:

Support was given to adding interim alternative educational settings to the continuum of services.

DEPARTMENT RESPONSE:

Because of the nature of the comment, no response is necessary.

Section 200.16 – Educational Programs for Preschool Children with Disabilities

62. COMMENTS:

Comments were receiving relating to the transition from the CPSE to the CSE and IEP requirements for a preschool child.

DEPARTMENT RESPONSE:

No revision to the proposed regulations are necessary to address this comment since there is no requirement that a parent initiate a new referral for a student with a disability transitioning from the CPSE to the CSE. Education Law section 4410 requires the IEP of a preschool child to identify the initial child care location arranged by the parent, or other site, at which each services will be provided when one or more related services is recommended by the CPSE. Since this is a statutory requirement, no revisions to the proposed regulations have been made.

Part 201 – Procedural Safeguards for Students with Disabilities Subject to Discipline

64. COMMENTS:

Comments were received relating to manifestation determinations, functional behavioral assessments and behavioral intervention plans, interim alternative educational settings, services, special circumstances, pendency, protections for children not yet eligible for special education.

DEPARTMENT RESPONSE:

Manifestation Determination: The proposed regulations are consistent with federal law, which establishes the criteria for making a manifestation determination and requires a review of the student's file in a manifestation review.

Functional behavioral assessments and behavioral intervention plans: No changes to the proposed regulations are necessary.

Interim Alternative Educational Setting (IAES): Proposed regulations have been revised to clarify the services a student placed in an IAES must receive.

Special circumstances: Clarifying revisions were made relating to school functions.

Pendency: No revision has been made since the proposed regulations are consistent with federal and State law.

Services: The proposed regulations have been revised to clarify the services a student must receive.

Protections for children not yet eligible for special education: No revisions have been made since the proposed rule is consistent with federal law that repealed the previous standard that a student must be presumed to have a disability if the student's behavior or performance demonstrated the need for special education services.

Authority of a Hearing Officer: Since the requirements in proposed section 201.8(a) have not yet been repealed from federal regulations and are not inconsistent with federal law, they have been retained.

NOTICE OF ADOPTION

Middle-Level Education

I.D. No. EDU-23-05-00019-A
Filing No. 1042
Filing date: Sept. 13, 2005
Effective date: Sept. 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 100.3, 100.4 and 80-5.12 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 215 (not subdivided), 305(1) and (2), 308 (not subdivided), 309 (not subdivided), 4430(3) and 3713(1) and (2)

Subject: Middle-level education.

Purpose: To implement Regents Policy Statement on Middle-level Education.

Substance of final rule: The Commissioner of Education proposes to amend sections 100.3, 100.4 and 80.5-12 of the Regulations of the Commissioner of Education, effective August 22, 2005, relating to implementation of the Regents Policy Statement on Middle-Level Education in grades five, six, seven, and eight. The following is a summary of the substance of the proposed amendment:

Section 100.3 is amended to:

(1) apply only to pre-kindergarten through grade four so that it is in alignment with the State's elementary learning standards;

(2) clarify language related to testing accommodations for students with disabilities, consistent with the federal No Child Left Behind Act (NCLB); and

(3) include language related to the annual testing in English language arts and mathematics in grades 3 and 4 to conform to the NCLB.

Section 100.4 is amended to:

(1) include existing provisions pertaining to grades five and six (previously located in section 100.3) so as to align section 100.4 with the State's intermediate learning standards and the Regents Policy Statement on Middle-Level Education;

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

(3) clarify language related to instruction in languages other than English in grades five, six, seven and eight, the administration of the second language proficiency examination, and the awarding of high school credit;

(4) clarify language dealing with home instruction to conform with Regents policy;

(5) clarify language related to testing accommodations and alternative assessments for students with disabilities, consistent with the NCLB;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

tiveness and the impact of the program enhancement on student learning and development.

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

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

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

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

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

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

Final rule as compared with last published rule: Nonsubstantive changes were made in section 100.4(h)(2)(iii)(*e*)(*4*).

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 Proposed Rule Making in the State Register on June 8, 2005, a nonsubstantial revision was made to correct a citation error in section 100.4(h)(2)(iii)(e)(4), relating to Model C middle-level education programs.

As published, subclause (4) provided that the Commissioner may terminate approval of a Model C middle-level education program ". . . at any time during the implementation period, including any approved continuations, upon a determination that the district has failed to comply with the requirements of its approved application and the requirements of section 100.4(h)(2)*(ii)(d)* of this Part [emphasis supplied]." However, the citation to subparagraph (ii)(d) of section 100.4(h)(2) is incorrect, since that provision is applicable to Model B programs. The citation should have referred to subparagraph (iii)(d) of section 100.4(h)(2), which is the applicable provision for Model C programs. Therefore, the citation to "(ii)(d)" has been corrected to "(iii)(d)" and now provides that the Commissioner may terminate approval of a Model C middle-level education program ". . . at any time during the implementation period, including any approved continuations, upon a determination that the district has failed to comply with the requirements of its approved application and the requirements of section 100.4(h)(2)(iii)(d) of this Part."

The above revision to the proposed rule merely corrects an inadvertent error in citation and does not require any changes to the previously published Regulatory Impact Statement.

Regulatory Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the *State Register* on June 8, 2005, a nonsubstantial revision was made to the proposed rule, as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The revision to the proposed rule merely corrects an inadvertent error in citation and does 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 Proposed Rule Making in the *State Register* on June 8, 2005, a nonsubstantial revision was made to the proposed rule, as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The revision to the proposed rule merely corrects an inadvertent error in citation and does 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 June 8, 2005, a nonsubstantial revision was made to the proposed rule, as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The revision to the proposed rule merely corrects an inadvertent error in citation. The proposed amendment relates to implementation of the Regents Policy Statement on Middle-Level Education in grades five through eight, and will not have an adverse impact on jobs or employment opportunities. The proposed amendment provides increased flexibility to school districts to structure their middle-level education instructional programs. Because it is evident from the nature of the rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION

Special Act School Districts

I.D. No. EDU-25-05-00003-A
Filing No. 1044
Filing date: Sept 13, 2005
Effective date: Sept. 29, 2005

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

Action taken: Addition of Part 105 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1) and (2), 308 (not subdivided) and 309 (not subdivided); L. 2004, chs. 628, 629

Subject: Composition of boards of education of Special Act school districts.

Purpose: To establish procedures for the appointment by the Commissioner of Education of public members to the board of education of each Special Act school district.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-25-05-00003-P, Issue of June 22, 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 Coun-

sel, 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

Superintendents' Conference Days

I.D. No. EDU-26-05-00005-A
Filing No. 1046
Filing date: Sept 13, 2005
Effective date: Sept. 29, 2005

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

Action taken: Amendment of section 175.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided) and 3604(8)

Subject: Superintendents' conference days.

Purpose: To allow a school district to use up to two of its superintendents' conference days for teacher rating of State assessments.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-26-05-00005-P, Issue of June 29, 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

School Health Services

I.D. No. EDU-28-05-00008-A
Filing No. 1045
Filing date: Sept 13, 2005
Effective date: Sept. 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 136.1, 136.2 and 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

Subject: School health services.

Purpose: To implement and otherwise conform the commissioner's regulations to L. 2004, ch. 477.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-28-05-00008-P, Issue of July 13, 2005.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

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

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

Proposed action: Amendment of 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); (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 of proposed rule: 1. Subdivision (a) of section 29.3 of the Rules of the Board of Regents is amended, effective December 29, 2005, as follows:

(a) Unprofessional conduct shall also include, in the professions of architecture and landscape architecture, engineering and land surveying:

(1) . . .
(2) . . .
(3) . . .
(4) . . .
(5) . . .
(6) . . .

(7) accepting any form of compensation from more than one party for services on the same project without fully disclosing the circumstances and receiving approval from all interested parties; [or]

(8) participating as a member, advisor or employee or a government body in those actions or deliberations which pertain to services provided by the practitioner or his or her organization for such government body*; or*

(9) 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. To be adequate, such confirmation shall include a reasonable field verification and shall 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.

2. Paragraph (4) of subdivision (e) of section 68.3 of the Regulations of the Commissioner of Education is added, effective December 29, 2005, as follows:

(4) Scores for licensing examinations shall be reported on a pass/fail basis.

3. Subdivision (d) of section 68.6 of the Regulations of the Commissioner of Education is amended, effective December 29, 2005, as follows:

(d) Passing grade. The passing grade for each of the parts of the surveying examination taken prior to October 1, 1984 is 75.0; for parts taken after October 1, 1984, the passing grade shall be 70.0. *Except for the Jurisdictional Examination, scores for the licensing examinations shall be reported on a pass/fail basis.*

4. Clause (a) of subparagraph (i) of paragraph (2) of subdivision (c) of section 68.11 of the Regulations of the Commissioner of Education is amended, effective December 29, 2005, as follows:

(a) On December 31, 2003, the licensee was directly employed on a full-time basis by the State of New York; or agencies, public authorities, or public benefit corporations of the State of New York; or local government units of the State of New York in a position requiring licensure in engineering and is represented by a collective bargaining unit *or designated management or confidential pursuant to Article 14 of the Civil Service Law* at all times when so employed; and

5. Clause (b) of subparagraph (ii) of paragraph (3) of subdivision (c) of section 68.11 of the Regulations of the Commissioner of Education is amended, effective December 29, 2005, as follows:

(b) Other educational activities. Acceptable continuing education shall be the following other educational activities, provided that no more than 18 hours of continuing education in a registration period shall consist of such other educational activities:

(1) . . .
(2) . . .
(3) . . .
(4) . . .

(5) completing a self-study program, meaning structured study, provided by a sponsor approved pursuant to subdivision (i) of this section, that is based on audio, audio-visual, written, on-line, and other media, and does not include live instruction, transmitted in person or otherwise, during which the student may communicate and interact with the instructor and other students; *and*

(6) completing an educational tour, meaning a structured tour of an instructional nature provided by a sponsor approved pursuant to subdivision (i) of this section.

6. Clause (b) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 68.12 of the Regulations of the Commissioner of Education is amended, effective December 29, 2005, as follows:

(b) Other educational activities. Acceptable continuing education shall be the following other educational activities, provided that no more than eight hours of continuing education in a registration period shall consist of such other educational activities, including but not limited to self-study programs:

(1) . . .

(2) . . .

(3) . . .

(4) obtaining a patent related to the practice of land surveying. A licensee shall receive eight continuing education hours for each patent granted on an invention during the registration period; [and]

(5) completing a self-study program, meaning structured study, provided by a sponsor approved pursuant to subdivision (i) of this section, that is based on audio, audio-visual, written, on-line, and other media, and does not include live instruction, transmitted in person or otherwise, during which the student may communicate and interact with the instructor and other students*; and*

(6) completing an educational tour, meaning a structured tour of an instructional nature provided by a sponsor approved pursuant to subdivision (i) of this section.

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

Subdivision (9) of section 6509 of the Education Law authorizes the Board of Regents in its rules to define unprofessional conduct in the licensed professions that would subject the licensee to discipline.

Paragraph (4) of subdivision (1) of section 7206 of the Education Law requires an applicant for licensure in engineering to pass a licensure examination in accordance with Commissioner's regulations.

Paragraph (4) of subdivision (1) of section 7206-a of the Education Law requires an applicant for licensure in land surveying to pass a licensure examination in accordance with Commissioner's regulations.

Paragraph (d) of subdivision (1) of section 7211 of the Education Law exempts certain licensed professional engineers employed in the public sector from the continuing education requirement.

Subdivision (4) of section 7211 of the Education Law authorizes the Commissioner of Education to prescribe in regulations standards for mandatory continuing education for professional engineers.

Subdivision (4) of section 7212 of the Education Law authorizes the Commissioner of Education to prescribe in regulations standards for mandatory continuing education for land surveyors.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes by establishing an additional definition of unprofessional conduct in the profession of land surveying and licensing examination and continuing education requirements in the professions of land surveying and engineering.

3. NEEDS AND BENEFITS:

The purpose of the propose amendment is 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.

The amendment to the Rules of the Board of Regents establishes an additional definition of unprofessional conduct in the profession of land surveying. It defines unprofessional conduct in this profession to include the revision, alteration, or update of any existing boundary survey without adequate confirmation of relevant boundary lines and monuments and requires the confirmation to include a reasonable field verification. The State Board for Engineering and Land Surveying has approved this change. The Department believes this regulation is needed to help ensure the competent practice of this profession and facilitate the Department's ability to discipline licensed land surveyors.

Commissioner's regulations would be amended to provide that the results of licensing examinations in engineering and land surveying would be reported on a pass/fail basis rather than by a numerical grade. This change is needed to conform the reporting requirements for examination results to the practice of the National Council for Examiners for Engineering and Surveying (NCEES), which is the national entity that gives the licensure examinations in these professions. NCEES has changed its policy and now reports the results of the licensure examinations on a pass/fail basis rather than by a numerical grade. Only the results of the Jurisdictional Examination in land surveying will be reported by numerical grade. Commissioner's regulations would be amended to conform to a recent statutory change that extended the public sector exemption to the continuing education requirement in engineering to certain licensed professional engineers who are designated managerial or confidential pursuant to Article 14 of the Civil Service Law (Chapter 103, Part B, Section 8 of the Laws of 2004). Commissioner's Regulations would also be amended to add another activity to those that a licensee may engage in to meet mandatory continuing education requirements in professional engineering and land surveying. The amendment permits the licensee to complete an educational tour, meaning a structured tour of an instructional nature, offered by an approved sponsor. The educational tour would have to concern an approved subject area relating to the practice of the profession. The change responds to requests from licensees and approved sponsors to permit structured educational tours to be creditable for the mandatory continuing education requirements of these professions.

4. COSTS:

(a) Costs to State Government: The amendment will not impose any additional costs on State government. The State Education Department will continue to review documentation relating to the continuing education requirements and report examination grades. Existing staff and resources of the State Education Department will be used for these tasks.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None. The proposed amendments will not impose any additional costs on the applicants for licensure in engineering and/or land surveying or licensees in these fields.

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed amendment does not impose any additional paperwork requirements on regulated parties.

7. DUPLICATION:

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

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

There are no Federal standards in the subject matter of the proposed amendment.

10. COMPLIANCE SCHEDULE:

The proposed amendment must be complied with on its effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendment establishes a definition of unprofessional conduct in the profession of land surveying and licensing examination and continuing education requirements in land surveying and engineering. The proposed amendment does not regulate small businesses or local governments. It establishes requirements applicable to individuals who are licensed professionals. It does not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a

regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. All 27,501 licensed professional engineers and all 1,714 licensed land surveyors who are registered to practice in New York would be subject to the requirements of the proposed amendment. Of these, 4,183 professional engineers and 767 land surveyors reported that their permanent address of record is in a rural county of New York State. In addition, the proposed amendment would affect applicants for licensure in engineering and land surveying who take the licensing examinations in these fields. Each year, about 1,700 apply to the State Education Department for licensure in engineering and about 60 apply for licensure in land surveying. The Department estimates that about 250 and 27, respectively, come from a rural county of New York State.

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

The amendment to the Rules of the Board of Regents establishes an additional definition of unprofessional conduct in the profession of land surveying. It defines unprofessional conduct in this profession to include the revision, alteration, or update of any existing boundary survey without adequate confirmation of relevant boundary lines and monuments and requires the confirmation to include a reasonable field verification.

Commissioner's regulations would be amended to provide that the results of licensing examinations in engineering and land surveying would be reported on a pass/fail basis rather than by a numerical grade. Only the results of the Jurisdictional Examination in land surveying will be reported by numerical grade.

Commissioner's regulations would be amended to conform to a recent statutory change that extended the public sector exemption to the continuing education requirement in engineering to certain licensed professional engineers who are designated managerial or confidential pursuant to Article 14 of the Civil Service Law (Chapter 103, Part B, Section 8 of the Laws of 2004). Commissioner's regulations would also be amended to add another activity to those that a licensee may engage in to meet mandatory continuing education requirements in engineering and land surveying. The amendment permits the licensee to complete an educational tour, meaning a structured tour of an instructional nature, offered by an approved sponsor. The educational tour would have to be in an approved subject area relating to the practice of the profession.

The proposed amendment does not impose a need for professional services and does not establish additional reporting or recordkeeping requirements.

3. COSTS:

The proposed amendment does not impose additional costs on applicants or licensees in engineering or land surveying, including those located in rural areas of New York State.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment establishes a definition of unprofessional conduct in the practice of land surveying and sets forth licensing examination and continuing education requirements in the professions of engineering and land surveying. The amendment would establish requirements designed to ensure the competent practice of engineering and land surveying in New York State. The Department has determined that these requirements should apply to all licensed professional engineers and land surveyors, regardless of their geographic location, to help ensure competency across the State. Because of the nature of the proposed regulation, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from statewide organizations representing all parties having an interest in the practice of engineering and land surveying. Included in this group were the State Board for Engineering and Land Surveying and professional associations representing the engineering and land surveying professions. These groups have members who live or work in rural areas. Each organization has been provided notice of the proposed rule making and an opportunity to comment.

Job Impact Statement

The purpose of the propose amendment is 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. The amendment clarifies a standard of professional conduct that licensed land surveyors must follow when revising, altering, or updating an existing boundary survey, and does not alter the scope of practice for this profession. The other regulatory changes specify how the results of licensure examinations are to be reported and continuing education requirements for land surveyors and professional engineers. The proposed amendment will have no effect on the number of jobs and employment opportunities in land surveying, engineering or any other field.

Because it is evident from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, no further 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.

Environmental Facilities Corporation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

New York State Beginning Farmer Loan Program

I.D. No. EFC-39-05-00001-P

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

Proposed action: This is a consensus rule making to add Part 2607 to Title 21 NYCRR.

Statutory authority: Public Authorities Law (PAL), section 1285-r(8)

Subject: New York State Beginning Farmer Loan Program (NYBFLP).

Purpose: To enable the Environmental Facilities Corporation (EFC) to carry out its responsibilities pursuant to PAL, section 1285-r(8), including establishing criteria and standards for evaluating the New York State Beginning Farmer Loan Program to be financed and the eligibility of beginning farmers.

Public hearing(s) will be held at: 10:00 a.m., Nov. 16, 2005 at Department of Environmental Conservation, 625 Broadway, Assembly Rm. 129, Albany, NY.

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

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

Text of proposed rule: Part 2600 is amended to add a new Part 2607 as follows:

21 NYCRR 2607
NEW YORK STATE BEGINNING FARMER LOAN PROGRAM REGULATIONS

Section 2607.1 Purpose, scope and applicability.

(a) The purpose of this Part is to provide rules and procedures for the New York State Environmental Facilities Corporation (Corporation) to provide financing to Beginning Farmers from the New York State Beginning Farmer Loan Program (NYBFLP) created by Chapter 366 of the Laws of 2004. This program is intended to allow Beginning Farmers to obtain reduced interest rate Loans for qualified purposes by obtaining Loan funds from the proceeds of a tax-exempt Bond issued by the Corporation.

(b) This Part applies to all persons seeking or receiving financing from the NYBFLP and to the activities of the Corporation in the discharge of its duties relating to the NYBFLP.

Section 2607.2 Definitions.

(a) Unless defined herein, terms used in this Part shall have the meaning set forth under sections 1281 and/or 1285-r of the Public Authorities Law (PAL). Terms used in this Part or to be used in complying with this Part have the following meanings:

(1) Act means the New York State Environmental Facilities Corporation Act, constituting Title 12 of Article 5 of the PAL, as amended and as may be amended.

(2) Allowable Costs means all costs of an Eligible Project which the Corporation determines are properly allocable to that project in accordance with applicable laws and regulations.

(3) Application means a completed instrument on a form approved by the Corporation.

(4) Bond means any instrument of indebtedness issued by the Corporation to provide funding for a Project.

(5) Bond Purchaser means any Lender as that term is defined in section 1285-r of the PAL.

(6) Commissioner means the Commissioner of the New York State Department of Agriculture and Markets.

(7) Corporation means the New York State Environmental Facilities Corporation, or its successor, unless otherwise indicated.

(8) Department means the New York State Department of Agriculture and Markets.

(9) Loan means any loan made by the Corporation to a Beginning Farmer.

(10) New York State Beginning Farmer Loan Program (NYBFLP) means the program for providing State assistance Loans for Eligible Projects established pursuant to section 1285-r of the PAL.

(11) Note means any instrument of indebtedness issued by a Beginning Farmer to the Corporation or Bond Purchaser.

(12) President means the president of the New York State Environmental Facilities Corporation.

(13) State means the State of New York.

2607.3 Project Eligibility Determination.

The Corporation shall not provide NYBFLP financial assistance to a Beginning Farmer unless and until the Corporation has made a written determination that the Project is an eligible Project, and that all applicable requirements of the Corporation have been met.

2607.4 Beginning Farmer Eligibility.

(a) Residence. The Beginning Farmer must be a resident of New York at the time the Bond is issued to provide financing for the Project.

(b) Training and Experience. The Beginning Farmer must have documented to the satisfaction of the Corporation, in consultation with the Department, sufficient education, training, and experience, to undertake the anticipated farm operations.

2607.5 Loan eligibility.

(a) Security for Loans. The Corporation may take security for any Loan. The form of security may include, but not be limited to, a promissory note, security agreement, or first mortgage.

(b) Loan conditions. Except as provided in section 2607.6, the conditions of a Loan shall be as determined by the Corporation in conjunction with the Bond Purchaser from time to time and shall be contained in the security and servicing documents relating to the Loan. Loan conditions may include, but are not limited to, fees and interest rates, maximum Loan amount, amortization period, repayment, prepayment, assumption, and assumption terms.

(c) A Loan may not be assigned by the Beginning Farmer, nor may any interest in agricultural land, agricultural improvements or agricultural depreciable property financed under the NYBFLP be leased, sold, exchanged or used as a trade-in, used on an equipment-for-hire basis or otherwise conveyed without the prior written consent of the Corporation and the Lender.

(d) Loan delinquency, foreclosure, and repossession provisions shall be determined from time to time by the Bond Purchaser and shall be contained in the security and financing documents relating to the Loan.

(e) The Beginning Farmer or Bond Purchaser must submit to the Corporation a nonrefundable Application fee of $150 with the Application. A Loan fee, equal to 1.5 percent of the principal amount of the bond, but not less than $750, must be submitted to the Corporation by the Beginning Farmer or Bond Purchaser.

(f) The Corporation may require that the Bond Purchaser furnish any information which the Corporation deems necessary to determine whether the Bond Purchaser qualifies as a Bond Purchaser.

(g) The Corporation's ability to finance a Project is subject to the availability of funds.

2607.6 Procedures for Application by Beginning Farmers.

(a) Application procedures. The Beginning Farmer may apply (on forms approved by the Corporation) for a Beginning Farmer Loan with any Lender. Any Loan approved will be assigned to that Lender. Eligibility for a Beginning Farmer Loan is determined by the requirements of the Act and the rules of the Corporation.

All terms and conditions of a Loan must be agreed upon between the Beginning Farmer and the Lender, which terms and conditions may not be any more onerous than those charged to similar customers for similar loans, but taking into account the tax-exempt nature of interest on the Loan. Following completion of the Application by the Beginning Farmer and approval by the Lender, the Application must be submitted to the Corporation for review and approval by the Corporation. The review will include, but not be limited to, whether (1) the Loan applicant is a qualified Beginning Farmer, (2) the Loan proceeds will be used for a qualified purpose by a Beginning Farmer under the Act, rules of the Corporation, and the United States Internal Revenue Code and Internal Revenue Service regulations relating to private activity bonds, (3) the terms of the Loan comply with these rules, and (4) the Bond Purchaser meets the definition of a Lender or Bond Purchaser, and (5) the Lender or Bond Purchaser has adequately taken into account the tax-exempt nature of interest on the Loan. If the Corporation, in consultation with the Department, determines that any of the foregoing conditions have not been satisfied, it may deny the Application. As part of its review, the Corporation may require the Beginning Farmer to submit appraisals on part or all of the property being financed by the Loan or to submit any or all other documents and information as may be necessary to complete its review of the Loan Application.

(b) Following approval of the Loan and issuance of the Bond, the Corporation will enter into a Loan agreement or financing agreement with the Beginning Farmer and then assign the non-recourse Loan to the Lender. The Corporation may charge fees as necessary to defray its costs for processing the Loan and Bond.

Issuance of Bond. Following approval of the Loan by the Corporation, and upon obtaining all necessary approvals, the Corporation will issue a Bond, to be purchased by the Lender or Bond Purchaser, in the same amount and consistent with the repayment terms of the Loan to the Beginning Farmer. The principal and interest on the Bond is a limited obligation payable solely out of the revenues derived from the Loan or finance agreement, debt obligation or sales contract with the Beginning Farmer and the underlying collateral or other security furnished by or on behalf of the Beginning Farmer. The Lender or Bond Purchaser shall have no other recourse against the Corporation. The principal and interest on the Bond does not constitute an indebtedness of the Corporation or the State of New York or a charge against its general credit or general fund.

(c) Priority of Applications. Applications shall be processed by the Corporation on a first-come, first-served basis, based upon the receipt of a completed Application as so determined in the sole discretion of the Corporation.

(d) Procedures following Bond issuance. No Bond proceeds may be used for a nonqualified purpose or by a nonqualified user. Following disbursement of the Bond proceeds, the Lender and Beginning Farmer may be required to certify to the Corporation that the proceeds were used by the qualified Beginning Farmer for a qualified purpose.

(e) Assignment of loans by Lenders or Bond Purchasers. A Lender or Bond Purchaser may assign a Loan in whole or in part to any person as defined in PAL Section 1281. Servicing of the Loan may also be assigned, but must at all times be with a Lender or Bond Purchaser as defined herein. The Corporation must be notified in writing prior to any assignment of the Loan.

(f) Assumption of loans, substitution of collateral and transfer of property. Loans may not be assumed without the prior written approval of the Corporation, and then only if the purchaser of the property is an eligible applicant for a NYBFLP Loan. Equipment and other depreciable property may be exchanged or traded for similar property, and other property such as breeding livestock may be added or substituted as collateral at the discretion of the Lender or Bond Purchaser without the prior approval of the Corporation. The benefits of the Loan made at the tax-exempt rate from the proceeds of a Corporation Bond must remain with the qualified Beginning Farmer, and no person to whom property is traded or otherwise transferred may obtain the benefits of the Corporation Loan.

(g) Right to audit. The Corporation, in consultation with the Department, shall have at any time the right to audit the records of the Lender or Bond Purchaser and the Beginning Farmer relating to any Loan and Bond hereunder.

Text of proposed rule and any required statements and analyses may be obtained from: Jeffrey M. Lanigan, Environmental Facilities Corporation, 625 Broadway, Albany, NY 12207-2997, (518) 402-6969, e-mail: Lanigan@nysefc.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

This rule, developed in consultation with the New York State Department of Agriculture and Markets, is proposed as a consensus rule, pursuant to the expectation that no person is likely to object to its adoption. The proposed rule implements and conforms to non-discretionary statutory

provisions in that it implements the State Beginning Farmer Loan Program established by Section 1285-r of the Public Authorities Law (PAL) and conforms to federal statutory requirements for such programs in 26 United States Code (USC) Sections 144 and 147. Pursuant to PAL Section 1285-r(8), the Environmental Facilities Corporation (EFC) is required to promulgate regulations, developed in consultation with the Commissioner of Agriculture and Markets, for the purpose of carrying out EFC's responsibilities under said Section, including establishing the criteria and standards for evaluating the projects to be financed and the eligibility of beginning farmers. This rule is proposed pursuant to said statutory mandate and conforms to the requirements of PAL Section 1285-r and the other applicable provisions of the PAL, as well as 26 USC Sections 144 and 147. This program is intended to allow beginning farmers to obtain reduced interest rate loans for qualified purposes by obtaining loan funds from the proceeds of a tax-exempt bond issued by EFC. As such, EFC has determined that no person is likely to object to the rule as written.

Job Impact Statement

The rule will have a positive, rather than a substantial adverse impact on jobs and employment opportunities. This rule is proposed pursuant to the requirement in PAL Section 1285-r(8) that EFC promulgate regulations, in consultation with the New York State Department of Agriculture and Markets, for the purpose of carrying out its responsibilities under said Section, including establishing criteria and standards for evaluating Beginning Farmer Loan Program projects to be financed and the eligibility of beginning farmers. Collectively, farms comprise one of New York State's most important economic and environmental resources, providing employment, support for local suppliers of goods and services and allied industries such as food processing and transportation. If farms are to remain viable, they must be adequately capitalized. Due to the large investment required to enter farming, potential new farmers and farm families desiring to make intergenerational transfers of their operations have an enormous need for access to affordable capital. The 2002 Census of Agriculture put the estimated average value of a farm at $441,756 per farm, which demonstrates the sizable capital requirements involved in transfers of farmland, machinery and equipment. The Beginning Farmer Loan Program will play a large role in making affordable capital available to farmers under the provisions of the proposed regulations and have a positive impact on job creation and job opportunities.

Department of Health

EMERGENCY RULE MAKING

Health Provider Network Access and Reporting Requirements for Articles 28, 36 and 40 Facilities

I.D. No. HLT-27-05-00001-E
Filing No. 1033
Filing date: Sept. 9, 2005
Effective date: Sept. 9, 2005

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

Action taken: Amendment of sections 400.10, 763.11, 766.9 and 793.1 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2800, 2803, 3612 and 4010

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

Specific reasons underlying the finding of necessity: The agency finds the immediate adoption of this rule is necessary to preserve the public health, safety and general welfare of the citizens of the State of New York. Compliance with State Administrative Procedure Act Section 202(1) would be contrary to the public interest. This regulation would add a new Section 400.10 of 10 NYCRR and amend Sections 763.11, 766.9, and 793.1 of 10 NYCRR to require all facilities defined as a hospital within Public Health Law (PHL) Article 28, home care facilities within Article 36 of the Public Health Law and hospices within Article 40 of the Public Health Law to establish and maintain a Health Provider Network (HPN) account with the Department of Health.

The HPN is a secure web-based application that can be utilized by these facilities to receive current and up-to-date information as well as to submit data to specialized programs for reporting or surveillance purposes. In times of emergencies or urgent matters, it is imperative that these facilities receive from the Department and submit to the Department information in a rapid, efficient manner. The HPN, a free service, is the best means to ensure a rapid, efficient exchange of information. Current methods of accessing and distributing information utilizing telephone, fax and e-mail have yielded sporadic results.

This problem was recently highlighted by the current and ongoing influenza crisis as the Department was determining the availability and the need for influenza vaccine throughout the State. There will be a need for frequent updates to the State to quickly determine where the need is and where the vaccine is available. The vaccine shortage is only one reason that this regulation is needed. Any emergency affecting these facilities whether locally, regionally, or Statewide will need to be evaluated as soon as possible to permit the Department to allocate resources and direct them to where they are most needed. New York has experienced various emergencies affecting these facilities in the recent past. The September 11, 2001 terrorist attacks, the August 2003 blackout and any weather related situations such as snow and ice storms, hurricanes and heat waves have all had an impact on the State's health care facilities. The HPN will be the best means for the Department to communicate with these facilities to determine the best approach for handling such emergencies in the future.

Subject: Health Provider Network (HPN) access and reporting requirements for arts. 28, 26 and 40 facilities.

Purpose: To require arts. 28, 36 and 40 facilities to establish and maintain HPN accounts with the Department of Health for the purpose of exchanging information with the Department of Health in a rapid, efficient manner in times of emergencies or urgent matters.

Text of emergency rule: The table of contents for Part 400 is amended to read as follows:

PART 400
ALL FACILITIES—GENERAL REQUIREMENTS
(Statutory authority: Public Health Law, Sections 2800, 2803)

Sec.
400.1 Title and applicability
* * *
400.10 [RESERVED] *Health Provider Network Access and Reporting Requirements*
* * *

A new section 400.10 is added to read as follows:

Section 400.10 Health Provider Network Access and Reporting Requirements

The operator of a facility shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each facility he or she operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven day a week contacts for emergency communication and alerts must be designated by each facility in the HPN Communications Directory. A policy defining the facility's HPN coverage consistent with the facility's hours of operation, shall be created and reviewed by the facility no less than annually. Maintenance of each facility's HPN accounts shall consist of, at a minimum, the following:

(a) sufficient designation of the facility's HPN coordinator(s) to allow for HPN individual user application;

(b) designation by the facility operator of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;

(c) adherence to the requirements of the HPN user contract; and

(d) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

A new subdivision (f) is added to Section 763.11 to read as follows:

(f) Health Provider Network Access and Reporting Requirements.

The governing authority of an agency shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each agency it operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven-day a week contacts for emergency communication and alerts, must be designated by each agency in the HPN Communications Directory. A policy defining the agency's HPN coverage consistent

with the agency's hours of operation shall be created and reviewed by the agency no less than annually. Maintenance of each agency's HPN accounts shall consist of, at a minimum, the following:

(1) sufficient designation of the facility's HPN coordinator(s) to allow for HPN individual user application;

(2) designation by the governing authority of an agency of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;

(3) adherence to the requirements of the HPN user contract; and

(4) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

A new subdivision (o) is added to Section 766.9 to read as follows:

(o) Health Provider Network Access and Reporting Requirements. The governing authority or operator of an agency shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each agency that it operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven-day a week contacts for emergency communication and alerts, must be designated by each agency in the HPN Communications Directory. A policy defining the agency's HPN coverage consistent with the agency's hours of operation shall be created and reviewed by the agency no less than annually. Maintenance of each agency's HPN accounts shall consist of, at a minimum, the following:

(1) sufficient designation of the agency's HPN coordinator(s) to allow for HPN individual user application;

(2) designation by the governing authority or operator of an agency of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;

(3) adherence to the requirements of the HPN user contract; and

(4) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

A new subdivision (n) is added to Section 793.1 to read as follows:

(n) Health Provider Network Access Reporting Requirements. The governing authority of a hospice shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each hospice it operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven-day a week contacts for emergency communication and alerts, must be designated by each hospice in the HPN Communications Directory. A policy defining the hospice's HPN coverage consistent with the hospice's hours of operation shall be created and reviewed by the hospice no less than annually. Maintenance of each hospice's HPN accounts shall consist of, at a minimum, the following:

(1) sufficient designation of the hospice's HPN coordinator(s) to allow for HPN individual user application;

(2) designation by the governing authority of the hospice of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;

(3) adherence to the requirements of the HPN user contract; and

(4) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. HLT-27-05-00001-P, Issue of July 6, 2005. The emergency rule will expire November 7, 2005.

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in Sections 2800, 2803(2), 3612 and 4010 (4) of the Public Health Law (PHL). PHL Article 28 (Hospitals), Section 2800 specifies that "Hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, pursuant to section three of article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article."

PHL Section 2803(2) authorizes the State Hospital Review and Planning Council (SHRPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities. PHL Article 36 (Home Care Services), Section 3612 authorizes the SHRPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to certified home health agencies, providers of long term home health care programs and providers of AIDS home care programs. PHL Article 40 (Hospice), Section 4010 (4) authorizes the SHRPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to hospices.

Legislative Objectives:

The legislative objective of PHL Article 28 includes the protection of the health of the residents of the State by assuring the efficient provision and proper utilization of health services of the highest quality at a reasonable cost. PHL Article 36 intends that there be a public commitment to the appropriate provision and expansion of services rendered to the residents of the State by certified home health agencies, to the maintenance of a consistently high level of services by all home care services agencies, to the central collection and public accessibility of information concerning all organized home care services, and to the adequate regulation and coordination of existing home care services. PHL Article 40 declares that hospice is a socially and financially beneficial alternative to conventional curative care for those afflicted by terminal illness. In recognition of the value of hospice and consistent with State policy to encourage the expansion of health care service options available to New York State residents, it is the intention of the Legislature that hospice be available to all who seek such care and that it become a permanent component of the State's health care system. Consistent with this legislative intent, these provisions seek to require Article 28, Article 36 and Article 40 healthcare providers to be enrolled and connected electronically to the Department's Health Provider Network (HPN).

The HPN is a secure web-based application that can be utilized by these facilities to receive current and up-to-date information as well as submit data to specialized programs for reporting or surveillance purposes. In times of emergencies or urgent matters, such as disease outbreaks, it is imperative that these facilities receive from and submit to the Department information in a rapid efficient manner. The HPN, a free service, is the best means to ensure a rapid, efficient exchange of information.

Needs and Benefits:

In 1996 the New York State Department of Health (NYSDOH) established the Health Information Network (HIN) for local health departments and the Health Provider Network (HPN) for all other health care partners. The Health Alert Network (HAN) is designed to post rapid alerts, updates and information regarding current threats, developments, advisories or references for all HIN/HPN users.

These systems are housed within the NYSDOH Commerce System, a secure web-based application that allows healthcare providers and local health departments to receive current and up-to-date information as well as submit data to specialized programs for reporting or surveillance purposes. In order to access this secure application, users must obtain and maintain HPN accounts. It enables electronic connectivity in real time to partners who have HPN accounts. Hospitals and long term care facilities currently submit information for purposes of reporting. For example, hospitals submit information to the New York Patient Occurrence Reporting and Tracking System (NYPORTS), financial reports and Health Emergency Response Data System Reports (HERDS) and information by their HPN accounts. Due to the specificity of those programs, and lack of any HPN activity by some facilities such as Diagnostic and Treatment Centers, the Department has encountered difficulty in reaching out in a rapid and efficient manner to multiple key contacts at health care facilities and agencies in times of emergencies or urgent matters.

In order to enhance overall emergency preparedness in New York State, it is imperative that all health care facilities and agencies be enrolled

and connected electronically to this system with enough depth and scope to connect and respond on a 24 hour, 7 day a week basis.

Costs:

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

There is no cost to enroll in the HPN program. Facility staff will need to be designated as HPN Coordinators and HPN users. A computer and internet connectivity will be required. The cost of a computer and internet access can vary depending on the sophistication of the equipment and the connection. A basic computer, which would be adequate for connecting to the HPN, could cost approximately $500.00 with up to a free year of technical support. Additional technical support and warranties can be purchased for approximately $44.00/month. Internet service costs as little as $10.00/month up to $45.00/month depending on the type of connection (dial-up vs. dedicated connection). Ultimately, the cost of compliance would be decided by each affected entity based on its needs.

Cost to State and Local Government:

None.

Cost to the Department of Health:

None.

Local Government Mandates:

None.

Paperwork:

There will be minimal paperwork required for enrolling in the HPN for each facility and each user.

Duplication:

This regulation does not duplicate any other state or federal law or regulation.

Alternative Approaches:

Emergency communications with many health care providers have been difficult as many times only phone, fax, and in some cases, e-mail is available. No other alternatives were identified that would enable rapid communication bidirectionally. Experience over the past 24 month period has shown poor voluntary response from most facilities to requests that they obtain HPN accounts.

Federal Requirements:

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

Compliance Schedule:

The emergency regulations will go into effect immediately upon filing with the Department of State. A grace period of ninety days was established for full compliance in conjunction with each of the first two emergency adoptions of this proposal.

Regulatory Flexibility Analysis

Effect of Rule:

Any facility defined as a hospital pursuant to PHL Article 28, home care agency within PHL Article 36, or Hospice within PHL Article 40 will be required to comply. Small businesses (defined as 100 employees or less), independently owned and operated, affected by this rule will include: 3 hospitals, 237 diagnostic and treatment centers, approximately 100 nursing homes, and approximately 200 home care services agencies. There are 52 certified hospices in New York State. Most of them would fit into the category of a small business, but definitive data concerning their small business status was not available.

Local governments are not affected by this rule.

Compliance Requirements:

In order to comply with these requirements, a facility must enroll in the NYSDOH HPN and be able to maintain the account as prescribed with sufficient depth and scope of staff. A computer and internet connectivity will be required.

Professional Services:

All facilities required to enroll in the HPN program must have trained staff to participate. No other professional staff are required.

Compliance Costs:

There is no cost to enroll in the HPN program. Facility staff will need to be designated as HPN Coordinators and HPN users. A computer and internet connectivity will be required to participate in the HPN program. The cost of a computer and internet access can vary depending on the sophistication of the equipment and the connection. A basic computer, which would be adequate for connecting to the HPN, could cost approximately $500.00 with up to a free year of technical support. Additional technical support and warranties can be purchased for approximately $44.00/month. Internet service costs as little as $10.00/month up to $45.00/month depending on the type of connection (dial-up vs. dedicated connection). Ultimately, the cost of compliance would be decided by each affected entity based on its needs.

Economic and Technological Feasibility:

It should be economically and technologically feasible for small businesses to comply with the regulations. Regulated parties will not incur any costs to establish an HPN account. Existing staff will need training to participate. Such training and technical support will be provided free of charge by the Department. A computer and internet connectivity will be required.

Minimizing Adverse Impact:

A grace period of ninety days was established for full compliance in conjunction with each of the first two emergency adoptions of this proposal.

Small Business and Local Government Participation:

Outreach to the affected parties, some of whom are small businesses, is being conducted. Organizations who represent the affected parties have been given notice of this proposal by its inclusion on the agenda of the Codes and Regulations Committee of the State Hospital Review and Planning Council. The public, including any affected party is invited to comment during the Codes and Regulations Committee meeting.

Rural Area Flexibility Analysis

Pursuant to section 202-bb of the State Administrative Procedure Act, a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas.

The proposed rule will not impose an adverse economic impact on rural facilities defined as within Articles 28, 36, or 40 of the Public Health Law, nor will it impose any additional recordkeeping, reporting and other compliance requirements.

Job Impact Statement

A Job Impact Statement is not included because it is apparent from the nature and purpose of these amendments that they will not have a substantial adverse impact on jobs and employment activities.

Assessment of Public Comment

The agency received no public comment.

EMERGENCY RULE MAKING

Health Provider Access and Reporting Requirements

I.D. No. HLT-27-05-00002-E
Filing No. 1034
Filing date: Sept. 9, 2005
Effective date: Sept. 9, 2005

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

Action taken: Amendment of sections 487.12, 488.12 and 490.12 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 460 and 461; and L. 1997, ch. 436

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

Specific reasons underlying the finding of necessity: The agency finds the immediate adoption of this rule is necessary to preserve the public health, safety and general welfare of the citizens of the State of New York. Compliance with State Administrative Procedure Act Section 202(1) would be contrary to the public interest. This regulation would amend Sections 487.12, 488.12, and 490.12 of 18 NYCRR to require all adult care facilities (ACFs) to establish and maintain a Health Provider Network (HPN) account with the Department of Health.

The HPN is a secure web-based application that can be utilized by these facilities to receive current and up-to-date information as well as to submit data to specialized programs for reporting or surveillance purposes. In times of emergencies or urgent matters, it is imperative that these facilities receive from the Department and submit to the Department information in a rapid, efficient manner. The HPN, a free service, is the best means to ensure a rapid, efficient exchange of information. Current methods of accessing and distributing information utilizing telephone, fax and e-mail have yielded sporadic results.

This problem was recently evident with the current and ongoing influenza crisis as the Department was determining the availability and the need for influenza vaccine throughout the State. There will be a need for frequent updates to the State to quickly determine where the need is and where the vaccine is available. The vaccine shortage is only one reason that this regulation is needed. Any emergency affecting these facilities whether

locally, regionally, or Statewide will need to be evaluated as soon as possible to permit the Department to allocate resources and direct them to where they are most needed. New York has experienced various emergencies affecting these facilities in the recent past. The September 11, 2001 terrorist attacks, the August 2003 blackout and any weather related situations such as snow and ice storms, hurricanes and heat waves have all had an impact on the State's adult care facilities. The HPN will be the best means for the Department to communicate with these facilities to determine the best approach for handling such emergencies in the future.

Subject: Health Provider Network (HPN) access and reporting requirement.

Purpose: To require adult homes, enriched housing programs and residences for adults to establish and maintain HPN accounts with the Department of Health for the purpose of exchanging information with the department in a rapid efficient manner in times of emergencies or urgent matters.

Text of emergency rule: A new subdivision (k) is added to Section 487.12 to read as follows:

(k) The operator of an adult home shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each adult home he or she operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven-day a week contacts for emergency communication and alerts, must be designated by each home in the HPN Communications Directory. A policy defining the adult home's HPN coverage consistent with the home's hours of operation shall be created and reviewed by the adult home no less than annually. Maintenance of each adult home's HPN accounts shall consist of, at a minimum, the following:

(1) sufficient designation of the home's HPN coordinator(s) to allow for HPN individual user application;

(2) designation by the adult home operator of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;

(3) adherence to the requirements of the HPN user contract; and

(4) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

A new subdivision (m) is added to Section 488.12 is to read as follows:

(m) The operator of an enriched housing program shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each program he or she operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven-day a week contacts for emergency communication and alerts, must be designated by each program in the HPN Communications Directory. A policy defining the enriched housing program's HPN coverage consistent with the enriched housing program's hours of operation shall be created and reviewed by the enriched housing program no less than annually. Maintenance of each enriched housing program's HPN accounts shall consist of, at a minimum, the following:

(1) sufficient designation of the enriched housing program's HPN coordinator(s) to allow for HPN individual user application;

(2) designation by the enriched housing program operator of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;

(3) adherence to the requirements of the HPN user contract; and

(4) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

A new subdivision (k) is added to Section 490.12 to read as follows:

(k) The operator of a residence for adults shall obtain from the Department's Health Provider Network (HPN), HPN accounts for each residence he or she operates and ensure that sufficient, knowledgeable staff will be available to and shall maintain and keep current such accounts. At a minimum, twenty-four hour, seven-day a week contacts for emergency communication and alerts, must be designated by each residence for adults' in the HPN Communications Directory. A policy defining the residence for adults' HPN coverage consistent with the residence for adults' hours of operation, shall be created and reviewed by the residence for adults no less than annually. Maintenance of each residence for adults' HPN accounts shall consist of, at a minimum, the following:

(1) sufficient designation of the residence's HPN coordinator(s) to allow for HPN individual user application;

(2) designation by the residence for adults operator of sufficient staff users of the HPN accounts to ensure rapid response to requests for information by the State and/or local Department of Health;

(3) adherence to the requirements of the HPN user contract; and

(4) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. HLT-27-05-00002-P, Issue of July 6, 2005. The emergency rule will expire November 7, 2005.

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in Sections 460 and 461 of the Social Services Law (SSL) and Chapter 436 of the Laws of 1997. SSL Section 460 delegates the comprehensive responsibility for the development and administration of programs, standards and methods of operation of residential care programs to the Department of Social Services (DSS) directly or through social services districts, and with the cooperation of other state agencies to protect and assure the life, health, safety and comfort of individuals who must be cared for away from their own homes. SSL Section 461 requires DSS to promulgate regulations for adult care facilities subject to its inspection and supervision only after consultation with the board of social welfare, departments of health and mental hygiene and office for the aging. Section 122(c) of Chapter 436 of the Laws of 1997 provides that effective April 1, 1997, the functions, powers, duties and obligations of the former Department of Social Services concerning adult homes, enriched housing programs, residences for adults, and assisted living programs are transferred to the New York State Department of Health.

Legislative Objectives:

The legislative objective of SSL Residential Care Program provisions is to provide services of the highest quality, efficiently and properly utilized at a reasonable cost. It also intends to effectively protect and assure the life, health, safety and comfort of residents who must be cared for away from their own homes. Consistent with this legislative intent, these provisions seek to require adult home, enriched housing and residence for adults providers to be enrolled and connected electronically to the Department's Health Provider Network (HPN).

The HPN is a secure web-based application that can be utilized by these entities to receive current and up-to-date information as well as submit data to specialized programs for reporting or surveillance purposes. In times of emergencies or urgent matters, such as disease outbreaks, it is imperative that these entities receive from and submit to the Department information in a rapid efficient manner. The HPN, a free service, is the best means to ensure a rapid, efficient exchange of information.

Needs and Benefits:

In 1996 the New York State Department of Health (NYSDOH) established the Health Information Network (HIN) for local health departments and the Health Provider Network (HPN) for all other health care partners. The Health Alert Network (HAN) is designed to post rapid alerts, updates and information regarding current threats, developments, advisories or references for all HIN/HPN users.

These systems are housed within the NYSDOH Commerce System, a secure web-based application that allows healthcare providers and local health departments to receive current and up-to-date information as well as submit data to specialized programs for reporting or surveillance purposes. In order to access this secure application, users must obtain and maintain HPN accounts. It enables electronic connectivity in real time to partners who have HPN accounts. Hospitals and long term care facilities currently submit information for purposes of reporting. For example, hospitals submit information to the New York Patient Occurrence Reporting and Tracking System (NYPORTS), financial reports and Health Emergency Response Data System Reports (HERDS) and information by their HPN accounts. Due to the specificity of those programs, and lack of any HPN activity by some providers, the Department has encountered difficulty in reaching out in a rapid and efficient manner to multiple key contacts at

health care facilities, agencies and residences in times of emergencies or urgent matters.

In order to enhance overall emergency preparedness in New York State, it is imperative that all health care facilities, agencies and residences be enrolled and connected electronically to this system with enough depth and scope to connect and respond on a 24 hour, 7 day a week basis.

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

There is no cost to enroll in the HPN program. Facility staff will need to be designated as HPN Coordinators and HPN users. A computer and internet connectivity will be required. The cost of a computer and internet access can vary depending on the sophistication of the equipment and connection. A basic computer, which would be adequate for connecting to the HPN, could cost approximately $500.00 with up to a free year of technical support. Additional technical support and warranties can be purchased for approximately $44.00/month. Internet service costs as little as $10.00/month up to $45.00/month depending on the type of connection (dial-up vs. dedicated connection). Ultimately, the cost of compliance would be decided by each affected entity based on its needs.

Cost to State and Local Government:

None.

Cost to the Department of Health:

None.

Local Government Mandates:

None.

Paperwork:

There will be minimal paperwork required for enrolling in the HPN for each facility and each user.

Duplication:

This regulation does not duplicate any other state or federal law or regulation.

Alternative Approaches:

Emergency communications with many health care providers have been difficult as many times only phone, fax, and in some cases, e-mail is available. No other alternatives were identified that would enable rapid communication bidirectionally. Experience over the past 24 month period has shown poor voluntary response from most facilities to requests that they obtain HPN accounts.

Federal Requirements:

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

Compliance Schedule:

The emergency regulations will go into effect immediately upon filing with the Department of State. A grace period of ninety days was established for full compliance in conjunction with each of the first two emergency adoptions of this proposal.

Regulatory Flexibility Analysis

Effect of Rule:

There are 514 existing adult care facilities (ACFs) in New York State. Of those, 384 have been identified as being certified for 100 or fewer beds and considered a small business.

Local governments are not affected by this rule.

Compliance Requirements:

In order to comply with these requirements, an ACF must enroll in the NYSDOH HPN and be able to maintain the account as prescribed with sufficient depth and scope of staff. A computer and internet connectivity will be required.

Professional Services:

All facilities required to enroll in the HPN program must have trained staff to participate. No other professional staff is required.

Compliance Costs:

There is no cost to enroll in the HPN program. Facility staff will need to be designated as HPN Coordinators and HPN users. A computer and internet connectivity will be required to participate in the HPN program. The cost of a computer and internet access can vary depending on the sophistication of the equipment and connection. A basic computer, which would be adequate for connecting to the HPN, could cost approximately $500.00 with up to a free year of technical support. Additional technical support and warranties can be purchased for approximately $44.00/month. Internet service costs as little as $10.00/month up to $45.00/month depending on the type of connection (dial-up vs. dedicated connection). Ultimately, the cost of compliance would be decided by each affected entity based on its needs.

Economic and Technological Feasibility:

It should be economically and technologically feasible for small businesses to comply with the regulations. Regulated parties will not incur any costs to establish an HPN account. Existing staff will need training to participate. Such training and technical support will be provided free of charge by the Department. A computer and internet connectivity will be required.

Minimizing Adverse Impact:

A grace period of ninety days was established for full compliance in conjunction with each of the first two emergency adoptions of this proposal.

Small Business and Local Government Participation:

Outreach to the affected parties, some of whom are small businesses, is being conducted.

Rural Area Flexibility Analysis

Pursuant to section 202-bb of the State Administrative Procedure Act, a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas.

The proposed rule will not impose an adverse economic impact on rural adult care facilities, nor will it impose any additional recordkeeping, reporting and other compliance requirements.

Job Impact Statement

A Job Impact Statement is not included because it is apparent from the nature and purpose of these amendments that they will not have a substantial adverse impact on jobs and employment activities.

Assessment of Public Comment

The agency received no public comment.

Division of the Lottery

NOTICE OF ADOPTION

Lotto Subscription Clarification

I.D. No. LTR-30-05-00005-A
Filing No. 1038
Filing date: Sept. 13, 2005
Effective date: Sept. 28, 2005

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

Action taken: Repeal of sections 2804.12-2804.19 and addition of new sections 2804.12-2804.19 to Title 21 NYCRR.

Statutory authority: Tax Law, section 1604(a)

Subject: Subscription clarification.

Purpose: To clarify rules regarding subscription purchases.

Text of final rule:

REPEAL OF SECTIONS 2804.12 THROUGH 2804.19 OF TITLE 21 NYCRR AND ADD NEW SECTIONS 2804.12 THROUGH 2804.19 OF TITLE 21 NYCRR

2804.12 Subscription program.

(a) A subscription program may be established at the discretion of the director for any division game(s). The subscription program may permit a subscriber to play the same number selections for a period of consecutive drawings over a stated period in such games as the director may decide.

(b) Entry into a subscription program will require the completion and submission of either (1) a subscription application form; or (2) a renewal application form. The subscriber will be required to provide his or her social security number on the respective application form so that prizes requiring federal reporting or withholding may be automatically sent to the winning subscriber. An application for a group subscription must contain the names, addresses, and social security numbers of each group member.

(c) By providing the social security number, the subscriber is authorizing the division to retain and use the number for the purpose of tax reporting and any other lawful purpose of the division. An application for a group subscription must contain the names, addresses, and social security numbers of each group member. No group may exceed ten members.

2804.13 Subscription definitions.

(a) "Application form" or "application" means either the subscription application form or the renewal of such application form.

(b) "Confirmation letter" means the paper or electronic correspondence sent to a subscriber from the division confirming the game(s), game numbers for each game panel played, the type of plan, the effective date, and the expiration date.

(c) "Effective date" means the game's first drawing date for which a subscription is effective.

(d) "Expiration date" means the last drawing date for which a subscription is effective.

(e) "Game numbers" means the numbers selected for each of the game panels played on an application form.

(f) "Game panel" means the electronic panel and/or paper panel on which game numbers are chosen.

(g) "Group" means two or more individuals sharing a game subscription whose individual qualifications meet that of an individual subscriber.

(h) "Group representative" means the individual designated on a group application form as the person selected by the group subscribers to act on behalf of the group in handling any communications and prize payments related to the subscription.

(i) "Plan" means the game(s) played, the number of consecutive games played and the duration of the subscription as determined by the number of weeks selected by the subscriber.

(j) "Quick Pick" means the option for a subscriber to have game numbers randomly selected by a computer. Once selected, the same quick pick numbers remain valid and will be used for each drawing for the duration of the subscription.

(k) "Subscriber" means either the individual or the group identified on an application form as the person(s) entitled to the winning prize.

(l) "Subscriber identifying information" means the name, address, subscription number, social security number or tax payer identification number of the subscriber or each member of a group.

(m) "Subscription Costs" means the cost of the subscription purchased by the subscribers as defined in Part 2804-14 of these rules.

(n) "Subscription file" means a file maintained by the division containing subscription information and used in the prize determination process.

(o) "Subscription number" means the number assigned by the division to a subscription record when the original application is processed.

(p) "Valid Subscription Entry" means to be a valid subscription entry a subscription must include the following: Subscriber identifying information (as defined herein), selected payment option, game numbers entered on the appropriate division computer file which is the official record of subscription entry.

(q) "Valid Group Subscription Entry" means to be a valid group subscription entry a subscription must include the following: Subscriber identifying information (as defined herein) for each member of the group, selected payment option, game numbers entered on the appropriate division computer file which is the official record of group subscription entry.

2804.14 Subscription costs.

(a) Lotto

(1) For each Lotto subscription, a minimum of two game panels must be selected for a minimum plan of 26 weeks.

(2) A Lotto subscriber may play two, four, or six game panels.

(3) The following number of game panels and subscription plans are available for Lotto subscriptions at the costs shown:

Games	*Plan*	*Cost*
1,2	*26 weeks - 52 drawings*	*$50*
1,2,3,4	*26 weeks - 52 drawings*	*$100*
1,2,3,4,5,6	*26 weeks - 52 drawings*	*$150*
1,2	*52 weeks - 104 drawings*	*$98*
1,2,3,4	*52 weeks - 104 drawings*	*$196*
1,2,3,4,5,6	*52 weeks - 104 drawings*	*$294*

(b) The division reserves the right to alter, temporarily or permanently, the costs of subscription plans at the discretion of the director.

(c) Other Games. The subscription costs for game(s) other than Lotto shall be posted on the division's website (www.nylottery.org) from time to time.

2804.15 Subscription application requirements.

(a) To be accepted for entry, an application form must meet the following requirements:

(1) Each game panel for Lotto must contain six unduplicated game numbers selected from the following numbers: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59. Alternatively, a game panel for Lotto may contain fewer than six game numbers, or the Quick Pick option may be selected to receive randomly selected game numbers. No request to change randomly selected Quick Pick numbers or numbers chosen by the player will be accepted after the effective date of the subscription. Such changes can only be made at the time of renewal.

(2) The application must include the required subscriber identifying information, including identifying information for each member of a group subscription. If an application is submitted without complete subscriber identifying information, the division may seek additional information from the applicant, as needed.

(b) An application may be rejected for the following reasons:

(1) The application is illegible in whole or in part.

(2) The application includes a form of payment that is not acceptable to the division.

(3) The subscriber provides an address or is using a computer or other on-line device outside the State of New York that would require the division to send subscription related correspondence or prize payments outside the State of New York, or if the acceptance of the application would be unlawful or would necessitate or facilitate any unlawful conduct, or for any other reason within the discretion of the director.

(c) A subscription may be terminated by the division after acceptance if, before or after the effective date, the division is notified that the payment for the subscription is invalid. In such event, the subscription shall be deemed invalid and no prizes will be paid to the subscriber.

(d) In the event of a termination of the subscription, any prize won by the subscriber will be retained by the division.

2804.16 Valid subscription entry.

To be a valid entry, a subscription must meet the following requirements:

(a) To be eligible to win a prize, an application form, including the subscriber identification information, lump sum option (if selected), and the game numbers must be entered into the Division's subscription file to create the official record of subscription entry.

(b) A confirmation letter (paper or electronic) shall be issued by the division to subscriber confirming a valid subscription entry has been received.

2804.17 Payment of subscription prizes.

(a) Prizes that exceed $1.00 and are less than the threshold withholding amount for federal tax reporting will be remitted to an individual subscriber whose name appears on the application.

(b) Prizes that meet or exceed the threshold amount for federal withholding for an individual will be remitted to the individual subscriber whose name appears on the application form minus the required withholding amount.

(c) Prizes that are greater than $1.00 will be remitted to an individual subscriber whose name appears on the application form. Prizes equal to or less than $1.00 will be credited to the subscriber's account to reduce the cost of subscription renewal, or in the event the subscriber chooses not to renew his/her subscription, the prize winning(s) in the account will be remitted to the subscriber.

(d) For payment of a prize which does not meet the threshold amount for federal tax reporting to a group subscriber, payment will be made in one payment in the name of the group and the group representative as indicated on the application form, and remitted to the group representative.

(e) For payment of a prize which meets or exceeds the threshold amount for federal withholding to a group subscriber, a payment representing an equal share of the prize will be remitted to each individual member of the group. If the subscription or renewal application does not show the taxpayer identification number (social security number or federal employer identification number) of each group member, the division will withhold appropriate income taxes in accordance with the applicable back-up withholding rules.

(f) A group subscription entry will be treated as a single entry in the prize pool and shall also be treated as a single entry when determining if a prize in the Lotto or similar game is payable in annual installments as provided in Part 2817 of this Title.

2804.18 Subscription disputes.

(a) The division is not responsible for disputes between or among subscription group members.

(b) In any dispute with the division concerning the right to a subscription prize, the division shall have the right to resolve such dispute by paying the prize or refunding the subscription fee. If a refund is paid, the refund shall be based on the remaining unused value of the subscription and shall be the sole and exclusive remedy of the subscriber(s).

(1) If there is a discrepancy between the information set forth on an application form and the information set forth in a confirmation letter, the subscriber may ask the division to resolve the discrepancy by written or electronic communication. After such a report is received by the division, the division shall resolve the discrepancy as soon as possible and issue a revised confirmation letter. Resolution may include, but is not limited to, cancellation of the subscription. No change in the subscription shall be effective until a revised confirmation letter is issued. No request to resolve a discrepancy shall be accepted after the effective date in the confirmation letter issued.

2804.19 Subscription miscellaneous.

(a) Furthermore, the New York Lottery, pursuant to its statutory authority, may from time to time add games to its subscription program (including, but not limited to, Mega-Millions).

(b) A subscription renewal must be processed at least twelve (12) business days prior to the expiration date of a current subscription in order to avoid a lapse in the subscription. A renewal application form containing current subscription number, games, game numbers, plan, effective date and expiration date will be sent to the subscriber either electronically or by mail. The division will make reasonable efforts to process renewal applications to assure no interruptions; however, the division shall not be responsible for an interruption if a renewal application is not processed in sufficient time.

(c) Once a subscription is entered into the subscription file, the funds paid for the subscription are not refundable.

(d) If a promotion offers a subscription, the division reserves the right to limit the number of promotional subscriptions that may be received by a person or group.

(e) The division reserves the right to exclude subscribers from participation in a promotion offering special payments or prizes.

(f) Any subscription commenced prior to the effective date of the subscription regulations set forth in this part shall be subject to the regulations that were in effect at the time such subscription was commenced. Any subscription commenced on or after the effective date of the subscription regulations set forth in this part shall be subject to this part.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 2804.13(f), (m) and 2804.17(f).

Text of rule and any required statements and analyses may be obtained from: Dwight T. Flynn, Associate Counsel, Division of the Lottery, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: dflynn@lottery.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Motor Vehicles

NOTICE OF ADOPTION

Civil Penalties

I.D. No. MTV-30-05-00013-A
Filing No. 1037
Filing date: Sept. 12, 2005
Effective date: Oct. 1, 2005

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

Action taken: Amendment of Parts 34 and 35 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 318(1) and (1-a)

Subject: Civil penalties.

Purpose: To conform regulations to statutory amendments relating to insurance lapse civil penalties.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-30-05-00013-P, Issue of July 27, 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 Welch, Department of Motor Vehicles, 6 Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Committee on Open Government

NOTICE OF ADOPTION

Access to Records

I.D. No. DOS-29-05-00022-A
Filing No. 1039
Filing date: Sept. 9, 2005
Effective date: Sept. 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 1401 of Title 21 NYCRR.

Statutory authority: Public Officers Law, section 89(3); and L. 2005, ch. 22

Subject: Access to records.

Purpose: To conform with amendments to law.

Text of final rule: Subdivision (a) of section 1401.2 is amended to read as follows:

(a) The governing body of a public corporation and the head of an executive agency or governing body of other agencies shall be responsible for insuring compliance with the regulations herein, and shall designate one or more persons as records access officer by name or by specific job title and business address, *and when requests are accepted via email, an email address,* who shall have the duty of coordinating agency response to public requests for access to records. The designation of one or more 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.

Subdivision (b)(2) of section 1401.2 is amended to read as follows:

(2) [Assist the requester in identifying requested records, if necessary] *Assist persons seeking records to identify the records sought, if necessary, and when appropriate, indicate the manner in which the records are filed, retrieved or generated to assist persons in reasonably describing records.*

Subdivisions (3), (4), (5) and (6) of section 1401.2(b) are renumbered as subdivisions (4), (5), (6) and (7), and a new subdivision (3) is added to read as follows:

(3) Contact persons seeking records when a request is voluminous or when locating the records sought involves substantial effort, so that agency personnel may ascertain the nature of records of primary interest and attempt to reasonably reduce the volume of the records requested.

Section 1401.5 is repealed and new section 1401.5 is adopted to read as follows:

1401.5 Responses to requests for records.

(a) An agency may require that a request be made in writing or may make records available upon oral request.

(b) When an agency maintains requested records on the internet, a response shall inform a requester that the records are accessible via the internet and in printed form either on paper or other information storage medium.

(c) An agency shall respond to a request within five business days of the receipt of a request by:

(1) informing a person requesting records that the request or portion of the request does not reasonably describe the records sought, including direction, to the extent possible, that would enable that person to request records reasonably described;

(2) granting or denying access to records in whole or in part;

(3) acknowledging the receipt of a request in writing, including an approximate date when the request will be granted or denied in whole or in part, which shall be reasonable under the circumstances of the request and shall not be more than twenty days after the date of the acknowledgment, or if it is known that circumstances prevent disclosure within twenty business days from the date of such acknowledgment, providing a statement in writing stating the reason for inability to grant the request within

that time and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part; or

(4) if the receipt of request was acknowledged in writing and included an approximate date when the request would be granted in whole or in part within twenty business days of such acknowledgment, but circumstances prevent disclosure within that time, providing a statement in writing with twenty business days of such acknowledgment stating the reason for the inability to do so and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part.

(d) In determining a reasonable time for granting or denying a request under the circumstances of a request, agency personnel shall consider the volume of a request, the ease or difficulty in locating, retrieving or generating records, the complexity of the request, the need to review records to determine the extent to which they must be disclosed, the number of requests received by the agency, and similar factors that bear on an agency's ability to grant access to records promptly and within a reasonable time.

(e) A failure to comply with the time limitations described herein shall constitute a denial of a request that may be appealed. Such failure shall include situations in which an agency:

(1) fails to grant access to the records sought, deny access in writing or acknowledge the receipt of a request within five business days of the receipt of a request;

(2) acknowledges the receipt of a request within five business days but fails to furnish an approximate date when it will grant or deny a request in whole or in part;

(3) furnishes an acknowledgment of the receipt of a request within five business days with an approximate date for granting or denying access in whole or in part that is unreasonable under the circumstances of the request;

(4) fails to respond to a request within a reasonable time after the approximate date given or within twenty days after the date of its acknowledgment of the receipt of a request;

(5) determines to grant a request in whole or in part within twenty business days of its acknowledgment of the receipt of a request, but fails to do so, unless the agency provides the reason for its inability to do so in writing and a date certain within which the request will be granted in whole or in part;

(6) does not grant a request in whole or in part within twenty business days of its acknowledgment of the receipt of a request and fails to provide the reason in writing explaining its inability to do so and a date certain by which the request will be granted in whole or in part; or

(7) responds to a request, stating that more than twenty business days is needed to grant or deny the request in whole or in part and provides a date certain within which it will do so, but such date is unreasonable under the circumstances of the request.

Subdivision (c) of section 1401.6 is amended to read as follows:

(c) The subject matter list shall be updated [not less than twice per year. The most recent] *annually, and the date of the most recent* update shall appear on the first page of the subject matter list.

Subdivision (a) of section 1401.7 is amended to read as follows:

(a) The governing body of a public corporation or the head, chief executive or governing body of other agencies shall [hear] *determine* appeals or shall designate a person or body to hear appeals regarding denial of access to records under the Freedom of Information Law.

Subdivision (b) of section 1401.7 is amended to read as follows:

(b) Denial of access shall be in writing stating the reason therefor and advising the person denied access of his or her right to appeal to the person or body [established to hear] *designated to determine* appeals, and that person or body shall be identified by name, title, business address and business telephone number. The records access officer shall not be the appeals officer.

Subdivision (c) of section 1401.7 is amended to read as follows:

(c) If an agency fails to respond to a request [within five business days of receipt of a request] as required in [subdivision (d) of] section 1401.5 of this Part, such failure shall be deemed a denial of access by the agency.

Subdivision (e) of section 1401.7 is amended to read as follows:

(e) *the* time for deciding an appeal by the individual or body designated to [hear] *determine* appeals shall commence upon receipt of written appeal identifying:

(1) the date and location of requests for records;

(2) *a description, to the extent possible, of the* records that were denied; and

(3) name and return address of the appellant.

Section 1401.7(f), (g) and (h) are renumbered as (g), (h) and (i) and a new subdivision (f) is added to read as follows:

(f) A failure to determine an appeal within ten business days of its receipt by granting access to the records sought or fully explaining the reasons for further denial in writing shall constitute a denial of the appeal.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 1401.5(c)(3), (4), (e)(4), (6), 1401.6(c) and 1401.9 was deleted, but must remain.

Text of rule and any required statements and analyses may be obtained from: Janet Mercer, Department of State, Committee on Open Government, 41 State St., Albany, NY 12231, (518) 474-2518, e-mail: jmercer@dos.state.ny.us

Revised Job Impact Statement

Changes made in the regulations proposed by the Committee on Open Government are not substantive and do not alter their intent or impact as originally proposed.

Assessment of Public Comment

Since the publication of the Notice of Proposed Rule Making in the *State Register* on July 20, 2005, one page of written comments, which was preceded by a telephone discussion with the authors of the comments and their colleagues, has been transmitted to the Committee on Open Government pertaining to amendments to its existing regulations [21 NYCRR Part 1401]. Another letter commenting on the proposed rule consisting of less than a page and a half was submitted by the New York City Law Department. The proposal to amend the existing regulations by means of consensus rule was precipitated by the enactment of Chapter 22 of the Laws of 2005.

In a conference call of August 3, Assemblywoman RoAnn Destito, the Assembly sponsor of the legislation, Richard Murphy and Andrea Zaretzki of the Assembly Regulations Review Commission, and Cheryl Couser of the Assembly Office of Program and Counsel, recommended non-substantial changes in the language proposed by the Committee on Open Government. Following that discussion, Richard Murphy transmitted proposed language to make certain provisions clearer and fully consistent with the intent of the legislation. In addition, in one instance, it was suggested that the proposed deletion of an existing provision, section 1401.9, was inappropriate, for it had no relevance to or connection with Chapter 22.

The following changes would, according to Assemblywoman Destito and her colleagues, "clarify" the proposed regulations implementing Chapter 22:

Section 1401.5(c)(3): "acknowledging the receipt of a request in writing, including an approximate date when the request will be granted or denied in whole or in part, which shall be reasonable under the circumstances of the request *and shall not be more than twenty business days after the date of the acknowledgment*, or if it is known that circumstances prevent disclosure within twenty business days from the date of such acknowledgment, [provide] *providing a statement in writing stating* the reason for inability to grant the request within that time and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part; or"

Section 1401.5(c)(4): "if the receipt of request was acknowledged in writing and included an approximate date when the request[ed] would be granted in whole or in part within twenty business days of such acknowledgment, but circumstances prevent disclosure within that time, *providing a statement in writing within twenty business days of such acknowledgment* stating the reason for the inability to do so and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part."

Section 1401.5(e)(4): "fails to respond to a request within a reasonable time after the approximate date given *or within twenty days after the date of* [in] its acknowledgment of the receipt of a request;"

Section 1401.5(e)(6): "does not grant a request in whole or in part within twenty business days of its acknowledgment of the receipt of a request and fails to provide the reason in writing explaining its inability to do so [or] *and* a date certain [within] *by* which the request will be granted in whole or in part; or"

It was also recommended that the Committee's proposal to require that agencies' subject matter lists in § 1401.6(c) be updated "periodically" be changed to require that those documents be updated "*annually*."

The comments made by the New York City Law Department involved questions regarding the interpretation of the proposed rule and its relation to the language of the amendments added by Chapter 22. A response was prepared and sent in which clarification was offered in response to the issues raised by that agency.

CONCLUSION

Because the recommended non-substantial changes described earlier involve a consensus rule and do not in any way alter the substance of the proposed regulations published on July 20, those changes are being incorporated into the regulations.

Public Service Commission

NOTICE OF ADOPTION

Low-Income Gas Customer Energy Efficiency Program by Niagara Mohawk Power Corporation

I.D. No. PSC-25-05-00012-A
Filing date: Sept. 12, 2005
Effective date: Sept. 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 Aug. 24, 2005, adopted an order in Case 05-G-0668 approving a request by Niagara Mohawk Power Corporation (Niagara Mohawk) to fund a Low-Income Gas Energy Efficiency Program for gas heating customers.

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

Subject: Energy-efficiency program for Niagara Mohawk low-income gas customers.

Purpose: To approve the program.

Substance of final rule: The Commission approved Niagara Mohawk Power Corporation's petition establishing a low-income gas customer energy efficiency program, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-G-0668SA1)

NOTICE OF ADOPTION

Exempt Wholesale Generator Status by FirstEnergy Corporation

I.D. No. PSC-26-05-00006-A
Filing date: Sept. 9, 2005
Effective date: Sept. 9, 2005

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

Action taken: The commission, on Aug. 24, 2005, adopted an order approving petitions of Waverly Electric Light & Power Company to allow certain generating facilities, now owned by subsidiaries of FirstEnergy Corporation, to become exempt wholesale generators.

Statutory authority: Public Service Law, sections 5(b), 65(1), 66(1), (5), (8), (9), (10), (11) and (12)

Subject: Request for exempt wholesale generator status.

Purpose: To grant wholesale generator status of certain generating facilities.

Substance of final rule: The Commission approved requests by Waverly Electric Light & Power Company to allow certain facilities, now owned by FirstEnergy Corporation, to become exempt wholesale generators under the Federal Public Utility Holding Act of 1935, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-E-0610SA1)

NOTICE OF ADOPTION

Transfer of Ownership Interests by Energy Factors, Incorporated and Alliance Energy, New York, LLC

I.D. No. PSC-27-05-00017-A
Filing date: Sept. 7, 2005
Effective date: Sept. 7, 2005

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

Action taken: The commission, on Aug. 24, 2005, adopted an order in Case 05-E-0746 approving the transfer of ownership interests in an approximately 84 MW electric and steam generating facility located in Ogdensburg, NY and an approximately 79 MW electric and steam generating facility located in Massena, NY.

Statutory authority: Public Service Law, sections 70 and 83

Subject: Transfer of electric and steam generating facilities.

Purpose: To approve the transfer of electric and steam generating facilities.

Substance of final rule: The Commission approved a request by Power City Partners, L.P. and AG-Energy, L.P. for the transfer of ownership interests in an approximately 84 MW electric and steam generating facility located in Ogdensburg, New York and an approximately 79 MW electric and steam generating facility located in Massena, New York to Alliance Energy New York, LLC, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(05-E-0746SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Exemptions from Standby Service by Niagara Mohawk Power Corporation

I.D. No. PSC-39-05-00002-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Niagara Mohawk Power Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 207 to become effective Dec. 19, 2005.

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

Subject: Exemptions from standby service.

Purpose: To revise rules concerning customer exemptions from the requirements for service under Service Classification No. 7—sale of standby service to customers with on-site generation facilities.

Substance of proposed rule: On August 31, 2005, Niagara Mohawk Power Corporation (Niagara Mohawk) filed proposed tariff amendments to revise its rules concerning customer exemptions from the requirements for service under S.C. No. 7 — Sale of Standby Service to Customers with

On-Site Generation Facilities. The proposed effective date of Niagara Mohawk's filing is December 19, 2005. The Commission may approve, reject or modify, in whole or in part, Niagara Mohawk's proposed tariff revisions.

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. Brilling, 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.

(01-E-1847SA5)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Lightened Regulation by Cross-Sound Cable (New York), LLC

I.D. No. PSC-39-05-00003-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject (in whole or in part) or modify a request by Cross-Sound Cable (New York), LLC (CSCNY) for an order providing for lightened regulation.

Statutory authority: Public Service Law, sections 4(1), 66(1), 69, 70 and 110

Subject: Request by CSCNY for lightened regulation as an electric corporation.

Purpose: To consider the request in connection with the construction and operation of an electric transmission facility.

Substance of proposed rule: By petition filed August 24, 2005, Cross-Sound Cable (New York) LLC (CSCNY) seeks a declaratory ruling from the Commission that it, as an electric corporation providing interstate electric transmission capacity, will be subject to a lightened regulatory regime. While the petition was denominated as one for a Declaratory Ruling, CSCNY seeks an Order granting relief, rather than simply a Declaratory Ruling finding entitlement to such relief.

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. Brilling, 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-1030SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Market Supply Charge and Energy Cost Adjustment by Orange and Rockland Utilities, Inc.

I.D. No. PSC-39-05-00004-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 2—Electricity, to become effective Dec. 1, 2005.

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

Subject: Market supply charge and energy cost adjustment.

Purpose: To revise the market supply charge (MSC) and energy cost adjustment to reduce the volatility of the MSC.

Substance of proposed rule: On September 1, 2005, Orange and Rockland Utilities, Inc. (O&R) filed proposed tariff amendments to revise its Market Supply Charge (MSC) and Energy Cost Adjustment (ECA) to reduce the volatility of the MSC. O&R proposes to make the following changes to its MSC and ECA and the cost elements recovered thereunder from full service and retail access electric customers. (1) Flow all adjustments related to Transmission Congestion Contracts through the ECA. (2) Establish a 5% "band" limiting how much the MSC would be negatively or positively impacted by NYISO adjustments each month with NYISO adjustments outside of the 5% band flowing through the ECA. (3) Revise the ECA to permit monthly adjustments, in addition to an annual adjustment. The proposed effective date of O&R's filing is December 1, 2005. The Commission may approve, reject or modify, in whole or in part, O&R's proposed tariff revisions.

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. Brilling, 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-1090SA1)